

Passed by both Houses



New South Wales

Filming Approval Bill 2004

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I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2004*



New South Wales

Filming Approval Bill 2004

Act No , 2004

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.

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

Chairman of Committees of the Legislative Assembly.

Clause 1 Filming Approval Bill 2004

Part 1 Preliminary

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

This Act is the *Filming Approval Act 2004*.

2 Commencement

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.

Clause 4 Filming Approval Bill 2004

Part 2 Filming approvals

Part 2 Filming approvals

4 Filming approvals for designated areas

- (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.
- (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.
- (3) In determining whether to grant a filming approval to carry out a filming activity in a designated area, the relevant Minister must have regard to each of the following matters:
 - (a) if the area forms part of land that is reserved or dedicated under Part 4 or 4A of the

- (a) the education of or the raising of awareness of members of the public about Aboriginal heritage or culture, historic heritage, biodiversity, threatened species, the management of parks, environmental processes, public recreation, bushfire management or visitor safety,
 - (b) the research or investigation into Aboriginal heritage or culture, historic heritage, biodiversity, threatened species, the management of parks, environmental processes, public recreation or bushfire management,
 - (c) the promotion of visits by tourists.
- (5) 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 *National Parks and Wildlife Act 1974*, the relevant Minister must obtain the concurrence of the board of management within the meaning of that Act (if any) for the lands.
- (6) A filming approval is subject to such conditions as may be specified in the approval.
- (7) In determining whether or not to grant a filming approval to carry out a filming activity in a designated area, the Minister is to be satisfied of the following matters (and is, if required for that purpose, to impose conditions on any filming approval granted to ensure that those matters are satisfied):
- (a) that the filming activity is carried out in a manner that minimises any adverse environmental impact on the area,
 - (b) that existing roads, tracks, paths or other means of access to the area will be used by the approval holder wherever feasible,
 - (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,
 - (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,
 - (e) that the filming activity is not inconsistent with any applicable threat abatement plan or recovery plan within the meaning of the *Threatened Species Conservation Act 1995*,

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Part 2 Filming approvals

- (g) that the siting and timing of the filming activity, as far as is practicable, minimises the impact of the activity on the natural and cultural heritage values of the area and on the public enjoyment of the area,
 - (h) where the activity is to be carried out in a wilderness area within the meaning of the *National Parks and Wildlife Act 1974*—that the filming activity will be carried out by the minimum number of persons who could feasibly carry out such an activity.
- (8) 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.
- (9) Subject to the regulations, a relevant Minister may approve fees from time to time for either or both of the following:
- (a) the making of applications for filming approvals in designated areas for which the Minister is the relevant Minister,

5 Application of Environmental Planning and Assessment Act 1979 to filming activities in designated areas

- (1) Development for the purposes of a filming activity in a designated area:
- (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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Part 2 Filming approvals

- (3) For the purposes of any defence to a prosecution for an offence under the *Fisheries Management Act 1994* or the *National Parks and Wildlife Act 1974* (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 *Environmental Planning and Assessment Act 1979*.

7 Approval holder to comply with conditions of filming approval

An approval holder must comply with each condition of the holder's filming approval when carrying out the filming activity to which the approval relates.

Maximum penalty: \$50,000 in the case of a corporation and \$10,000 in any other case.

8 Filming approval not required if filming activity otherwise permissible

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.

Part 3 Miscellaneous

9 Restraint of contravention of this Act

- (1) In this section, *contravention* includes threatened or apprehended contravention.
- (2) Any person may bring proceedings in the Land and Environment Court for an order to remedy or restrain a contravention of this Act (including a contravention of a filming approval), whether or not any right of that person has been or may be infringed by or as a consequence of that contravention.
- (3) Proceedings under this section may be brought by a person on the person's own behalf or on behalf of that person and on behalf of other persons (with their consent), or a body corporate or unincorporate (with the consent of its committee or other controlling or governing body), having like or common interests in those proceedings.
- (4) Proceedings under this section in relation to a contravention that affects the validity of a filming approval may only be brought within the period of 14 days after the date on which the approval was granted.
- (5) Any person on whose behalf proceedings are brought is entitled to contribute to or provide for the payment of the legal costs and expenses incurred by the person bringing the proceedings.
- (6) If the Court is satisfied that a contravention has occurred, or that a contravention will, unless restrained by order of the Court, be committed, it may make such order as it thinks fit to remedy or restrain the contravention.
- (7) The Court may not make an order under subsection (6) to remedy or restrain a contravention of a condition of a filming approval in proceedings brought by a person (other than a person who brings the proceedings by or on behalf of the Crown) unless the Court is satisfied that:
 - (a) the Crown has decided not to take any remedial action in respect of the contravention within 30 days after the contravention, or
 - (b) the Crown has not made a decision on whether to take such action within 30 days after the contravention.

- (8) For the purposes of subsection (7), **remedial action** is not limited to the institution of criminal proceedings, but includes action to require the person who committed the contravention to prevent, control, abate or mitigate any harm to the environment caused by the contravention or to prevent the continuance or recurrence of the contravention.

10 Fees to be paid into National Parks and Wildlife Fund

Any fee paid under this Act is to be paid into the Fund within the meaning of the *National Parks and Wildlife Act 1974*.

11 Delegation

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:

- (a) any member of staff of the Department of Environment and Conservation, or
- (b) a board of management or trust board within the meaning of the *National Parks and Wildlife Act 1974*.

12 Register of filming approvals to be publicly available

- (1) The Director-General of the Department of Environmental and Conservation is to cause information on filming approvals granted under this Act:
- (a) to be recorded in a register that is to be kept in the head office of the Department and made available to the public, free of charge, during ordinary office hours, and
 - (b) to be placed on the Department's website.
- (2) Information to be included on the register and website is to include the following:
- (a) the name of each person to whom any filming approval has been granted,
 - (b) the designated area to which the filming approval relates,
 - (c) the purpose for which the filming approval has been granted,
 - (d) information as to the terms and conditions of the filming approval, except information that the Director-General would be prevented from disclosing by the *Freedom of Information Act 1989* or the *Privacy and Personal Information Protection Act 1998*.

13 Regulations

- (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.
- (2) In particular, the regulations may make provision for or with respect to the following:
 - (a) the making of applications for filming approvals (including fees for any such applications),
 - (b) the determination of applications for filming approvals by relevant Ministers.

14 Nature of proceedings for offences

Proceedings for an offence under this Act may be dealt with summarily before the Land and Environment Court.

15 Amendment of National Parks and Wildlife Regulation 2002

The *National Parks and Wildlife Regulation 2002* is amended as set out in Schedule 1.

16 Review of Act

- (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.
- (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.
- (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.

Schedule 1 Amendment of National Parks and Wildlife Regulation 2002

(Section 15)

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*