



New South Wales

Coastal Protection and Other Legislation Amendment Bill 2010

Explanatory note

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

Overview of Bill

The object of this Bill is to make amendments to the *Coastal Protection Act 1979* (the *Principal Act*) and other legislation to deal with coastal erosion and projected sea level rise, including amendments relating to the following:

- (a) the improvement of the operation and enforcement of the Principal Act,
- (b) enabling landowners to place certain emergency coastal protection works (such as sandbags) on beaches and sand dunes to mitigate erosion in specified circumstances without obtaining development consent or other specified permissions,
- (c) enabling local councils to make and levy an annual charge for the provision of coastal protection services (such as services to maintain coastal protection works or to manage the impacts of such works) on rateable land that benefits from such services.

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.

Schedule 1 Amendment of Coastal Protection Act 1979 No 13

Schedule 1 [1] amends section 3 of the Principal Act to provide for further objects of that Act, being to encourage and promote plans and strategies for adaptation in response to coastal climate change impacts, including projected sea level rise and to promote beach amenity.

Schedule 1 [2] amends section 4 of the Principal Act to insert certain definitions for the purposes of that Act.

Schedule 1 [3] makes a law revision amendment to take account of a change in a departmental name.

Schedule 1 [4] inserts proposed section 4C into the Principal Act to provide which designated authorities may exercise certain powers in relation to land under the Principal Act (see proposed Part 4D in **Schedule 1 [26]**).

Schedule 1 [5] inserts proposed Parts 2 (proposed sections 6–11) and 2A (proposed sections 12 and 13) into the Principal Act. Proposed Part 2 deals with matters relating to the administration of that Act. More specifically, the proposed Part:

- (a) provides for the identification of Coastal Authorities (being the Minister administering the Principal Act (the *Minister*), the Minister administering the *Crown Lands Act 1989* and certain roads authorities, coastal local councils and other public authorities with land or responsibilities relating to coastal areas) who may exercise certain powers under the Principal Act (proposed section 6), and
- (b) provides for the appointment and functions of authorised officers by Coastal Authorities to enforce the Principal Act (proposed section 7), and
- (c) deals with identification cards for authorised officers and the delegation of functions by Coastal Authorities (proposed sections 8 and 9), and
- (d) provides that the investigative functions contained in Chapter 7 of the *Protection of the Environment Operations Act 1997* are conferred on authorised officers for the purposes of exercising functions under the Principal Act (proposed section 10), and
- (e) creates certain offences relating to authorised officers and the exercise of their functions under the Principal Act (proposed section 11).

Proposed Part 2A establishes a NSW Coastal Panel. The Coastal Panel is to consist of 7 members appointed by the Minister of whom:

- (a) one is to be a person nominated by the Director-General of the Department of Environment, Climate Change and Water, and
- (b) one is to be a person nominated by the Director-General of the Department of Planning, and
- (c) three are to be nominated by the Local Government and Shires Associations, and
- (d) one is to be a person nominated by the Chief Executive of the Land and Property Management Authority, and
- (e) one is to be appointed by the Minister with the concurrence of the Local Government and Shires Associations.

The NSW Coastal Panel is to have the following functions (and may delegate those functions in certain circumstances):

- (a) to provide advice to the Minister on any matter referred to the Coastal Panel by the Minister relating to the coastal zone or otherwise in connection with the operation of the Principal Act,
- (b) such functions conferred or imposed on it by or under the *Environmental Planning and Assessment Act 1979* relating to the granting of development consent,
- (c) any other function conferred or imposed on it by or under the Principal Act, the *Environmental Planning and Assessment Act 1979* or any other Act.

Sections 38 and 39 of the Principal Act require that the Minister give concurrence to certain development or the granting of certain rights or consent in relation to such development in the coastal zone. **Schedule 1 [6] and [7]** amend sections 38 and 39 of the Principal Act to remove the requirement that certain public authorities obtain the Minister's concurrence twice in relation to the same development in the coastal zone. The amendments also provide that public authorities need not obtain such concurrence in relation to the carrying out of development for the placement or maintenance of emergency coastal protection works.

