



New South Wales

# Filming Related Legislation Amendment Bill 2008

## Explanatory note

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

## Overview of Bill

The object of this Bill is to amend various Acts and instruments to support the screen industry by reducing or simplifying regulatory impediments to the carrying out of filming projects.

## 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.

**Clause 3** is a formal provision that gives effect to the amendments to the Acts and instruments set out in Schedule 1.

**Clause 4** provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

## Schedule 1 Amendments

**Schedule 1.1** amends the *Crown Lands Act 1989* as follows:

- (a) to enable subleases, licences and sublicences to be granted over Crown land that is the subject of a lease under that Act or the *Crown Lands (Continued Tenures) Act 1989*, and over Crown reserves, to enable the carrying out of filming projects despite any provision that would otherwise prevent the grant of the sublease, licence or sublicense (**Schedule 1.1 [2], [3], [4] and [5]**),
- (b) to enable a reserve trust to grant a lease or licence over the reserve for the purpose of enabling a filming project to be carried out whether or not the carrying out of the project is in accordance with any plan of management adopted for the reserve or is consistent with the declared purpose of the reserve (**Schedule 1.1 [6]**),
- (c) to make consequential amendments (**Schedule 1.1 [1] and [7]**).

**Schedule 1.2** amends the *Filming Approval Act 2004* as follows:

- (a) to create a presumption in favour of the relevant Minister granting approval to the carrying out of filming activities in a designated area under that Act that forms part of land that is reserved under Part 4 of the *National Parks and Wildlife Act 1974* (other than a wilderness area) unless the carrying out of filming activities on the land is expressly prohibited by a plan of management for the land (**Schedule 1.2 [2]**),
- (b) to ensure that applications for approvals are not refused where any concerns about giving the approvals could be adequately addressed by imposing conditions on the approvals (**Schedule 1.2 [4]**),
- (c) to make consequential amendments (**Schedule 1.2 [1] and [3]**).

**Schedule 1.3** amends the *Local Government Act 1993* as follows:

- (a) to require a council to grant an application for a lease, licence or other estate in respect of certain community land to allow a filming project to be carried out unless the plan of management for the land expressly prohibits use of the land for filming projects or there are exceptional circumstances warranting refusal of the application (**Schedule 1.3 [1]—proposed section 46 (5A)**),
- (b) to ensure that applications for approvals are not refused where any concerns about giving the approvals could be adequately addressed by imposing conditions on the approvals (**Schedule 1.3 [1]—proposed section 46 (5B)**),
- (c) to require a council to give notice of such a refusal as soon as practicable, and the reasons for it within 3 days, after the refusal (**Schedule 1.3 [1]—proposed section 46 (5C)**),
- (d) to enable regulations to be made capping the amount of security deposits, bonds, fees or charges payable in respect of applications for approvals necessary to carry out filming projects (*filming approvals*) and to require

- council's having discretions to determine the levels of such amounts to do so in accordance with applicable filming protocols (**Schedule 1.3 [2]**),
- (e) to require councils to comply with either a filming protocol issued by the Director-General or a comparable filming protocol adopted by the council and approved by the Director-General in determining applications for filming approvals (**Schedule 1.3 [4], [6] and [10]**),
  - (f) to require councils to give notice of the reasons for refusing applications for filming approvals and of any review or appeal rights within 3 business days after the refusals (**Schedule 1.3 [5] and [8]**),
  - (g) to create a presumption in favour of the grant of an application for a filming approval unless exceptional circumstances warrant refusal of the application or an Act requires refusal and to require councils to consider the imposition of conditions to address concerns they have about granting approvals (**Schedule 1.3 [9]**),
  - (h) to make consequential amendments (**Schedule 1.3 [3], [7] and [11]–[14]**).

**Schedule 1.4 and 1.5** amend the *Standard Instrument (Local Environmental Plans) Order 2006* and the *State Environmental Planning Policy No 4—Development Without Consent and Miscellaneous Exempt and Complying Development*, respectively, to allow, as exempt development, the erection and use of temporary structures and the temporary alteration or addition to buildings or works for the sole purpose of filming subject to certain specified requirements concerning the period of use and accessibility to the public.

