



New South Wales

Snowy Mountains Cloud Seeding Trial Amendment Bill 2012

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to replace the current trial of cloud seeding operations in the Snowy Mountains area, as provided for in the *Snowy Mountains Cloud Seeding Trial Act 2004* (the ***Principal Act***), with a scheme to provide for ongoing cloud seeding operations in a larger part of the Snowy Mountains area. In particular, the Bill:

- (a) authorises cloud seeding operations (being operations designed to increase precipitation by the discharge of a seeding agent into passing clouds) to be carried out by or on behalf of Snowy Hydro Limited (***SHL***) subject to specified conditions, and
- (b) requires the use of approved seeding agents, approved tracing agents and approved methods of discharge in the cloud seeding operations, specifies certain approved agents and methods and sets out the approval process for other agents and methods, and
- (c) requires the preparation and approval (by the Minister for Planning and Infrastructure and the Minister for the Environment (the ***relevant Ministers***)) of an environmental management plan (an ***EMP***) relating to the cloud seeding operations, and

- (d) requires SHL to prepare a report on its cloud seeding operations each year, and
- (e) provides that the Environment Protection Authority (the *EPA*) is to review each such report, and cloud seeding operations in general from time to time, and report any findings, and make any necessary recommendations, to the Board of the EPA and the relevant Ministers, and
- (f) extends the operation of Chapter 7 of the *Protection of the Environment Operations Act 1997* (Investigation) to the exercise of powers in connection with the Principal Act, and
- (g) enables the making of regulations relating to fees payable by Snowy Hydro Limited to the National Parks and Wildlife Service in connection with cloud seeding operations, and
- (h) makes other minor and consequential amendments.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Schedule 1 Amendment of Snowy Mountains Cloud Seeding Trial Act 2004 No 19

Schedule 1 [1] and [2] amend the long title and name of the Principal Act to reflect the proposed replacement of trial cloud seeding operations in the Snowy Mountains area with a scheme for ongoing cloud seeding operations. The Principal Act currently provides for the Natural Resources Commission to play a role in the trial cloud seeding operations. **Schedule 1 [6], [13] and [15]** make amendments as a consequence of the removal of the role of the Natural Resources Commission following the proposed end to the trial operations.

Schedule 1 [9] replaces the provision that currently permits trial cloud seeding operations to be carried out by or on behalf of SHL in the “target area” (being an area in the Snowy Mountains shown on a map in Schedule 1 to the Principal Act) with a provision providing for ongoing cloud seeding operations to be carried out by or on behalf of SHL. Such ongoing operations are subject to conditions set out in the provision, including conditions that:

- (a) the operations primarily target land within the Snowy water catchment (therefore expanding the area to be covered by the operations), and
- (b) the operations be carried out only if there is an approved EMP and only in accordance with that EMP, and
- (c) the operations use only an approved seeding agent, approved tracing agent and approved method, and

- (d) the discharge of the seeding agent is carried out at a time when increased precipitation in the Snowy water catchment is likely to fall as snow at an elevation above 1400 metres from the mean sea level, and
- (e) SHL must consult with the National Parks and Wildlife Service before carrying out any new operations involving a land-based method of discharge of seeding or tracing agent within any area of land reserved under the *National Parks and Wildlife Act 1974*, and
- (f) SHL must consult with the National Parks and Wildlife Service before installing, or carrying out major modifications to, any facilities required to carry out cloud seeding operations within any area of land reserved under the *National Parks and Wildlife Act 1974*, and
- (g) installation of new facilities for cloud seeding operations must not be carried out within any wilderness area (within the meaning of the *National Parks and Wildlife Act 1974*), and
- (h) seeding agent is not to be discharged from land-based generators in any wilderness area.

