

# Filming Approval Act 2004

## Does not include amendments by:

*Government Information (Public Access) (Consequential Amendments and Repeal) Act 2009 No 54* (not commenced -- to commence on 1.7.2010)

## Long Title

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.

## 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 reasonably 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.

## 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 *National Parks and Wildlife Act 1974* or land acquired under Part 11 of that Act:

- (i) any heritage values of the land,
- (ii) if the approval will authorise the use of any building or structure on the land--the cultural significance of the building or structure,
- (iii) any plan of management for the land,
- (iv) in the case of land that is a wilderness area within the meaning of that Act--whether there is no other feasible location outside of that land within New South Wales to carry out the activity,

(b) if the area forms part of a marine park within the meaning of *Marine Parks Act 1997*:

- (i) any heritage values of the park,
- (ii) if the approval will authorise the use of any building or structure in the park--the cultural significance of the building or structure,
- (iii) any operational plan or zoning plan under that Act for the park.

(3A) However, it is presumed that the Minister will grant a filming approval to carry out a filming activity in a designated area that forms part of land that is reserved under Part 4 of the *National Parks and Wildlife Act 1974* (other than a wilderness area within the meaning of that Act) unless the carrying out of filming activities on the land is expressly prohibited by any plan of management for the land.

(4) 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* may not grant approval for the carrying out of any filming activity in the designated area unless the Minister is satisfied that the activity is to be carried out primarily for any one or more of the following purposes:

- (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 (other than a designated area referred to in subsection (3A)), 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*,
- (f) that the filming activity complies with any applicable policy (if any) of the Department of Environment and Conservation concerning filming in designated areas,
- (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.

(7A) The Minister may not refuse to grant a filming approval to carry out a filming activity in a designated area referred to in subsection (3A) on the ground that the Minister is not satisfied as to a matter referred to in subsection (7) unless the Minister is of the opinion that the matter cannot be adequately addressed by the imposition of one or more conditions on the filming approval.

(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,
- (b) the granting of filming approvals to carry out filming activities in designated areas for which the Minister is the relevant Minister.

(10) A relevant Minister for a designated area may not:

- (a) determine any application for a filming approval to carry out a filming activity in the area unless the fee (if any) approved under subsection (9) (a) for the application is paid by the applicant to the Minister, or
- (b) grant a filming approval to carry out a filming activity in the area unless the fee (if any) approved under subsection (9) (b) for the grant is paid by the applicant to the Minister.

(11) If there is more than one relevant Minister for a designated area:

- (a) an application under subsection (1) may be lodged with one of the relevant Ministers, and
- (b) a filming approval may be granted by any of the relevant Ministers, but only with the concurrence of the other relevant Ministers.

(12) 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. Sections 6 and 8 provide for the effect of the granting of a filming approval on other laws.

## **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
- (b) may be so carried out even if the development would be prohibited, or would

require development consent, in the absence of this section.

(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.

(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. 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.

## **6 Effect of filming approval on certain other Acts**

(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:

- (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).

(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.

(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 (Repealed)

#### 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 (Repealed)

#### Historical notes

The following abbreviations are used in the Historical notes:

Am	amended	LW	legislation website	Sch	Schedule
Cl	clause	No	number	Schs	Schedules
ClI	clauses	p	page	Sec	section
Div	Division	pp	pages	Secs	sections
Divs	Divisions	Reg	Regulation	Subdiv	Subdivision
GG	Government Gazette	Regs	Regulations	Subdivs	Subdivisions
Ins	inserted	Rep	repealed	Subst	substituted

Table of amending instruments *Filming Approval Act 2004 No 38*. Second reading speech made: Legislative Assembly, 5.5.2004; Legislative Council, 2.6.2004. Assented to 15.6.2004. Date of commencement, 16.7.2004, sec 2 and GG No 120 of 16.7.2004, p 5876. This Act has been amended as follows:

2005	No 64	<i>Statute Law (Miscellaneous Provisions) Act 2005</i> . Assented to 1.7.2005. Date of commencement of Sch 3, assent, sec 2 (1).
2008	No 39	<i>Filming Related Legislation Amendment Act 2008</i> . Assented to 25.6.2008. Date of commencement, 30.3.2009, sec 2 and 2009 (103) LW 27.3.2009.

#### Table of amendments

Sec 4	Am 2008 No 39, Sch 1.2 [1]-[4].
Sec 15	Rep 2005 No 64, Sch 3.
Sch 1	Rep 2005 No 64, Sch 3.