

New South Wales

Snowy Mountains Cloud Seeding Trial Bill 2004

Explanatory note

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

Overview of Bill

The object of this Bill is to facilitate a trial cloud seeding research project by Snowy Hydro Limited to increase winter snowfall in a targeted area of the Snowy Mountains.

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.

Part 2 Authorisation of cloud seeding trial

Clause 4 authorises the carrying out of cloud seeding operations described in the clause by Snowy Hydro Limited. The operations are directed at increasing snowfall in a specified target area by the discharge into the passing clouds of a seeding agent (silver iodide) by means of ground based aerosol generators.

Clause 5 provides that the authorisation of cloud seeding operations by the proposed Act has effect for 6 years, unless sooner terminated.

Clause 6 provides that the authorisation of cloud seeding operations by the proposed Act may be suspended or terminated by an order jointly made by the Minister for Infrastructure and Planning and the Minister for the Environment (*the relevant Ministers*). The authorisation may be suspended or terminated if the relevant Ministers are satisfied that:

- (a) the cloud seeding operations are having or will have a significant adverse environmental impact, or
- (b) Snowy Hydro Limited has not complied with any requirements with respect to the cloud seeding operations that have been imposed by the relevant Ministers on Snowy Hydro Limited to minimise any such environmental impact, or
- (c) Snowy Hydro Limited has failed to provide information concerning the environmental impact of the cloud seeding operations requested by the relevant Ministers.

Part 3 Miscellaneous

Clause 7 provides that cloud seeding operations authorised by the proposed Act may be carried out despite any other Act or law. The clause specifically provides that the *Environmental Planning and Assessment Act 1979* and certain other Acts and statutory orders or notices do not apply to the extent (if any) that they would prohibit or interfere with authorised cloud seeding operations.

Clause 8 provides that the Natural Resources Commission is to supervise authorised cloud seeding operations and report on the environmental impact of those operations to the relevant Ministers. Each report of the Natural Resources Commission is to be made public within a reasonable time after it is provided to the relevant Ministers.

Clause 9 provides for the exclusion of Crown liability in relation to authorised cloud seeding operations.

Snowy Hydro Limited does not constitute the Crown for the purposes of the clause.

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Clause 10 provides that the proposed Act binds the Crown in right of New South Wales and, in so far as the legislative power of the Parliament of New South Wales permits, the Crown in all its other capacities.

Clause 11 provides that the Governor may make regulations under the proposed Act.

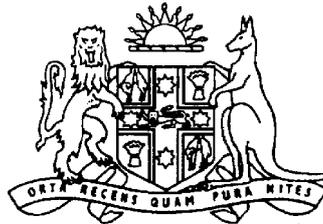
Schedule 1 Target area

Schedule 1 contains a map that describes the target area of the cloud seeding trial.

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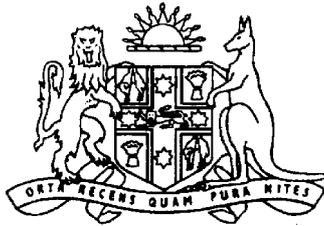
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New South Wales

Snowy Mountains Cloud Seeding Trial Bill 2004

No , 2004

A Bill for

An Act to facilitate a trial cloud seeding research project in the Snowy Mountains area; and for related purposes.

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

This Act is the *Snowy Mountains Cloud Seeding Trial Act 2004*.

2 Commencement

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

3 Definitions

In this Act:

authorised cloud seeding operations means the operations authorised to be carried out by section 4 during the period referred to in section 5.

function includes power, authority or duty.

Natural Resources Commission means the Natural Resources Commission established under Part 2 of the *Natural Resources Commission Act 2003*.

public land means:

- (a) national park estate within the meaning of the *National Park Estate (Southern Region Reservations) Act 2000*, and
- (b) community land within the meaning of the *Local Government Act 1993*.

relevant Ministers means:

- (a) the Minister administering the *Environmental Planning and Assessment Act 1979*, and
- (b) the Minister administering Part 4 of the *National Parks and Wildlife Act 1974*.

Part 2	Authorisation of cloud seeding trial	1
4	Authorisation of trial	2
(1)	Cloud seeding operations designed to increase precipitation by the discharge of a seeding agent into passing clouds (being operations that comply with the following requirements) are, by this Act, authorised to be carried out by or on behalf of Snowy Hydro Limited:	3 4 5 6 7
(a)	The area primarily targeted for the increased precipitation is land that is shown on the map in Schedule 1 as the “target area” (even though increased precipitation may fall outside that area).	8 9 10 11
(b)	Land based operations may be carried out within or outside the target area, but the seeding agent is not to be discharged from within the Jagungal Wilderness Area.	12 13 14
(c)	The discharge of the seeding agent is carried out at a time when increased precipitation in the target area is likely to fall as snow.	15 16 17
(d)	The seeding agent consists of silver iodide only. Indium sesquioxide may also be discharged as a control tracer.	18 19
(e)	The seeding agent and tracer are discharged only by land based aerosol generators.	20 21
(f)	The cloud seeding operations and their effect are monitored.	22
(2)	The cloud seeding operations authorised by this Act include:	23
(a)	entering onto public land to carry out the cloud seeding operations, and	24 25
(b)	installing and maintaining facilities, and carrying out works, on public or other land that are required to carry out cloud seeding operations, and	26 27 28
(c)	any operations that are ancillary or incidental to the operations referred to in this section.	29 30
5	Duration of trial	31
	The authorisation of cloud seeding operations by this Act has effect for the period of 6 years, unless sooner terminated under section 6. The authorisation does not have effect during any period of suspension under section 6, but the period of the trial is not extended by any such period of suspension.	32 33 34 35 36