Schedule 1 [9] also inserts new provisions concerning approved seeding and tracing agents and approved methods of discharge of those agents. The Principal Act currently provides for the use of silver iodide as a seeding agent, indium sesquioxide as a tracing agent and the discharge of these agents only by land-based aerosol generators. The new provisions enable the approval, by the relevant Ministers, of additional agents as seeding agents and tracing agents and the use of aerial methods of discharge of approved agents.

Schedule 1 [10] inserts a new provision dealing with the approval of environmental management plans. Such a plan must be in place before cloud seeding operations can be undertaken. The provision provides that the relevant Ministers may, on application by SHL, approve an EMP in relation to the cloud seeding operations authorised by the Principal Act. The EMP is to comply with any requirements imposed by the Ministers and notified to SHL. The relevant Ministers may also require an application for approval of an EMP to be accompanied by an independent scientific assessment of any changed cloud seeding operations. The provision also deals with the amendment, replacement and revocation of an EMP. **Schedule 1 [10]** also inserts a new provision outlining a review process in relation to environmental management plans.

Schedule 1 [11] and [12] provide for the suspension or termination of the authorisation of cloud seeding operations if SHL has not complied with any conditions of the authorisation conferred by the Principal Act or any other requirement imposed by or under the Principal Act or if SHL has not complied with a requirement made of it under Chapter 7 of the *Protection of the Environment Operations Act 1997* in connection with a review carried out by the EPA under the Principal Act.

Schedule 1 [14] inserts a new Part (proposed sections 6A, 6B and 6C) dealing with reporting and review requirements. Proposed section 6A requires an annual report to be provided on the cloud seeding operations of SHL to the relevant Ministers and to the EPA. Proposed section 6B provides for the EPA to have an ongoing role in the oversight of cloud seeding operations by requiring the EPA to review each report on cloud seeding operations provided by SHL and report the findings of the review, and make any necessary recommendations following the review, to the Board of the EPA and the relevant Ministers. The EPA may also review and report on the cloud seeding operations generally from time to time. Proposed section 6C extends the operation of Chapter 7 of the *Protection of the Environment Operations Act 1997* (Investigation) to the exercise of powers in connection with the Principal Act.

Schedule 1 [16] and [17] amend the provision that currently provides for no compensation to be payable by the State as a result of the enactment of the Principal Act or the carrying out of cloud seeding operations to ensure it extends to anything resulting from the amendment of the Principal Act or the effect of the *Environment Protection and Biodiversity Conservation Act 1999* of the Commonwealth on the authorised cloud seeding operations.

Schedule 1 [18] inserts a provision enabling the delegation of a Minister's functions under the Principal Act or the regulations to a member of the Government Service. **Schedule 1 [5]** makes a consequential amendment.

Schedule 1 [19] enables regulations to be made in relation to fees payable by Snowy Hydro Limited to the National Parks and Wildlife Service in connection with cloud seeding operations.

Schedule 1 [20] omits a map that is made redundant as a consequence of the amendments in Schedule 1 [9] and inserts savings and transitional provisions.

Schedule 1 [4] and [8] make amendments consequential on the proposed replacement of trial cloud seeding operations in the Snowy Mountains area with ongoing cloud seeding operations. **Schedule 1 [3] and [7]** make other consequential amendments, including by inserting new definitions.

Schedule 2 Amendment of other Acts

Schedule 2.1 makes amendments to the *National Parks and Wildlife Act 1974* as a consequence of the amendment in Schedule 1 [19].

Schedule 2.2 makes an amendment to the *Protection of the Environment Operations Act 1997* as a consequence of the insertion of proposed section 6C into the Principal Act.

