

Snowy Mountains Cloud Seeding Act 2004 No 19

[2004-19]



New South Wales

Status Information

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Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Previously named**
Snowy Mountains Cloud Seeding Trial Act 2004

Authorisation

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New South Wales

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Snowy Mountains Cloud Seeding Act 2004 No 19



New South Wales

An Act to facilitate cloud seeding operations in the Snowy Mountains area; and for related purposes.

Part 1 Preliminary

1 Name of Act

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

2 Commencement

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

3 Definitions

(1) In this Act:

approved EMP means an environmental management plan approved by the relevant Ministers under section 5 and for which the approval is in force.

approved method, in relation to the discharge of a seeding agent or tracing agent, means a method specified as an approved method in, or approved in accordance with, section 4C.

approved seeding agent means a thing specified as an approved seeding agent in, or approved in accordance with, section 4A.

approved tracing agent means a thing specified as an approved tracing agent in, or approved in accordance with, section 4B.

authorised cloud seeding operations means the operations authorised to be carried out by section 4.

environmental management plan or **EMP**—see section 5.

EPA means the Environment Protection Authority constituted by the *Protection of the Environment Administration Act 1991*.

function includes power, authority or duty and **exercise** a function includes perform

a duty.

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*.

Snowy water catchment has the same meaning as it has in the *Snowy Hydro Corporatisation Act 1997*.

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

Part 2 Authorisation of cloud seeding operations

4 Authorisation of cloud seeding operations

- (1) Cloud seeding operations designed to increase precipitation by the discharge of a seeding agent into passing clouds are authorised to be carried out by or on behalf of Snowy Hydro Limited in accordance with this Act.
- (2) The authorisation is subject to the following conditions:
 - (a) the area to be primarily targeted for the increased precipitation is land within the Snowy water catchment,
 - (b) operations may be carried out only if there is an approved EMP,
 - (c) operations must be carried out in accordance with the approved EMP (whether being carried out within or outside the Snowy water catchment),
 - (d) the seeding agent used must be an approved seeding agent and used in accordance with the conditions (if any) of its approval as a seeding agent,
 - (e) the tracing agent used must be an approved tracing agent and used in accordance with the conditions (if any) of its approval as a tracing agent,
 - (f) the seeding agent and tracing agent must be discharged by the use of an approved method,
 - (g) the discharge must be carried out in accordance with the conditions (if any) of its approval as a method of discharge,

- (h) the discharge of the seeding agent is to be carried out at a time when increased precipitation in the Snowy water catchment is likely to fall as snow at an elevation above 1400 metres from the mean sea level,
 - (i) Snowy Hydro Limited must consult with the National Parks and Wildlife Service before carrying out any new operations involving a land-based method of discharge of seeding or tracing agent within any area of land reserved under the *National Parks and Wildlife Act 1974* (that is, operations in an area that has not been the subject of previous consultation with the Service),
 - (j) Snowy Hydro Limited must consult with the National Parks and Wildlife Service before installing, or carrying out major modifications to, any facilities required to carry out cloud seeding operations within any area of land reserved under the *National Parks and Wildlife Act 1974*,
 - (k) installation of new facilities for cloud seeding operations must not be carried out within any wilderness area (within the meaning of the *National Parks and Wildlife Act 1974*),
 - (l) a seeding agent is not to be discharged from land-based aerosol generators in any wilderness area (within the meaning of the *National Parks and Wildlife Act 1974*).
- (3) The cloud seeding operations authorised by this Act include, subject to the requirements imposed by or under this Act:
- (a) entering onto public land to carry out the cloud seeding operations, and
 - (b) installing and maintaining facilities, and carrying out works, on public or other land, that are required to carry out cloud seeding operations, and
 - (c) any operations that are ancillary or incidental to the operations referred to in this section.
- (4) The cloud seeding operations authorised by this Act may be carried out within or outside the Snowy water catchment, subject to the requirements imposed by or under this Act.

4A Approved seeding agents

- (1) Silver iodide is an approved seeding agent.
- (2) The relevant Ministers may, on application by Snowy Hydro Limited, approve the use of any other thing as a seeding agent in cloud seeding operations.
- (3) An application for approval of the use of a thing as a seeding agent in cloud seeding operations must be accompanied by details of the health risk assessment carried out in relation to the proposed use of the seeding agent (including the process used to carry out the assessment and the results of the assessment).

- (4) The health risk assessment is to comply with any requirements set out in the approved EMP.
- (5) The relevant Ministers may approve the use of a thing as a seeding agent with or without conditions.
- (6) The relevant Ministers may, at any time, amend or revoke an approval given under this section.
- (7) The relevant Ministers must consult with Snowy Hydro Limited before amending or revoking an approval.