6	Suspension or termination of trial	1
(1)	The authorisation of cloud seeding operations by this Act may be suspended or terminated on a ground specified in subsection (2) by an order jointly made by the relevant Ministers and served on Snowy Hydro Limited.	2 3 4 5
(2)	The authorisation may be suspended or terminated if the relevant Ministers are satisfied that:	6 7
(a)	the cloud seeding operations are having or will have a significant adverse environmental impact, or	8 9
(b)	Snowy Hydro Limited has not complied with any requirements with respect to the cloud seeding operations that have been imposed by the relevant Ministers to minimise any such environmental impact (such as a requirement that Snowy Hydro Limited prepare and implement an environment management plan), or	10 11 12 13 14 15
(c)	Snowy Hydro Limited has not provided the relevant Ministers with information about the cloud seeding operations that has been requested by the relevant Ministers to assess the environmental impact of the operations.	16 17 18 19
(3)	A suspension or termination under this section may extend to all or any of the cloud seeding operations authorised by this Act.	20 21
(4)	The relevant Ministers are to consult Snowy Hydro Limited and the Natural Resources Commission about any proposed suspension or termination under this section.	22 23 24
(5)	A requirement may be imposed and information may be requested under this section by an order jointly made by the relevant Ministers and served on Snowy Hydro Limited.	25 26 27

Part 3 Miscellaneous

7 Application of other legislation

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| 7 Application of other legislation | 2 |
| (1) Authorised cloud seeding operations may be carried out despite any other Act or law. | 3
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| (2) The <i>Environmental Planning and Assessment Act 1979</i> does not apply to authorised cloud seeding operations. Accordingly: | 5
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| (a) development consent under Part 4 of that Act is not required for those operations, and | 7
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| (b) Part 5 of that Act does not apply in respect of those operations, and | 9
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| (c) those operations cannot be prohibited or restricted by an environmental planning instrument (whether made before or after the commencement of this section) under that Act. | 11
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| (3) The carrying out of authorised cloud seeding operations is taken to be consistent with the principles for the management of any reserved land under the <i>National Parks and Wildlife Act 1974</i> on which the operations are carried out and with any plan of management under that Act that relates to any such land. | 14
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| (4) For the purposes of any defence or exception under the <i>National Parks and Wildlife Act 1974</i> , the carrying out of cloud seeding operations authorised by this Act is taken to be the carrying out of development authorised by a development consent under the <i>Environmental Planning and Assessment Act 1979</i> . | 19
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| (5) An environment protection licence under the <i>Protection of the Environment Operations Act 1997</i> is not required for the carrying out of authorised cloud seeding operations. | 24
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| (6) The following orders or notices cannot be made or given so as to prevent or interfere with the carrying out of authorised cloud seeding operations: | 27
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| (a) an interim protection order (within the meaning of the <i>National Parks and Wildlife Act 1974</i> or the <i>Threatened Species Conservation Act 1995</i>), | 30
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| (b) an order under Division 1 (Stop work orders) of Part 6A of the <i>National Parks and Wildlife Act 1974</i> , Division 1 (Stop work orders) of Part 7 of the <i>Threatened Species Conservation Act 1995</i> or Division 7 (Stop work orders) of Part 7A of the <i>Fisheries Management Act 1994</i> , | 33
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- (c) an environment protection notice under Chapter 4 of the *Protection of the Environment Operations Act 1997*, 1
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- (d) an order under section 124 of the *Local Government Act 1993*. 3
- (7) The provisions of subsections (2)–(6) do not affect the generality of 4
subsection (1). 5
- (8) Authorised cloud seeding operations do not constitute or give rise to 6
an existing use or other lawful use for the purposes of Division 10 7
of Part 4 of the *Environmental Planning and Assessment Act 1979*. 8
- 8 Supervision of trial and reporting by Natural Resources Commission** 9
- (1) The Natural Resources Commission is to supervise authorised cloud 10
seeding operations and report on the environmental impact of those 11
operations to the relevant Ministers. 12
- (2) Reports under this section are to be made at such times as the 13
relevant Ministers direct or the Natural Resources Commission 14
thinks fit. 15
- (3) A copy of each report under this section is to be provided to Snowy 16
Hydro Limited at the same time as it is provided to the relevant 17
Ministers. 18
- (4) Each report of the Natural Resources Commission is to be made 19
public within a reasonable time after it is provided to the relevant 20
Ministers. 21
- (5) For the purposes of the exercise of the functions of the Natural 22
Resources Commission under this Act, Snowy Hydro Limited is 23
taken to be a government agency (within the meaning of the *Natural 24
Resources Commission Act 2003*). 25
- 9 No compensation payable by State** 26
- (1) Compensation is not payable by or on behalf of the Crown arising 27
directly or indirectly from any of the following: 28
- (a) the enactment of this Act, 29
- (b) the carrying out of authorised cloud seeding operations, 30
- (c) the exercise by any person of a function under this Act or a 31
failure to exercise any such function. 32
- (2) In this section: 33
- compensation* includes damages or any other form of monetary 34
compensation. 35

the Crown means the Crown within the meaning of the *Crown Proceedings Act 1988*, and includes an officer, employee or agent of the Crown, but does not include Snowy Hydro Limited.

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10 Act to bind Crown

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This Act binds the Crown in right of New South Wales and, in so far as the legislative power of the Parliament of New South Wales permits, the Crown in all its other capacities.

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11 Regulations

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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.

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Schedule 1 Target area

(Section 4)

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