Schedule 1 [8] omits certain sections as a consequence of the enactment of proposed Part 2 (see above).

Schedule 1 [9] omits section 53 as a consequence of the consolidation of all the provisions of the Principal Act dealing with regulations into proposed section 60 (see **Schedule 1 [33]** below).

Schedule 1 [10] makes an amendment to provide that section 55 of the Principal Act (which relates to the carrying out of works under the *Public Works Act 1912*) does not authorise the Minister or the Governor to direct a specified person to carry out specified work.

Schedule 1 [11] makes a consequential amendment.

Schedule 1 [12]–[22] make amendments relating to the making and enforcement of coastal zone management plans. More specifically, the amendments deal with the following:

- (a) directions to councils to make plans,
- (b) the matters to be included and not to be included in such plans,
- (c) matters relating to the guidelines for the preparation of plans,
- (d) providing that plans are to be certified rather than approved by the Minister,
- (e) clarifying that plans may be amended in whole or in part,
- (f) requiring plans to be published on the internet,
- (g) providing that the provisions relating to the enforcement of plans do not apply to the carrying out of work that is development for which consent has been granted, exempt development or development that does not need consent under the *Environmental Planning and Assessment Act 1979* or an approved project within the meaning of Part 3A of that Act.

Schedule 1 [23] is a consequential repeal.

Schedule 1 [24] is a consequential amendment to a Part heading.

Schedule 1 [25] inserts proposed new section 55M into Part 4B of the Principal Act. The proposed section provides that consent must not be granted under the *Environmental Planning and Assessment Act 1979* to development for the purpose of coastal protection works (that is, long term works such as seawalls) unless the consent authority is satisfied (by conditions imposed on the consent or otherwise) that satisfactory arrangements have been made for the following for the life of the works:

- (a) the restoration of a beach, or land adjacent to the beach not protected by the works, if any increased erosion of the beach or adjacent land is caused by the presence of the works,
- (b) the maintenance of the works.

Where the coastal protection works are constructed by or on behalf of landowners or jointly with a council or public authority, the arrangements are to secure adequate funding for the carrying out of any such restoration and maintenance, including by either or both of the following:

- (a) by legally binding obligations of all or any of the owners from time to time of the land protected by the works,
- (b) by payment to the relevant council of an annual charge for coastal protection services (within the meaning of the *Local Government Act 1993*). (See Schedule 2 below).

Such funding obligations of landowners are to include the percentage share of the total funding of each landowner.

Schedule 1 [26] inserts proposed Parts 4C and 4D into the Principal Act.

Proposed Part 4C (proposed sections 55O–55Z) deals with emergency coastal protection works (in general, emergency sand and sandbags placed on a beach or a sand dune to mitigate erosion). Proposed Division 1 of the Part contains proposed sections 55O–55S.

Proposed section 55O provides that a person does not require regulatory approval for emergency coastal protection works if the works are authorised by a certificate under proposed Division 2.

Proposed section 55P defines *emergency coastal protection works* to mean works comprising the placement of the following material on a beach, or a sand dune adjacent to a beach, to mitigate the effects of wave erosion on land:

- (a) sand, or fabric bags filled with sand, (other than sand taken from a beach or a sand dune adjacent to a beach),
- (b) other objects or material prescribed by the regulations under the Principal Act (other than rocks, concrete, construction waste or other debris).