First print



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Snowy Mountains Cloud Seeding Trial Amendment Bill 2012

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New South Wales

Snowy Mountains Cloud Seeding Trial Amendment Bill 2012

No. , 2012

A Bill for

An Act to amend the *Snowy Mountains Cloud Seeding Trial Act 2004* to provide for ongoing cloud seeding operations in the Snowy Mountains area; and for related purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Snowy Mountains Cloud Seeding Trial Amendment Act 2012</i> .	3 4
2 Commencement	5
This Act commences on a day or days to be appointed by proclamation.	6

Schedule 1	Amendment of Snowy Mountains Cloud Seeding Trial Act 2004 No 19	1
		2
[1] Long title		3
	Omit “a trial cloud seeding research project”.	4
	Insert instead “cloud seeding operations”.	5
[2] Section 1 Name of Act		6
	Omit “ <i>Trial</i> ”.	7
[3] Section 3 Definitions		8
	Insert in alphabetical order:	9
	<i>approved EMP</i> means an environmental management plan approved by the relevant Ministers under section 5 and for which the approval is in force.	10 11 12
	<i>approved method</i> , in relation to the discharge of a seeding agent or tracing agent, means a method specified as an approved method in, or approved in accordance with, section 4C.	13 14 15
	<i>approved seeding agent</i> means a thing specified as an approved seeding agent in, or approved in accordance with, section 4A.	16 17
	<i>approved tracing agent</i> means a thing specified as an approved tracing agent in, or approved in accordance with, section 4B.	18 19
	<i>environmental management plan</i> or <i>EMP</i> —see section 5.	20
	<i>EPA</i> means the Environment Protection Authority constituted by the <i>Protection of the Environment Administration Act 1991</i> .	21 22
	<i>Snowy water catchment</i> has the same meaning as it has in the <i>Snowy Hydro Corporatisation Act 1997</i> .	23 24
[4] Section 3, definition of “authorised cloud seeding operations”		25
	Omit “during the period referred to in section 5”.	26
[5] Section 3, definition of “function”		27
	Insert “and <i>exercise</i> a function includes perform a duty” after “duty”.	28
[6] Section 3, definition of “Natural Resources Commission”		29
	Omit the definition.	30
[7] Section 3 (2)		31
	Insert at the end of section 3:	32
	(2) Notes included in this Act do not form part of this Act.	33

[8] Part 2, heading	1
Omit “ trial ”. Insert instead “ operations ”.	2
[9] Sections 4–4C	3
Omit section 4. Insert instead:	4
4 Authorisation of cloud seeding operations	5
(1) Cloud seeding operations designed to increase precipitation by the discharge of a seeding agent into passing clouds are authorised to be carried out by or on behalf of Snowy Hydro Limited in accordance with this Act.	6 7 8 9
(2) The authorisation is subject to the following conditions:	10
(a) the area to be primarily targeted for the increased precipitation is land within the Snowy water catchment,	11 12
(b) operations may be carried out only if there is an approved EMP,	13 14
(c) operations must be carried out in accordance with the approved EMP (whether being carried out within or outside the Snowy water catchment),	15 16 17
(d) the seeding agent used must be an approved seeding agent and used in accordance with the conditions (if any) of its approval as a seeding agent,	18 19 20
(e) the tracing agent used must be an approved tracing agent and used in accordance with the conditions (if any) of its approval as a tracing agent,	21 22 23
(f) the seeding agent and tracing agent must be discharged by the use of an approved method,	24 25
(g) the discharge must be carried out in accordance with the conditions (if any) of its approval as a method of discharge,	26 27 28
(h) the discharge of the seeding agent is to be carried out at a time when increased precipitation in the Snowy water catchment is likely to fall as snow at an elevation above 1400 metres from the mean sea level,	29 30 31 32
(i) Snowy Hydro Limited must consult with the National Parks and Wildlife Service before carrying out any new operations involving a land-based method of discharge of seeding or tracing agent within any area of land reserved under the <i>National Parks and Wildlife Act 1974</i> (that is, operations in an area that has not been the subject of previous consultation with the Service),	33 34 35 36 37 38 39