4B Approved tracing agents

- (1) Indium sesquioxide is an approved tracing agent.
- (2) The relevant Ministers may, on application by Snowy Hydro Limited, approve the use of any other thing as a tracing agent in cloud seeding operations.
- (3) An application for approval of the use of a thing as a tracing agent in cloud seeding operations must be accompanied by details of the health risk assessment carried out in relation to the proposed use of the tracing agent (including the process used to carry out the assessment and the results of the assessment).
- (4) The health risk assessment is to comply with any requirements set out in the approved EMP.
- (5) The relevant Ministers may approve the use of a thing as a tracing agent with or without conditions.
- (6) The relevant Ministers may, at any time, amend or revoke an approval given under this section.
- (7) The relevant Ministers must consult with Snowy Hydro Limited before amending or revoking an approval.

4C Approved methods of discharge of agent

- (1) The discharge of a seeding agent or tracing agent by land-based aerosol generators is an approved method of discharge.
- (2) The relevant Ministers may, on application by Snowy Hydro Limited, approve the use of an aerial method of discharge of a seeding agent or tracing agent as an approved method of discharge.
- (3) The relevant Ministers may approve the use of an aerial method of discharge as an approved method of discharge with or without conditions.
- (4) The relevant Ministers may, at any time, amend or revoke an approval given under

this section.

- (5) The relevant Ministers must consult with Snowy Hydro Limited before amending or revoking an approval.

5 Environmental management plan

- (1) The relevant Ministers may, on application by Snowy Hydro Limited, approve an environmental management plan (an **EMP**) in relation to the cloud seeding operations authorised by this Act.
- (2) The EMP is to comply with any requirements imposed by the relevant Ministers and notified to Snowy Hydro Limited.
- (3) Without limiting subsection (2), the relevant Ministers may require the EMP to provide for the following:
 - (a) a public review and approval process that must be undertaken before any aerial cloud seeding operations or changes to seeding agents or tracing agents,
 - (b) a process for the resolution of disputes about cloud seeding operations between Snowy Hydro Limited and others (such as community members, Ministers or NSW Government agencies).
- (4) An application for approval of an EMP must be accompanied by an independent scientific assessment of any proposed cloud seeding operations that differ from the operations currently authorised. Any such scientific assessment must comply with any requirements imposed by the relevant Ministers and notified to Snowy Hydro Limited.
- (5) The relevant Ministers may, on application by Snowy Hydro Limited:
 - (a) approve an amendment to an approved EMP, or
 - (b) revoke an approval of an EMP and approve a new EMP.
- (6) This section applies in respect of an application for approval of amendment of an approved EMP in the same way as it applies in respect of an application for approval of an EMP.
- (7) An approval of an EMP remains in force until it is revoked by the relevant Ministers.

5A Review of approved EMP

- (1) The relevant Ministers may, from time to time, conduct a review of an approved EMP.
- (2) A review must be conducted at least once every 5 years after approval of an EMP is granted or renewed. However, reviews may be conducted at more frequent intervals.
- (3) The relevant Ministers are to advise Snowy Hydro Limited of their intention to conduct

a review and to give Snowy Hydro Limited an opportunity to make submissions on the review.

- (4) For the purposes of the review, Snowy Hydro Limited must provide the relevant Ministers with any information or evidence required by the relevant Ministers to conduct the review.
- (5) Without limiting subsection (4), the relevant Ministers may require Snowy Hydro Limited to provide an independent scientific assessment of any proposed cloud seeding operations that differ from the operations currently authorised. Any such scientific assessment must comply with any requirements imposed by the relevant Ministers and notified to Snowy Hydro Limited.
- (6) Following a review, the relevant Ministers may:
 - (a) renew their approval of the approved EMP (with or without amendments to the EMP), or
 - (b) revoke their approval of the approved EMP and approve a new EMP, or
 - (c) revoke their approval of the approved EMP.
- (7) The relevant Ministers must consult with Snowy Hydro Limited before revoking their approval of an approved EMP.

6 Suspension or termination of authorisation

- (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) 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 conditions of the authorisation conferred by this Act or any other requirement imposed by or under this Act, or
 - (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, or
 - (d) Snowy Hydro Limited has not complied with a requirement made of it under Chapter 7 of the *Protection of the Environment Operations Act 1997* in connection with a review carried out by the EPA under this Act.
- (3) A suspension or termination under this section may extend to all or any of the cloud

seeding operations authorised by this Act.

- (4) The relevant Ministers are to consult Snowy Hydro Limited about any proposed suspension or termination under this section.
- (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.