**Schedule 1.6** amends the *Western Lands Act 1901* as follows:

- (a) to enable the grant, with the consent of the Minister, of a sublease of land held under a lease for the purposes of enabling the carrying out of a filming project, despite any provision of the head lease or the Act relating to the purposes for which the land may be used (**Schedule 1.6—proposed section 18G (6A)**),
- (b) to enable the holder of a lease to grant a licence with the consent of the Minister and on such terms and conditions as the Minister determines to enable the carrying out of a filming project and to do so without the consent of the Minister in specified circumstances (**Schedule 1.6—proposed section 18G (6B)–(6E)**),
- (c) to enable consent to be given and licences to be granted by the Minister or a lessee to enable the carrying out of a filming project despite any provision to the contrary in a lease (**Schedule 1.6—proposed section 18G (6F)**).



First print



New South Wales

# Filming Related Legislation Amendment Bill 2008

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New South Wales

# Filming Related Legislation Amendment Bill 2008

No. , 2008

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## **A Bill for**

An Act to amend various Acts and instruments with respect to approvals for the purposes of filming projects; and for other purposes.

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<b>The Legislature of New South Wales enacts:</b>	1
<b>1 Name of Act</b>	2
This Act is the <i>Filming Related Legislation Amendment Act 2008</i> .	3
<b>2 Commencement</b>	4
This Act commences on a day or days to be appointed by proclamation.	5
<b>3 Amendments</b>	6
The Acts and instruments specified in Schedule 1 are amended as set out in that Schedule.	7 8
<b>4 Repeal of Act</b>	9
(1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.	10 11
(2) The repeal of this Act does not, because of the operation of section 30 of the <i>Interpretation Act 1987</i> , affect any amendment made by this Act.	12 13



<b>Schedule 1</b>	<b>Amendments</b>	1
	(Section 3)	2
<b>1.1</b>	<b>Crown Lands Act 1989 No 6</b>	3
<b>[1]</b>	<b>Section 3 Definitions</b>	4
	Insert in alphabetical order in section 3 (1):	5
	<i>filming project</i> has the same meaning as in the <i>Local Government Act 1993</i> .	6 7
<b>[2]</b>	<b>Section 44AA</b>	8
	Insert after section 44:	9
<b>44AA</b>	<b>Subleases</b>	10
	(1) The holder of a lease (whether granted under this Act or the <i>Crown Lands (Continued Tenures) Act 1989</i> ) may grant a sublease to enable the carrying out of a filming project, but only with the consent of the Minister and on such terms and conditions as the Minister determines.	11 12 13 14 15
	(2) Subsection (1) does not require the consent of the Minister if the terms of the lease permit the grant of a sublease without the Minister's consent and use of the land for the purpose of a filming project is authorised by the lease or is generally consistent with the purposes for which the land may be used under the lease.	16 17 18 19 20
	(3) Consent may be given to the grant of a sublease under subsection (1) that will enable the carrying out of a filming project, and the sublease may be granted, despite any provision to the contrary in the lease.	21 22 23 24
<b>[3]</b>	<b>Section 45 Licences</b>	25
	Insert after section 45 (3):	26
	(4) Subject to section 49, the holder of a lease referred to in subsection (3) may grant a licence over Crown land the subject of the lease to enable the carrying out of a filming project, but only with the consent of the Minister and on such terms and conditions as the Minister determines.	27 28 29 30 31
	(5) Subsection (4) does not require the consent of the Minister if the terms of the lease permit the grant of a licence without the Minister's consent and use of the land for the purpose of a filming project is authorised by the lease or is generally consistent with the purposes for which the land may be used under the lease.	32 33 34 35 36

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Schedule 1 Amendments

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(6)	Consent may be given to the grant of a licence under subsection (4) that will enable the carrying out of a filming project, and the licence may be granted, despite any provision to the contrary in the lease.	1 2 3 4
	<b>Note.</b> This subsection also applies to licences in respect of Crown reserves. See section 34A (6) (b).	5 6
<b>[4]</b>	<b>Section 47 Revocation of licences</b>	7
	Insert “(other than a licence granted under section 45 (4) by the holder of a lease)” after “A licence” in section 47 (1).	8 9
<b>[5]</b>	<b>Section 48A Sublicences</b>	10
	Insert after section 48A (3):	11
(4)	Subsection (1) does not prevent the grant, with the consent of the Minister, of a sublicence that will enable the carrying out of a filming project.	12 13 14
<b>[6]</b>	<b>Section 103 Sale, lease, easement, licence or mortgage in accordance with consent</b>	15 16
	Insert after section 103 (4):	17
(5)	Without limiting subsection (1), a reserve trust may grant a lease or licence under this Division for the purposes of enabling a filming project to be carried out, whether or not the project is in accordance with any plan of management adopted for the reserve under Division 6 or is consistent with the declared purpose of the reserve.	18 19 20 21 22 23
<b>[7]</b>	<b>Section 114 Adoption of plan of management</b>	24
	Insert after section 114 (2):	25
	<b>Note.</b> This subsection does not prevent the grant of a lease or other tenure or licence for the purposes of filming projects and certain other purposes (see sections 34A and 103 (5)).	26 27 28
<b>1.2</b>	<b>Filming Approval Act 2004 No 38</b>	29
<b>[1]</b>	<b>Section 4 Filming approvals for designated areas</b>	30
	Omit “management plan” from section 4 (3) (a) (iii).	31
	Insert instead “plan of management”.	32