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| (j) | Snowy Hydro Limited must consult with the National Parks and Wildlife Service before installing, or carrying out major modifications to, any facilities required to carry out cloud seeding operations within any area of land reserved under the <i>National Parks and Wildlife Act 1974</i> , | 1
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| (k) | installation of new facilities for cloud seeding operations must not be carried out within any wilderness area (within the meaning of the <i>National Parks and Wildlife Act 1974</i>), | 6
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| (l) | a seeding agent is not to be discharged from land-based aerosol generators in any wilderness area (within the meaning of the <i>National Parks and Wildlife Act 1974</i>). | 9
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| (3) | The cloud seeding operations authorised by this Act include, subject to the requirements imposed by or under this Act: | 12
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| (a) | entering onto public land to carry out the cloud seeding operations, and | 14
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| (b) | installing and maintaining facilities, and carrying out works, on public or other land, that are required to carry out cloud seeding operations, and | 16
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18 |
| (c) | any operations that are ancillary or incidental to the operations referred to in this section. | 19
20 |
| (4) | The cloud seeding operations authorised by this Act may be carried out within or outside the Snowy water catchment, subject to the requirements imposed by or under this Act. | 21
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23 |
| 4A | Approved seeding agents | 24 |
| (1) | Silver iodide is an approved seeding agent. | 25 |
| (2) | The relevant Ministers may, on application by Snowy Hydro Limited, approve the use of any other thing as a seeding agent in cloud seeding operations. | 26
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28 |
| (3) | An application for approval of the use of a thing as a seeding agent in cloud seeding operations must be accompanied by details of the health risk assessment carried out in relation to the proposed use of the seeding agent (including the process used to carry out the assessment and the results of the assessment). | 29
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32
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| (4) | The health risk assessment is to comply with any requirements set out in the approved EMP. | 34
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| (5) | The relevant Ministers may approve the use of a thing as a seeding agent with or without conditions. | 36
37 |
| (6) | The relevant Ministers may, at any time, amend or revoke an approval given under this section. | 38
39 |

(7)	The relevant Ministers must consult with Snowy Hydro Limited before amending or revoking an approval.	1 2
4B	Approved tracing agents	3
(1)	Indium sesquioxide is an approved tracing agent.	4
(2)	The relevant Ministers may, on application by Snowy Hydro Limited, approve the use of any other thing as a tracing agent in cloud seeding operations.	5 6 7
(3)	An application for approval of the use of a thing as a tracing agent in cloud seeding operations must be accompanied by details of the health risk assessment carried out in relation to the proposed use of the tracing agent (including the process used to carry out the assessment and the results of the assessment).	8 9 10 11 12
(4)	The health risk assessment is to comply with any requirements set out in the approved EMP.	13 14
(5)	The relevant Ministers may approve the use of a thing as a tracing agent with or without conditions.	15 16
(6)	The relevant Ministers may, at any time, amend or revoke an approval given under this section.	17 18
(7)	The relevant Ministers must consult with Snowy Hydro Limited before amending or revoking an approval.	19 20
4C	Approved methods of discharge of agent	21
(1)	The discharge of a seeding agent or tracing agent by land-based aerosol generators is an approved method of discharge.	22 23
(2)	The relevant Ministers may, on application by Snowy Hydro Limited, approve the use of an aerial method of discharge of a seeding agent or tracing agent as an approved method of discharge.	24 25 26 27
(3)	The relevant Ministers may approve the use of an aerial method of discharge as an approved method of discharge with or without conditions.	28 29 30
(4)	The relevant Ministers may, at any time, amend or revoke an approval given under this section.	31 32
(5)	The relevant Ministers must consult with Snowy Hydro Limited before amending or revoking an approval.	33 34

