

Filming Approval Bill 2004

Explanatory note

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

Overview of Bill

In *Blue Mountains Conservation Society Inc v Director-General of National Parks and Wildlife & (2) Ors* [2004] NSWLEC 196, Lloyd J of the Land and Environment Court held that a consent to film a commercial movie in a wilderness area given under clause 20 of the *National Parks and Wildlife Regulation 2002* was invalid because it constituted a licence for the purposes of section 153A of the Act. Section 153A provides that a licence cannot be granted in respect of land within a wilderness area. His Honour also found that the activity in question was in any event contrary to the management principles for wilderness areas set out in section 9 of the *Wilderness Act 1987*.

The objects of this Bill are:

- (a) to facilitate the granting of approvals to film in national parks, marine parks and other areas under the *National Parks and Wildlife Act 1974* and the *Marine Parks Act 1997*, but to limit the granting of such approvals in respect of wilderness areas to filming for educational, scientific, research or tourism purposes, and
- (b) to make a consequential amendment to the *National Parks and Wildlife Regulation 2002*.

Outline of provisions

Part 1 Preliminary

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.

Clause 3 defines certain words and expressions used in the proposed Act.

In particular, **designated area** is defined to mean:

- (a) any area that forms part of land that is reserved or dedicated under Part 4 or 4A of the *National Parks and Wildlife Act 1974* (including any wilderness area within the meaning of that Act) or land acquired under Part 11 of that Act, or
- (b) any area that forms part of a marine park within the meaning of the *Marine Parks Act 1997*.

The **relevant Minister**, in relation to a filming approval under the proposed Act in respect of a designated area, is defined to mean:

- (a) in relation to an area that forms part of land that is reserved or dedicated under Part 4 or 4A of the *National Parks and Wildlife Act 1974* or land acquired under Part 11 of that Act, the Minister administering those provisions, or
- (b) in relation to a designated area that forms part of a marine park within the meaning of the *Marine Parks Act 1997*, the Minister administering that Act.

Part 2 Filming approvals

Clause 4 enables the relevant Minister for a designated area to grant approval to carry out filming and related activities (**filming activities**) in the area even if the filming activities are for commercial purposes. An approval may be subject to such conditions as may be specified in the approval. It may also authorise the approval holder to have exclusive use of the area for filming purposes for the period specified in the approval. The Minister must give consideration as to whether or not conditions are required on the approval to ensure that the environmental impact of the filming activity is minimised.

The relevant Minister for a designated area that forms part of a wilderness area within the meaning of the *National Parks and Wildlife Act 1974* will not be able to grant a filming approval for the carrying out of any filming activity in the area unless the Minister is satisfied that the activity is to be carried out for educational, scientific, research or tourism purposes.

Clause 5 provides that development for the purposes of a filming activity in a designated area does not require development consent under Part 4 of the *Environmental Planning and Assessment Act 1979*. The proposed section also makes it clear that it does not affect the operation of Part 5 of that Act, except in relation to filming activities carried out in marine parks.

Clause 6 provides that a filming approval under the proposed Act authorises the approval holder to carry out in the designated area to which the approval relates any filming activity, in accordance with the conditions of the approval, that is specified in the approval even if the carrying out of that activity is prohibited or not permitted by or under:

- (a) the *National Parks and Wildlife Act 1974*, or
- (b) the *Wilderness Act 1987*, or
- (c) the *Marine Parks Act 1997*, or
- (d) a statutory rule or any other instrument made under an Act referred to in paragraph (a), (b) or (c).

The proposed section also provides that a filming approval can be relied on for certain defences to the prosecution of offences under the *Fisheries Management Act 1994* and the *National Parks and Wildlife Act 1974* (or the regulations under those Acts).

Clause 7 provides that nothing in the proposed Act requires a person to obtain a filming approval to carry out any filming activity in a designated area that is not prohibited or that can be carried out without the need for a further approval or other authorisation under another law.

Part 3 Miscellaneous

Clause 8 enables a relevant Minister for a designated area to delegate the Minister's functions under the proposed Act or the regulations.

Clause 9 enables the Governor to make regulations for the purposes of the proposed Act.

Clause 10 gives effect to Schedule 1, which contains an amendment to the *National Parks and Wildlife Regulation 2002*.

Clause 11 provides for the review of the proposed Act after a period of 5 years following the date of assent to the proposed Act.

Schedule 1 Amendment of National Parks and Wildlife Regulation 2002

Schedule 1 amends the *National Parks and Wildlife Regulation 2002* to provide that, for the purposes of that Regulation, a filming approval to carry out a filming activity on land reserved or dedicated under the *National Parks and Wildlife Act 1974* is taken to constitute consent to the carrying out of that activity on the land by the park authority (within the meaning of that Regulation) for the land in accordance with the conditions of the approval.