The placement of the material as emergency coastal protection works must comply with the following requirements:

- (a) the material must be placed in accordance with a certificate under proposed Division 2,
- (b) the material must be placed as an emergency action during a period of beach erosion (where the beach erosion occurs through storm activity or an extreme or irregular event) or when such beach erosion is imminent or it is reasonably likely that such beach erosion is imminent,
- (c) the material must be placed by or on behalf of a landowner or occupier to protect the following from damage due to the erosion:
 - (i) a lawfully erected building,
 - (ii) land on which a building could be lawfully erected that is zoned residential under an environmental planning instrument and is adjacent to land on which a lawfully erected building is located,
- (d) the material must be placed by or on behalf of the landowner or occupier in accordance with any emergency action subplan (being part of the council's coastal zone management plan) that applies to the land,
- (e) the material must be placed in accordance with any requirements adopted by the Minister and published in the Gazette,
- (f) the material must be placed in accordance with any requirements specified in the regulations under the Principal Act.

Proposed section 55Q provides that the maximum period allowed for emergency coastal protection works is 6 months or such period as may be prescribed by the regulations under the Principal Act commencing on the placement of the works. Works cease to be emergency coastal protection works for the purposes of the

Principal Act if the works remain in place for longer than the maximum period allowed for emergency coastal protection works. That period can be extended if at the expiry of that 6-month or other prescribed period, a development application under the *Environmental Planning and Assessment Act 1979* for consent to development for the purposes of coastal protection works on the same land (that is, long term works) is pending.

Proposed section 55R provides that emergency coastal protection works must be maintained by or on behalf of the landowner or occupier in accordance with the following requirements:

- (a) any requirements of the certificate under proposed Division 2 that authorises the works,
- (b) any requirements of an emergency action subplan (being part of the council's coastal zone management plan) that applies to the land concerned,
- (c) any requirements adopted by the Minister and published in the Gazette for the purposes of the proposed section,
- (d) any requirements specified in the regulations under the Principal Act for the purposes of the proposed section.

Proposed section 55S provides that a landowner or occupier may take advantage of the special provisions relating to emergency coastal protection works only once.

Proposed Division 2 (proposed sections 55T–55V) provides for the issue by authorised officers of relevant councils and the Director-General of the Department of Environment, Climate Change and Water of certificates authorising the placement of emergency coastal protection works. (The function of issuing a certificate must be delegated to an emergency works authorised officer appointed for this purpose). A certificate under the proposed Division does not authorise the placement of emergency coastal protection works more than 2 years after it was issued. Councils and the Department of Environment, Climate Change and Water must notify each other of the issue of such certificates.

Proposed Division 3 contains proposed sections 55W–55Z.

Proposed section 55W provides that if a person does not require regulatory approval for emergency coastal protection works (under proposed section 55O), such works may be placed and maintained despite certain restrictions and limitations contained in the *Environmental Planning and Assessment Act 1979*, the *Fisheries Management Act 1994*, the *Marine Parks Act 1997*, the *Local Government Act 1993* and, where the beach or dune is a road (or road reserve), the *Roads Act 1993*.

Proposed section 55X provides that a landowner or occupier of land must, at or about the time the emergency coastal protection works are to be placed on land, notify the relevant local council of the placing of the works and, if the works are or are about to be placed on public land in reliance on proposed section 55Z, notify the public authority that is the owner of, or has the care, control or management of, the land.

Proposed section 55Y provides that a person who has placed emergency coastal protection works (or caused such works to be placed) on land must, before the expiry of the maximum period allowed for emergency coastal protection works, remove the works and restore the land in accordance with:

- (a) any requirements adopted by the Minister and published in the Gazette for the purposes of this provision, and
- (b) any requirements specified in the regulations for the purposes of this provision.

Failure to comply with the provision is an offence carrying a maximum penalty of 4,500 penalty units (currently \$495,000) and 400 penalty units (currently \$44,000) for each day the offence continues (in the case of a corporation) or 2,250 penalty units (currently \$247,500) and 200 penalty units (currently \$22,000) for each day the offence continues (in any other case).

If a person does not comply with the provision (whether that person has been convicted of an offence in respect of the non-compliance or not), the Coastal Authority concerned may remove the works and restore the land. Any costs reasonably incurred by the Coastal Authority under the provision may be recovered in a court of competent jurisdiction from the person as a debt due to the Coastal Authority.