<b>[2] Section 4 (3A)</b>	1
Insert after section 4 (3):	2
(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 <i>National Parks and Wildlife Act 1974</i> (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.	3 4 5 6 7 8 9
<b>[3] Section 4 (7)</b>	10
Insert “(other than a designated area referred to in subsection (3A))” after “designated area”.	11 12
<b>[4] Section 4 (7A)</b>	13
Insert after section 4 (7):	14
(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.	15 16 17 18 19 20
<b>1.3 Local Government Act 1993 No 30</b>	21
<b>[1] Section 46 Leases, licences and other estates in respect of community land—generally</b>	22 23
Insert after section 46 (5):	24
(5A) A council must grant an application under subsection (1) (c) for a lease, licence or other estate in respect of community land in order to allow a filming project to be carried out on the land unless:	25 26 27 28
(a) the community land is land referred to in section 47AA (1), or	29 30
(b) the plan of management for the land expressly prohibits use of the land for the purposes of filming projects, or	31 32
(c) the council is satisfied that there are exceptional circumstances that warrant refusal of the application.	33 34

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(5B)	Before refusing an application on a ground referred to in subsection (5A) (c), the council must consider whether any concerns it has could be addressed by imposing conditions on the grant.	1 2 3 4
(5C)	If the council refuses an application, it must:	5
(a)	inform the applicant in writing of its decision as soon as practicable after it is made, and	6 7
(b)	give the applicant reasons in writing for its decision within 3 business days after it is made.	8 9
<b>[2]</b>	<b>Section 116 Form of, and security deposits, bonds, fees and charges for, filming proposal</b>	10 11
	Omit section 116 (3) and (4). Insert instead:	12
(3)	Except as provided by subsection (4), the security deposit, bond, fee or charge (however expressed) for each application is to be determined in accordance with the Act, statutory instrument or law under which the application is made.	13 14 15 16
(4)	If under any Act, statutory instrument or law the council has a discretion to determine the security deposit, bond, fee or charge (however expressed) in respect of an application, it must determine it in accordance with the applicable filming protocol and the amount determined must not exceed the maximum amount (if any) prescribed by the regulations for such an application.	17 18 19 20 21 22 23
<b>[3]</b>	<b>Section 116, note</b>	24
	Insert at the end of section 116:	25
	<b>Note.</b> See section 119F (2).	26
<b>[4]</b>	<b>Section 119B Application for approvals under Division 3</b>	27
	Omit section 119B (2). Insert instead:	28
(2)	In determining the application, the council must comply with the applicable filming protocol in addition to taking into consideration the matters specified in section 89.	29 30 31
(2A)	In the event of an inconsistency between any criteria in a local policy required to be taken into consideration under section 89 and the applicable filming protocol, the applicable filming protocol prevails.	32 33 34 35

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<b>[5] Section 119B (6)</b>	1
Insert after section 119B (5):	2
(6) If the council refuses an application, it must notify the applicant of the matters specified in section 99 within 3 business days after the refusal.	3 4 5
<b>[6] Section 119C Application for approval other than under Division 3</b>	6
Omit section 119C (2). Insert instead:	7
(2) In determining the application, the council must comply with the applicable filming protocol in addition to any other requirements relating to determination of the application.	8 9 10
(2A) In the event of an inconsistency between any requirements relating to determination of the application and the applicable filming protocol, the applicable filming protocol prevails.	11 12 13
<b>[7] Section 119C (7)</b>	14
Insert “(subject to subsection (8))” after “application is”.	15
<b>[8] Section 119C (8)</b>	16
Insert after section 119C (7):	17
(8) If the council refuses an application, it must:	18
(a) inform the applicant in writing of its determination as soon as practicable after it is made, and	19 20
(b) give the applicant reasons in writing for its determination within 3 business days after it is made, and	21 22
(c) if the relevant Act, statutory instrument or law confers a right of review of the determination or right of appeal against the determination—notify the applicant of that right within 3 business days after it is made.	23 24 25 26
<b>[9] Section 119CA</b>	27
Insert after section 119C:	28
<b>119CA Presumption in favour of grant of approval</b>	29
(1) The council must grant an application referred to in section 119B or 119C made to it in accordance with the Act, statutory instrument or law under which it is made unless the council:	30 31 32
(a) is satisfied that there are exceptional circumstances that warrant refusal of the application, or	33 34

