



New South Wales

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 *National Parks and Wildlife Act 1974*. 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.



New South Wales

Filming Approval Bill 2004

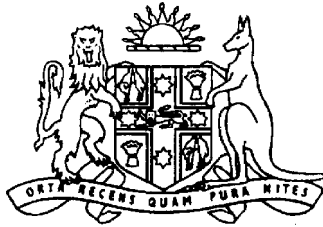
Contents

	Page
Part 1 Preliminary	
1 Name of Act	2
2 Commencement	2
3 Definitions	2
Part 2 Filming approvals	
4 Filming approvals for designated areas	4
5 Application of Environmental Planning and Assessment Act 1979 to filming activities in designated areas	5
6 Effect of filming approval on certain other Acts	6
7 Filming approval not required if filming activity otherwise permissible	6
Part 3 Miscellaneous	
8 Delegation	7

Filming Approval Bill 2004

Contents

	Page
9 Regulations	7
10 Amendment of National Parks and Wildlife Regulation 2002	7
11 Review of Act	7
Schedule 1 Amendment of National Parks and Wildlife Regulation 2002	8



New South Wales

Filming Approval Bill 2004

No. , 2004

A Bill for

An Act to facilitate filming in national parks, marine parks and certain other areas under the *National Parks and Wildlife Act 1974* and the *Marine Parks Act 1997*; and for other purposes.

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

This Act is the *Filming Approval Act 2004*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Definitions

(1) In this Act:

approval holder means a person to whom or to which a filming approval is granted.

designated area means any of the following:

- (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,
- (b) any area that forms part of a marine park within the meaning of the *Marine Parks Act 1997*.

development has the same meaning as it has in the *Environmental Planning and Assessment Act 1979*.

exercise a function includes perform a duty.

filming means recording images (whether on film or video tape or electronically or by other means) for exhibition or broadcast (such as by cinema, television or the Internet or by other means) or for sale.

filming activity means:

- (a) filming, and
- (b) any other activity connected with the carrying out of filming, whether or not for a commercial purpose.

filming approval means an approval given under this Act.

function includes a power, authority or duty.

relevant Minister, in relation to a filming approval in respect of a designated area, means:

- (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.
- (2) Notes included in this Act do not form part of this Act.

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Part 2	Filming approvals	1
4	Filming approvals for designated areas	2
(1)	A person proposing to carry out a filming activity in a designated area may apply to the relevant Minister for the area for approval to carry out the activity in that area.	3 4 5
(2)	The relevant Minister may, by order in writing, grant approval to any such applicant and such other persons as may be specified in the approval to carry out such filming activities in the area as are specified in the approval.	6 7 8 9
(3)	The relevant Minister for a designated area that forms part of a wilderness area within the meaning of the <i>National Parks and Wildlife Act 1974</i> may not grant 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.	10 11 12 13 14 15
(4)	Before granting a filming approval in respect of an area that forms part of Schedule 14 lands or ALR Act lands within the meaning of Part 4A of the <i>National Parks and Wildlife Act 1974</i> , the relevant Minister must obtain the concurrence of the board of management within the meaning of that Act (if any) for the lands.	16 17 18 19 20
(5)	A filming approval is subject to such conditions as may be specified in the approval.	21 22
(6)	In determining whether to impose conditions on a filming approval to carry out a filming activity, the relevant Minister is to consider whether or not conditions should be imposed to ensure the following:	23 24 25 26
(a)	that the filming activity is carried out in a manner that minimises any adverse environmental impact on the area,	27 28
(b)	that existing roads, tracks, paths or other means of access to the area will be used by the approval holder wherever feasible,	29 30 31
(c)	that the location in which the filming activity is to be carried out is the minimum area that is feasible for the carrying out of such an activity,	32 33 34
(d)	that the period of time required to carry out the filming activity is limited to the shortest period that is feasible for the carrying out of the activity.	35 36 37