Proposed section 55Z facilitates the use of certain public land for emergency coastal protection works in emergency situations. Specifically, the proposed section provides that a certificate under proposed Division 2 that authorises a person to place and maintain emergency coastal protection works on land owned or occupied by the person extends to authorising the person to use and occupy public land (without obtaining a lease, licence or permit in respect of, or an easement or right-of-way in relation to, the land), but only if the person takes all practical measures:

- (a) to avoid placing those works on the public land, and
- (b) to avoid damage to assets and vegetation on the public land, and
- (c) to minimise risks to the public on the public land, and
- (d) to maintain reasonable public access (including access by local and public authorities) to and through the beach concerned.

Proposed Part 4D (proposed sections 55ZA–55ZH) confers certain powers and functions on Coastal Authorities relating to beaches.

Proposed section 55ZA gives a Coastal Authority that is a designated authority for a beach the power to make orders to remove materials or structures from the beach (including private land that is or fronts a beach) where the Coastal Authority is of the opinion that the material or structure:

- (a) causes or is likely to cause increased erosion of a beach or land adjacent to a beach, or

- (b) unreasonably limits or is likely to unreasonably limit public access to a beach or headland, or
- (c) poses or is likely to pose a threat to public safety.

The proposed section does not apply to material deposited on a beach, or a structure erected, in the course of development for which consent has been granted or that is exempt development or development that does not need consent under the *Environmental Planning and Assessment Act 1979* or is an approved project within the meaning of Part 3A of that Act or in relation to emergency coastal protection works. The proposed section is a remaking of, and makes provision for substantially the same matters as, current section 55M of the Principal Act.

Proposed section 55ZB gives a Coastal Authority that is a designated authority for land the power to make stop work orders to prohibit an activity on a beach on the land that, in the opinion of the Coastal Authority:

- (a) causes or is likely to cause increased erosion of a beach or land adjacent to a beach, or
- (b) unreasonably limits or is likely to unreasonably limit public access to a beach or headland, or
- (c) poses or is likely to pose a threat to public safety.

Such an order cannot be made in relation to an activity carried out in the course of development for which consent has been granted or that is exempt development or development that does not need consent under the *Environmental Planning and Assessment Act 1979* or an approved project within the meaning of Part 3A of that Act or in relation to emergency coastal protection works.

Proposed section 55ZC gives a Coastal Authority that is a designated authority for land the power to make certain orders to remove, alter or repair emergency coastal protection works on the land and to restore the land if the Coastal Authority is of the opinion that:

- (a) the works are causing increased erosion of a beach or land adjacent to a beach, or
- (b) the works unreasonably limit public access to a beach or headland, or
- (c) the works pose a threat to public safety, or
- (d) the works have ceased to be emergency coastal protection works (for example, the works have been in place for longer than the maximum period allowed for emergency coastal protection works or the works are not being maintained as required by the proposed Part).

The proposed section also provides that a Coastal Authority that is a designated authority for land on which a person has placed (or caused to be placed) emergency coastal protection works (whether public or private land) may order the person to restore any assets or vegetation on public land that have been damaged in the course of the placement of the works.

The proposed section also enables a Coastal Authority that is a designated authority for public land on which a person has placed (or caused to be placed) emergency coastal protection works to order the person to move, alter or remove the works and restore the land if the Coastal Authority is of the opinion that the person did not take all practical measures:

- (a) to avoid placing those works on the public land, and
- (b) to avoid damage to assets and vegetation on the public land, and
- (c) to minimise risks to the public on the public land, and
- (d) to maintain reasonable public access (including access by local and public authorities) to and through the beach concerned.

Proposed section 55ZD contains general provisions regarding the operation of orders under the proposed Part.

Proposed section 55ZE enables a Coastal Authority to recover the administrative costs of preparing and giving orders under the proposed Part. A person who is given an order under the proposed Part by a Coastal Authority must within 30 days pay a fee of \$320 (or such higher fee as may be prescribed by the regulations) to the Coastal Authority.