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(b)	is required by the Act under which the application is made to refuse the application.	1 2
(2)	Before refusing an application, the council must consider whether any concerns it has could be addressed by imposing conditions on the approval.	3 4 5
<b>[10] Section 119D</b>		6
	Omit the section. Insert instead:	7
<b>119D Applicable filming protocol</b>		8
(1)	For the purposes of this Division, the <i>applicable filming protocol</i> in relation to a council is:	9 10
(a)	the filming protocol, issued by the Director-General under this section, as in force from time to time, or	11 12
(b)	if the council has adopted a filming protocol and it has been approved by order in writing by the Director-General—that filming protocol.	13 14 15
(2)	The Director-General may, by order in writing, issue a filming protocol that includes any of the following:	16 17
(a)	information about procedures for obtaining approvals for carrying out filming,	18 19
(b)	guidelines or heads of consideration to be taken into account by councils in determining applications for approvals made in a filming proposal,	20 21 22
(c)	codes of conduct for the carrying out of filming,	23
(d)	provisions for determining fees for an application, and fees and charges for services related to an application, made in a filming proposal,	24 25 26
(e)	any other matter related to filming.	27
(3)	The Director-General must not approve a filming protocol adopted by a council unless the Director-General is satisfied that it is comparable to the filming protocol issued by the Director-General.	28 29 30 31
(4)	Before issuing a filming protocol, or approving a filming protocol adopted by a council, the Director-General must consult with such persons or bodies as he or she considers appropriate for such period as he or she considers appropriate.	32 33 34 35
(5)	Except as provided by sections 119B (2A) and 119C (2A), a filming protocol has no effect to the extent that it is inconsistent with an express provision of an Act or statutory instrument.	36 37 38

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<b>[11] Section 119F Application of this Division</b>	1
Omit section 119F (2). Insert instead:	2
(2) Except as provided by section 116 (3) and (4), nothing in section 116 affects the operation of section 97 or any provision of any other Act, statutory instrument or law that allows a council to require payment of a security deposit, bond, fee or charge (however expressed) in relation to an application made in a filming proposal.	3 4 5 6 7 8
<b>[12] Section 610F Public notice of fees</b>	9
Omit “a filming protocol” from section 610F (4).	10
Insert instead “an applicable filming protocol”.	11
<b>[13] Dictionary</b>	12
Insert in alphabetical order:	13
<i>applicable filming protocol</i> , in relation to a council, is defined in section 119D.	14 15
<b>[14] Dictionary, definition of “filming protocol”</b>	16
Omit the definition.	17
<b>1.4 Standard Instrument (Local Environmental Plans) Order 2006</b>	18 19
<b>[1] Standard instrument prescribed by the Order</b>	20
Insert “and other temporary structures and temporary alterations or additions to buildings or works” after “marquees” in the Direction under the heading to Schedule 2.	21 22 23
<b>[2] Standard instrument</b>	24
Omit subclause (1) of the clause headed “Filming” in Schedule 2.	25
<b>[3] Standard instrument, Schedule 2</b>	26
Insert “or used” after “erected” in subclause (6) (g) of the clause headed “Filming”.	27 28
<b>[4] Standard instrument, Schedule 2</b>	29
Insert “or use” after “erection” in subclause (6) (m) (ii) of the clause headed “Filming”.	30 31