Part 2A Reporting and review

6A Reporting requirements

- (1) Snowy Hydro Limited must, by 31 March in each year or such later date as agreed by the relevant Ministers, provide a report on its cloud seeding operations during the period of 12 months ending on 31 December in the previous year to the relevant Ministers and to the EPA.
- (2) Without limiting the generality of subsection (1), the report must contain the following information:
 - (a) details of compliance with the approved EMP,
 - (b) details of research concerning, and monitoring of, the impact of tracing agents and seeding agents on the environment (including the findings of any such research or monitoring).

6B General functions of EPA

- (1) The EPA is to review each report on cloud seeding operations provided by Snowy Hydro Limited and report the findings of the review, and make any necessary recommendations following the review, to the Board of the EPA and the relevant Ministers.
- (2) The EPA is, from time to time as determined by the EPA, to review the cloud seeding operations carried out in accordance with this Act and report the findings of the review, and make any necessary recommendations following the review, to the Board of the EPA and the relevant Ministers.

6C Application of Chapter 7 of [Protection of the Environment Operations Act 1997](#)

Chapter 7 (Investigation) of the [Protection of the Environment Operations Act 1997](#) extends to the exercise of powers in connection with this Act and the regulations.

Note—

Section 186 of the [Protection of the Environment Operations Act 1997](#) provides that Chapter 7 of that Act extends to the exercise of certain powers in connection with certain other legislation, including this Act. Chapter 7 of the [Protection of the Environment Operations Act 1997](#) deals with such matters as the appointment of authorised officers, powers to require information and records, powers of entry and search, powers to question

and to identify persons and powers with respect to certain things such as vehicles.

Part 3 Miscellaneous

7 Application of other legislation

- (1) Authorised cloud seeding operations may be carried out despite any other Act or law.
- (2) The *Environmental Planning and Assessment Act 1979* does not apply to authorised cloud seeding operations. Accordingly:
 - (a) development consent under Part 4 of that Act is not required for those operations, and
 - (b) Part 5 of that Act does not apply in respect of those operations, and
 - (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.
- (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 *National Parks and Wildlife Act 1974* on which the operations are carried out and with any plan of management under that Act that relates to any such land.
- (4) For the purposes of any defence or exception under the *National Parks and Wildlife Act 1974*, 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 *Environmental Planning and Assessment Act 1979*.
- (5) An environment protection licence under the *Protection of the Environment Operations Act 1997* is not required for the carrying out of authorised cloud seeding operations.
- (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:
 - (a) an interim protection order (within the meaning of the *National Parks and Wildlife Act 1974* or the *Threatened Species Conservation Act 1995*),
 - (b) an order under Division 1 (Stop work orders) of Part 6A of the *National Parks and Wildlife Act 1974*, Division 1 (Stop work orders) of Part 7 of the *Threatened Species Conservation Act 1995* or Division 7 (Stop work orders) of Part 7A of the *Fisheries Management Act 1994*,
 - (c) an environment protection notice under Chapter 4 of the *Protection of the Environment Operations Act 1997*,
 - (d) an order under section 124 of the *Local Government Act 1993*.

(7) The provisions of subsections (2)–(6) do not affect the generality of subsection (1).

(8) Authorised cloud seeding operations do not constitute or give rise to an existing use or other lawful use for the purposes of Division 10 of Part 4 of the *Environmental Planning and Assessment Act 1979*.

8 (Repealed)

9 No compensation payable by State

(1) Compensation is not payable by or on behalf of the Crown arising directly or indirectly from any of the following:

- (a) the enactment or amendment of this Act,
- (b) the carrying out of authorised cloud seeding operations,
- (c) the exercise by any person of a function under this Act or a failure to exercise any such function,
- (d) the effect of the *Environment Protection and Biodiversity Conservation Act 1999* of the Commonwealth on the authorised cloud seeding operations, including anything done or omitted to be done by the Commonwealth or any person exercising a function under that Act in respect of the authorised cloud seeding operations.

(2) In this section:

compensation includes damages or any other form of monetary compensation.

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.

10 Act to bind Crown

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.

10A Delegation

A Minister may delegate to a member of the Government Service the exercise of any of the Minister's functions under this Act or the regulations, other than this power of delegation.

11 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 fees payable by Snowy Hydro Limited to the National Parks and Wildlife Service in connection with cloud seeding operations (including by specifying any such fee or the method by which the fee is to be calculated).
- (3) The Minister is not to recommend the making of a regulation that provides for the payment of fees by Snowy Hydro Limited in connection with cloud seeding operations unless the Minister certifies that he or she is satisfied that the fees do not exceed the costs incurred or likely to be incurred by the National Parks and Wildlife Service in connection with cloud seeding operations.

Schedule 1 Savings and transitional provisions

Part 1 General

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or any Act that amends this Act.
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.