Proposed section 55ZF makes it an offence to fail to comply with an order under the proposed Part. The offence will carry a maximum penalty of 4,500 penalty units (currently \$495,000) and 400 penalty units (currently \$44,000) for each day the offence continues (in the case of a corporation) or 2,250 penalty units (currently \$247,500) and 200 penalty units (currently \$22,000) for each day the offence continues (in any other case). If a person does not comply with the requirements of an order within the time specified (whether that person has been convicted of an offence in respect of the order or not), the Coastal Authority concerned may, where the order required the doing of any act or thing, do the act or thing. Any costs incurred by the Coastal Authority doing that act or thing may then be recovered in a court as a debt due to the Coastal Authority.

Proposed section 55ZG provides for the resolution of disputes between Coastal Authorities.

Proposed section 55ZH provides that a successor in title to land protected by emergency coastal protection works may be the subject of orders under the proposed Part as if the successor in title were the original owner and also that orders given to their predecessor in title may be enforced against them. (See also **Schedule 3.2 [2]** regarding the notice that purchasers of land receive of emergency coastal protection works and orders under this proposed Part.)

Schedule 1 [27] amends section 56A of the Principal Act to make it clear that the Land and Environment Court may make an order under that section that a person remove or clean up material dumped following (as well as during) a beach erosion event.

Schedule 1 [28] amends section 58 (1) of the Principal Act to increase the maximum penalty for offences against the Principal Act for which a specific penalty is not provided to 4,500 penalty units (currently \$495,000) in the case of a corporation and 2,250 penalty units (currently \$247,500) in any other case. Currently that maximum penalty is 100 penalty units (currently \$11,000).

Schedule 1 [29] amends section 58 (2) of the Principal Act to increase the maximum penalty for offences against the regulations under the Principal Act to 400 penalty units (currently \$44,000) in the case of a corporation and 200 penalty units (currently \$22,000) in any other case. Currently that maximum penalty is 10 penalty units (currently \$1,100).

Schedule 1 [30] and [31] amend section 59 of the Principal Act to provide that proceedings for offences against proposed section 55Y or proposed Part 4D may be taken before the Land and Environment Court. Proceedings for other offences will continue to be taken before the Local Court.

Schedule 1 [32] inserts proposed sections 59A and 59B into the Principal Act to deal with continuing offences and the issuing of penalty notices.

Schedule 1 [33] (in conjunction with **Schedule 1 [9]**) omits sections 60 and 61 to consolidate provisions of the Principal Act dealing with regulations into a proposed new section 60.

Schedule 1 [34] inserts proposed sections 63–65 into the Principal Act. Proposed section 63 deals with the delegation of the Minister’s functions under the Principal Act (other than the functions of the Minister as a Coastal Authority which are dealt with under proposed section 9).

Proposed section 64 provides that the Minister is to review Part 4C (Emergency coastal protection works) of the Principal Act to determine whether its policy objectives remain valid and whether its terms remain appropriate for securing those objectives. The review is to be undertaken as soon as possible after the period of 2 years from the date of assent to the proposed Act and 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 2 years.

Proposed section 65 provides that the Minister is to review the Principal Act to determine whether its policy objectives remain valid and whether its terms remain appropriate for securing those objectives. The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to the proposed Act and 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 [35] enables regulations of a savings or transitional nature consequent on the enactment of the proposed Act to be made.

Schedule 1 [36] inserts proposed Schedule 2 into the Principal Act that deals with matters relating to the constitution and procedure of the proposed NSW Coastal Panel.