[10] Sections 5 and 5A	1
Omit section 5. Insert instead:	2
5 Environmental management plan	3
(1) The relevant Ministers may, on application by Snowy Hydro Limited, approve an environmental management plan (an <i>EMP</i>) in relation to the cloud seeding operations authorised by this Act.	4 5 6
(2) The EMP is to comply with any requirements imposed by the relevant Ministers and notified to Snowy Hydro Limited.	7 8
(3) Without limiting subsection (2), the relevant Ministers may require the EMP to provide for the following:	9 10
(a) a public review and approval process that must be undertaken before any aerial cloud seeding operations or changes to seeding agents or tracing agents,	11 12 13
(b) a process for the resolution of disputes about cloud seeding operations between Snowy Hydro Limited and others (such as community members, Ministers or NSW Government agencies).	14 15 16 17
(4) The relevant Ministers may require an application for approval of an EMP to be accompanied by an independent scientific assessment of any proposed cloud seeding operations that differ from the operations currently authorised. Any such scientific assessment must comply with any requirements imposed by the relevant Ministers and notified to Snowy Hydro Limited.	18 19 20 21 22 23
(5) The relevant Ministers may, on application by Snowy Hydro Limited:	24 25
(a) approve an amendment to an approved EMP, or	26
(b) revoke an approval of an EMP and approve a new EMP.	27
(6) This section applies in respect of an application for approval of amendment of an approved EMP in the same way as it applies in respect of an application for approval of an EMP.	28 29 30
(7) An approval of an EMP remains in force until it is revoked by the relevant Ministers.	31 32
5A Review of approved EMP	33
(1) The relevant Ministers may, from time to time, conduct a review of an approved EMP.	34 35

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(2)	A review must be conducted at least once every 5 years after approval of an EMP is granted or renewed. However, reviews may be conducted at more frequent intervals.	1 2 3
(3)	The relevant Ministers are to advise Snowy Hydro Limited of their intention to conduct a review and to give Snowy Hydro Limited an opportunity to make submissions on the review.	4 5 6
(4)	For the purposes of the review, Snowy Hydro Limited must provide the relevant Ministers with any information or evidence required by the relevant Ministers to conduct the review.	7 8 9
(5)	Without limiting subsection (4), the relevant Ministers may require Snowy Hydro Limited to provide an independent scientific assessment of any proposed cloud seeding operations that differ from the operations currently authorised. Any such scientific assessment must comply with any requirements imposed by the relevant Ministers and notified to Snowy Hydro Limited.	10 11 12 13 14 15 16
(6)	Following a review, the relevant Ministers may:	17
(a)	renew their approval of the approved EMP (with or without amendments to the EMP), or	18 19
(b)	revoke their approval of the approved EMP and approve a new EMP, or	20 21
(c)	revoke their approval of the approved EMP.	22
(7)	The relevant Ministers must consult with Snowy Hydro Limited before revoking their approval of an approved EMP.	23 24
[11]	Section 6 Suspension or termination of authorisation	25
	Omit section 6 (2) (b). Insert instead:	26
(b)	Snowy Hydro Limited has not complied with any conditions of the authorisation conferred by this Act or any other requirement imposed by or under this Act, or	27 28 29
[12]	Section 6 (2) (d)	30
	Insert at the end of section 6 (2) (c):	31
	, or	32
(d)	Snowy Hydro Limited has not complied with a requirement made of it under Chapter 7 of the <i>Protection of the Environment Operations Act 1997</i> in connection with a review carried out by the EPA under this Act.	33 34 35 36