- (7) A filming approval for a designated area may grant the approval holder exclusive use of the area for the purposes of carrying out a filming activity specified in the approval for the period specified in the approval.
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- (8) If there is more than one relevant Minister for a designated area:
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- (a) an application under subsection (1) may be lodged with one of the relevant Ministers, and
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- (b) a filming approval may be granted by any of the relevant Ministers, but only with the concurrence of the other relevant Ministers.
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- (9) Nothing in any other Act, a statutory rule or another law (or in any instrument made under another Act) prevents an application for a filming approval from being made, considered or granted.
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- Note.** Sections 6 and 7 provide for the effect of the granting of a filming approval on other laws.
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5 Application of Environmental Planning and Assessment Act 1979 to filming activities in designated areas 16
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- (1) Development for the purposes of a filming activity in a designated area:
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- (a) may be carried out without the necessity for development consent under Part 4 of the *Environmental Planning and Assessment Act 1979*, and
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- (b) may be so carried out even if the development would be prohibited, or would require development consent, in the absence of this section.
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- (2) Sections 19 and 20 of the *Marine Parks Act 1997* are taken not to apply to development for the purposes of a filming activity, or to a filming activity, carried out in a marine park declared under that Act.
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- (3) Except as provided by subsection (2), nothing in this Act affects the operation of Part 5 of the *Environmental Planning and Assessment Act 1979* in relation to filming activities carried out in designated areas.
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- Note.** Part 5 (Environmental assessment) of the *Environmental Planning and Assessment Act 1979* requires the relevant Minister to follow certain procedures and to consider certain environmental matters before granting a filming approval.
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6	Effect of filming approval on certain other Acts	1
(1)	A filming approval 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:	2 3 4 5 6
	(a) the <i>National Parks and Wildlife Act 1974</i> , or	7
	(b) the <i>Wilderness Act 1987</i> , or	8
	(c) the <i>Marine Parks Act 1997</i> , or	9
	(d) a statutory rule or any other instrument made under an Act referred to in paragraph (a), (b) or (c).	10 11
(2)	Without limiting subsection (1), an approval holder is not required to obtain a separate approval or other authorisation under an Act, statutory rule or instrument referred to in that subsection for the carrying out of any filming activity specified in the holder's filming approval.	12 13 14 15 16
(3)	For the purposes of any defence to a prosecution for an offence under the <i>Fisheries Management Act 1994</i> or the <i>National Parks and Wildlife Act 1974</i> (or the regulations under those Acts), a filming approval for the carrying out of a filming activity in a designated area is taken to constitute an approval of the activity by a determining authority within the meaning of Part 5 of the <i>Environmental Planning and Assessment Act 1979</i> .	17 18 19 20 21 22 23
7	Filming approval not required if filming activity otherwise permissible	24 25
	Nothing in this 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.	26 27 28 29

Part 3	Miscellaneous	1
8	Delegation	2
	The relevant Minister for a designated area may delegate the exercise of any function of the Minister under this Act or the regulations (other than this power of delegation) to:	3
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	(a) any member of staff of a government department, or	6
	(b) any person, or any class of persons, authorised for the purposes of this section by the regulations.	7
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9	Regulations	9
(1)	The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.	10
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(2)	In particular, the regulations may make provision for or with respect to the following:	14
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	(a) the making of applications for filming approvals (including fees for any such applications),	16
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	(b) the determination of applications for filming approvals by relevant Ministers.	18
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10	Amendment of National Parks and Wildlife Regulation 2002	20
	The <i>National Parks and Wildlife Regulation 2002</i> is amended as set out in Schedule 1.	21
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11	Review of Act	23
(1)	The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.	24
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(2)	The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.	27
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(3)	A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.	29
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Schedule 1 Amendment of National Parks and Wildlife Regulation 2002

(Section 10)

Clause 3 Definitions

Insert after clause 3 (1):

- (1A) For the purposes of this Regulation, a filming approval granted under the *Filming Approval Act 2004* to carry out a filming activity within the meaning of that Act 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 for the land in accordance with the conditions of the approval.