Schedule 2 Amendment of Local Government Act 1993 No 30

Schedule 2 [1] inserts proposed section 496B into the *Local Government Act 1993* to enable a council to make and levy an annual charge for the provision of coastal protection services for rateable land that benefits from the services. The charge may be levied if the services relate to coastal protection works that were jointly constructed (or are being constructed) by or on behalf of owners or occupiers, or previous owners or occupiers, of the land, and a public authority or a council and must be levied if the works were constructed (or are being constructed) solely by or on behalf of such private owners or occupiers of land. The Minister administering the Principal Act may issue guidelines relating to the making and levying of charges. A council is to have regard to any such guidelines when making and levying such charges. **Schedule 2 [2]** makes a consequential amendment.

Schedule 2 [3] inserts provisions into the *Local Government Act 1993* restricting the levying of the new coastal protection services charge under proposed section 496B. A charge may not be levied in relation to any coastal protection works that existed before the commencement of the proposed section without the consent of the owner of that land. Also, a charge may not be levied in relation to any coastal protection works if:

- (a) the maintenance of the works or the management of the impacts of the works (as appropriate) is a condition of an approval or consent under the *Environmental Planning and Assessment Act 1979* relating to the works, and
- (b) that maintenance or management work is not being carried out by or on behalf of the council.

Schedule 2 [4] inserts proposed sections 606A and 606B into the *Local Government Act 1993*. Proposed section 606A provides that a council must, on request, before new coastal protection works are constructed, give each person who would be liable to pay a coastal protection services charge under proposed section 496B an estimate of the person's liability for that charge for each of the following 5 years.

Proposed section 606B provides that a council must, on request, provide a person who is liable to pay an annual charge for coastal protection services with a report prepared by an independent person on the cost to the council of providing those services. If a council provides such a report, the council is to make the report available to all other persons liable to pay an annual charge in relation to the same services. A council is not required to provide a new report under the proposed section to a person if the council has in the previous 3 years provided or made available to the person such a report in relation to the same coastal protection services.

Schedule 2 [5] and [6] make amendments to section 733 of the *Local Government Act 1993* to extend the exemption from liability that a council possesses in relation to flood liable land and land in the coastal zone to the following things done in good faith by the council:

- (a) the preparation or making of a coastal zone management plan, or the giving of an order, under the Principal Act,
- (b) any thing done or omitted to be done regarding beach erosion or shoreline recession on Crown land or land owned or controlled by a council or a public authority,
- (c) the failure to upgrade flood mitigation works or coastal management works in response to projected or actual impacts of climate change,
- (d) the failure to undertake action to enforce the removal of illegal or unauthorised structures on Crown land or land owned or controlled by a council or a public authority that results in beach erosion,
- (e) the provision of information relating to climate change or sea level rise.

Section 733 (4) provides that, unless the contrary is proved, a council is taken to have acted in good faith for the purposes of section 733 if advice was furnished, or a thing was done or omitted to be done, substantially in accordance with the principles contained in a specified manual relating to the management of flood liable land or the management of the coastline identified by the Minister for Planning. **Schedule 2 [7]** provides that guidelines may also be adopted for this purpose.

Schedule 2 [7] inserts a number of definitions for the purposes of section 733, including a definition to make it clear that in that section references to the *coastal zone* include land that adjoins the tidal waters of the Hawkesbury River, Sydney Harbour and Botany Bay, and their tributaries.

Schedule 2 [8] provides that regulations may be made under the *Local Government Act 1993* relating to coastal protection services. For example, regulations may be made setting the minimum standards in carrying out such coastal protection services.

Schedule 2 [9] enables regulations of a savings or transitional nature consequent on the enactment of the proposed Act to be made.

Schedule 2 [10] inserts new definitions into the Dictionary to the *Local Government Act 1993*, including the following:

coastal protection service which is defined to mean a service:

- (a) to maintain and repair coastal protection works, or
- (b) to manage the impacts of such works (such as changed or increased beach erosion elsewhere),

but does not include a service that relates to emergency coastal protection works.

coastal protection works which is defined to mean activities or works to reduce the impact of coastline hazards on land adjacent to tidal waters and includes seawalls, revetments, groyne and beach nourishment.