[13] Section 6 (4)	1
Omit “and the Natural Resources Commission”.	2
[14] Part 2A	3
Insert after Part 2:	4
Part 2A Reporting and review	5
6A Reporting requirements	6
(1) Snowy Hydro Limited must, by 31 March in each year or such later date as agreed by the relevant Ministers, provide a report on its cloud seeding operations during the period of 12 months ending on 31 December in the previous year to the relevant Ministers and to the EPA.	7 8 9 10 11
(2) Without limiting the generality of subsection (1), the report must contain the following information:	12 13
(a) details of compliance with the approved EMP,	14
(b) details of research concerning, and monitoring of, the impact of tracing agents and seeding agents on the environment (including the findings of any such research or monitoring).	15 16 17 18
6B General functions of EPA	19
(1) The EPA is to review each report on cloud seeding operations provided by Snowy Hydro Limited and report the findings of the review, and make any necessary recommendations following the review, to the Board of the EPA and the relevant Ministers.	20 21 22 23
(2) The EPA is, from time to time as determined by the EPA, to review the cloud seeding operations carried out in accordance with this Act and report the findings of the review, and make any necessary recommendations following the review, to the Board of the EPA and the relevant Ministers.	24 25 26 27 28
6C Application of Chapter 7 of Protection of the Environment Operations Act 1997	29 30
Chapter 7 (Investigation) of the <i>Protection of the Environment Operations Act 1997</i> extends to the exercise of powers in connection with this Act and the regulations.	31 32 33
Note. Section 186 of the <i>Protection of the Environment Operations Act 1997</i> provides that Chapter 7 of that Act extends to the exercise of certain powers in connection with certain other legislation, including this Act. Chapter 7 of the <i>Protection of the Environment Operations Act 1997</i>	34 35 36 37

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	deals with such matters as the appointment of authorised officers, powers to require information and records, powers of entry and search, powers to question and to identify persons and powers with respect to certain things such as vehicles.	1 2 3 4
[15]	Section 8 Supervision of trial and reporting by Natural Resources Commission	5 6
	Omit the section.	7
[16]	Section 9 No compensation payable by State	8
	Insert “or amendment” after “enactment” in section 9 (1) (a).	9
[17]	Section 9 (1) (d)	10
	Insert after section 9 (1) (c):	11
	(d) the effect of the <i>Environment Protection and Biodiversity Conservation Act 1999</i> of the Commonwealth on the authorised cloud seeding operations, including anything done or omitted to be done by the Commonwealth or any person exercising a function under that Act in respect of the authorised cloud seeding operations.	12 13 14 15 16 17
[18]	Section 10A	18
	Insert after section 10:	19
	10A Delegation	20
	A Minister may delegate to a member of the Government Service the exercise of any of the Minister’s functions under this Act or the regulations, other than this power of delegation.	21 22 23
[19]	Section 11 Regulations	24
	Insert at the end of the section:	25
	(2) In particular, the regulations may make provision for or with respect to fees payable by Snowy Hydro Limited to the National Parks and Wildlife Service in connection with cloud seeding operations (including by specifying any such fee or the method by which the fee is to be calculated).	26 27 28 29 30
	(3) The Minister is not to recommend the making of a regulation that provides for the payment of fees by Snowy Hydro Limited in connection with cloud seeding operations unless the Minister certifies that he or she is satisfied that the fees do not exceed the costs incurred or likely to be incurred by the National Parks and Wildlife Service in connection with cloud seeding operations.	31 32 33 34 35 36

[20] Schedule 1	1
Omit the Schedule. Insert instead:	2
Schedule 1 Savings and transitional provisions	3
Part 1 General	4
1 Regulations	5
(1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or any Act that amends this Act.	6 7 8
(2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.	9 10
(3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as:	11 12 13
(a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or	14 15 16
(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.	17 18 19

Schedule 2	Amendment of other Acts	1
2.1	National Parks and Wildlife Act 1974 No 80	2
[1]	Section 138 Payments into Fund	3
	Insert “, the <i>Snowy Mountains Cloud Seeding Act 2004</i> ” after “the <i>Wilderness Act 1987</i> ” in section 138 (1) (b) (iii).	4 5
[2]	Section 139 Payments out of Fund	6
	Insert after section 139 (2) (m2):	7
	(m3) charges, costs and expenses incurred by the Service in connection with cloud seeding operations authorised by the <i>Snowy Mountains Cloud Seeding Act 2004</i> ,	8 9 10
2.2	Protection of the Environment Operations Act 1997 No 156	11
	Section 186 Extension of Chapter to other environment protection legislation	12 13
	Insert after section 186 (b2):	14
	(b3) <i>Snowy Mountains Cloud Seeding Act 2004</i> and the regulations under that Act,	15 16