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<b>[5] Standard instrument, Schedule 2</b>	1
Insert after subclause (6) (m) of the clause headed “Filming”:	2
(n) details of any temporary alteration or addition to any building or work at the location for the purposes of the filming.	3 4 5
<b>[6] Standard instrument, Schedule 2</b>	6
Insert after the clause headed “Tents or marquees used solely for filming purposes”:	7 8
<b>Temporary structures (other than tents and marquees), and temporary alterations or additions to buildings or works, solely for filming purposes</b>	9 10 11
(1) May only be erected, used, altered or added to in connection with filming that is exempt development.	12 13
(2) Temporary structure must not be at the location for more than 30 days within a 12-month period.	14 15
(3) Alteration or addition to the building or work must not remain in place for more than 30 days within a 12-month period.	16 17
(4) Temporary structure, or building or work in its altered or added to form, must not be accessible to the public.	18 19
<b>1.5 State Environmental Planning Policy No 4—Development Without Consent and Miscellaneous Exempt and Complying Development</b>	20 21 22
<b>[1] Clause 2 Definitions</b>	23
Omit “video recording” wherever occurring from paragraphs (b) and (c) of the definition of <i>filming</i> in clause 2 (1).	24 25
Insert instead “recording images”.	26
<b>[2] Clause 2 (4) (d)</b>	27
Insert “or 15B” after “clause 13”.	28
<b>[3] Clause 2 (6)</b>	29
Omit “and clause 13”. Insert instead “clause 13”.	30
<b>[4] Clause 2 (6)</b>	31
Insert “and clause 15B” after “subclause”.	32



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<b>[5] Clause 15 When filming is exempt development</b>	1
Omit clause 15 (1) (d).	2
<b>[6] Clause 15 (2) (g)</b>	3
Insert “or used” after “erected”.	4
<b>[7] Clause 15 (2) (m) (ii)</b>	5
Insert “or use” after “erection”.	6
<b>[8] Clause 15 (2) (m) (v)</b>	7
Omit “Land and Water Conservation”. Insert instead “Lands”.	8
<b>[9] Clause 15 (2) (n)</b>	9
Insert after clause 15 (2) (m) (before the note):	10
(n) details of any temporary alteration or addition to any building or work at the location for the purposes of the filming.	11 12 13
<b>[10] Clause 15B</b>	14
Insert after clause 15A:	15
<b>15B When certain temporary structures and modifications for purposes of filming is exempt development</b>	16 17
(1) In this clause:	18
<i>temporary structure</i> means a temporary structure other than a tent or marquee.	19 20
(2) For the erection or use of a temporary structure at a location, or the temporary alteration or addition to a building or work at a location, for the sole purpose of filming to be exempt development:	21 22 23 24
(a) the temporary structure must not be at the location for more than 30 days within a 12-month period, and	25 26
(b) the alteration or addition to the building or work must not remain in place for more than 30 days within a 12-month period, and	27 28 29
(c) the temporary structure, or building or work in its altered or added to form, must not be accessible to the public.	30 31
<b>Note.</b> To be exempt development, the erection or use of the temporary structure or temporary alteration or addition must also comply with clause 14 of this Policy and any relevant provisions of the Act.	32 33 34 35

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<b>1.6 Western Lands Act 1901 No 70</b>	1
<b>Section 18G Dealings in leased land</b>	2
Insert after section 18G (6):	3
(6A) Subsection (6) does not prevent the sublease of land held under a head lease, with the consent of the Minister, for the purposes of enabling the carrying out of a filming project, and such a sublease may be granted, despite any provision of the head lease or this Act relating to the purposes for which the land may be used.	4 5 6 7 8
(6B) The head lessee under subsection (6A) may grant a licence over land that is held under the head lease to enable the carrying out of a filming project (within the meaning of the <i>Local Government Act 1993</i> ), but only with the consent of the Minister and on such terms and conditions as the Minister determines.	9 10 11 12 13
(6C) Subsection (6B) does not require the consent of the Minister if the use of the land for the purpose of a filming project is authorised by the head lease or is generally consistent with the purposes for which the land may be used under the head lease.	14 15 16 17
(6D) The head lessee must notify the Commissioner of the granting of a licence without the consent of the Minister as referred to in subsection (6C) within 28 days after it is granted.	18 19 20
(6E) A head lessee who grants a licence under subsection (6B) or as referred to in subsection (6C) must take all reasonable steps to ensure that the licensee complies with the requirements of this Act and the conditions of the head lease with respect to the land.	21 22 23 24
(6F) Consent may be given to the grant of a licence under subsection (6B) that will enable the carrying out of a filming project (within the meaning of the <i>Local Government Act 1993</i> ), and the licence may be granted, despite any provision to the contrary in the head lease.	25 26 27 28 29