Schedule 3 Amendment of other legislation

Schedule 3.1 [2] amends the *Conveyancing (Sale of Land) Regulation 2005* to provide that, in a contract for the sale of land, the vendor warrants that, as at the date of the contract and except as disclosed in the contract the land is not subject to an annual charge for the provision of coastal protection services under the *Local Government Act 1993* (see **Schedule 2 [1]**). **Schedule 3.1 [3]** makes an amendment to provide that, without limiting any other manner in which disclosure may occur, the vendor may disclose that land is subject to an annual charge for the provision of coastal protection services by attaching to the contract a certificate under section 603 of the *Local Government Act 1993* relating to the land (being a certificate as to rates and charges). **Schedule 3.1 [4] and [5]** make parallel amendments to provisions relating to options to purchase land. **Schedule 3.1 [1]** provides a definition of a *section 603 certificate*.

Schedule 3.2 [1] amends the *Environmental Planning and Assessment Regulation 2000* to provide that the factors to be taken into account when consideration is being given to the likely impact of an activity on the environment for the purposes of Part 5 of the *Environmental Planning and Assessment Act 1979* are to include the impact on coastal processes and coastal hazards, including those under projected climate change conditions.

Schedule 3.2 [2] amends the *Environmental Planning and Assessment Regulation 2000* to provide that a planning certificate under section 149 of the *Environmental Planning and Assessment Act 1979* (which must be attached to a contract for the sale of land) is to include information as to whether in the knowledge of the relevant council, any orders under proposed Part 4D of the Principal Act have been made in relation to the land concerned or whether any emergency coastal protection works remain on the land concerned. The provisions complement proposed section 55ZH of the Principal Act to enable the provisions of Parts 4C and 4D to apply to successors in title to the landowner who placed emergency coastal protection works on land (or caused them to be placed).

Schedule 3.3 makes amendments to the *Local Government (General) Regulation 2005* in relation to the proposed coastal protection services charge (see **Schedule 2 [1]**). Specifically:

- (a) **Schedule 3.3 [1]** provides that a council's annual statement of its revenue policy is to include a map or list (or both) of the parcels of rateable land that are to be subject to the charge in the following year (if any), and
- (b) **Schedule 3.3 [2]** provides that a council's annual report is, if the council levied a coastal protection services charge in the relevant year, to include a statement detailing the coastal protection services provided by the council during that year and also makes a law revision amendment, and
- (c) **Schedule 3.3 [3]** provides that coastal protection services provided by the council are to be of a certain specified standard.

First print



New South Wales

Coastal Protection and Other Legislation Amendment Bill 2010

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New South Wales

Coastal Protection and Other Legislation Amendment Bill 2010

No. , 2010

A Bill for

An Act to amend the *Coastal Protection Act 1979* and other legislation to deal with coastal erosion and projected sea level rise; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Coastal Protection and Other Legislation Amendment Act 2010</i> .	3 4
2 Commencement	5
This Act commences on a day or days to be appointed by proclamation.	6

Schedule 1	Amendment of Coastal Protection Act	1
	1979 No 13	2
[1]	Section 3 Objects of this Act	3
	Insert after section 3 (g):	4
	(h) to encourage and promote plans and strategies for	5
	adaptation in response to coastal climate change impacts,	6
	including projected sea level rise, and	7
	(i) to promote beach amenity.	8
[2]	Section 4 Definitions	9
	Insert in alphabetical order in section 4 (1):	10
	<i>authorised officer</i> means a person who is appointed as an	11
	authorised officer under section 7.	12
	<i>beach</i> means the area of unconsolidated or other readily erodable	13
	material between the highest level reached by wave action and	14
	the place where tidal or lake waters reach a depth of 10 metres	15
	below Australian Height Datum.	16
	<i>Coastal Authority</i> —see section 6.	17
	<i>Coastal Panel</i> means the NSW Coastal Panel established under	18
	Part 2A.	19
	<i>coastal protection works</i> means activities or works to reduce the	20
	impact of coastline hazards on land adjacent to tidal waters and	21
	includes seawalls, revetments, groynes and beach nourishment.	22
	<i>coastal zone management plan</i> means a coastal zone	23
	management plan made under Part 4A.	24
	<i>Department</i> means the Department of Environment, Climate	25
	Change and Water.	26
	<i>designated authority</i> —see section 4C.	27
	<i>Director-General</i> means the Director-General of the	28
	Department.	29
	<i>emergency action subplan</i> means that part of a coastal zone	30
	management plan that deals with the matter referred to in section	31
	55C (1) (b) (emergency action during periods of beach erosion).	32
	<i>emergency coastal protection works</i> —see Division 1 of Part 4C.	33
	<i>emergency works authorised officer</i> —see section 55T (5).	34
	<i>public land</i> means:	35
	(a) Crown land within the meaning of the <i>Crown Lands</i>	36
	<i>Act 1989</i> or land within a reserve as defined in Part 5 of	37
	that Act, or	38

(b) land owned or under the care, management or control of a council or a public authority,	1 2
but does not include any land reserved under the <i>National Parks and Wildlife Act 1974</i> or land acquired under Part 11 of that Act.	3 4
relevant local council , in relation to emergency coastal protection works and coastal protection works, means:	5 6
(a) if the works are within the area of a council—that council, or	7 8
(b) if the works are not within the area of any council—the council whose area is nearest to the works.	9 10
Note. Certain beaches in NSW are Crown land and not within the boundaries of any local council area.	11 12
residential building means a building (such as a dwelling-house or residential flat building) that is solely or principally used for residential purposes.	13 14 15
road work has the same meaning as in the <i>Roads Act 1993</i> .	16
[3] Section 4B Inspection of maps outlining coastal zone	17
Omit “Infrastructure, Planning and Natural Resources” wherever occurring in section 4B (1) and (2).	18 19
Insert instead “Planning”.	20
[4] Section 4C	21
Insert after section 4B:	22
4C Designated authorities for land	23
The following Coastal Authorities are designated authorities for land for the purposes of this Act:	24 25
(a) in relation to all land—the Minister,	26
(b) in relation to land within a local government area, or that is a beach adjacent to a local government area, of a council that is a Coastal Authority—the council,	27 28 29
(c) in relation to Crown land within the meaning of the <i>Crown Lands Act 1989</i> or land within a reserve as defined in Part 5 of that Act—the Minister administering that Act,	30 31 32
(d) in relation to public land not referred to in paragraph (c)—the public authority that is the owner of, or has the care, control or management of, the land.	33 34 35

[5] Parts 2 and 2A	1
Insert after Part 1:	2
Part 2 Administration	3
Division 1 Coastal Authorities and their authorised officers	4
	5
6 Coastal Authorities	6
(1) For the purposes of this Act, each of the following is a Coastal Authority:	7
	8
(a) the Minister,	9
(b) the Minister administering the <i>Crown Lands Act 1989</i> ,	10
(c) a council whose area, or part of whose area, is included within the coastal zone or whose area includes land that adjoins the tidal waters of the Hawkesbury River, Sydney Harbour and Botany Bay, and their tributaries,	11
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(d) a roads authority (within the meaning of the <i>Roads Act 1993</i>) for a road within the coastal zone or on land that adjoins the tidal waters of the Hawkesbury River, Sydney Harbour and Botany Bay, and their tributaries,	15
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(e) a public authority that is the owner of, or has the care, control or management of, land within the coastal zone or land that adjoins the tidal waters of the Hawkesbury River, Sydney Harbour and Botany Bay, and their tributaries (other than a State owned corporation or a reserve trust within the meaning of Part 5 of the <i>Crown Lands Act 1989</i>).	19
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(2) A Coastal Authority:	26
(a) may exercise the functions of an authorised officer, and	27
(b) when exercising those functions, has all the immunities of an authorised officer.	28
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7 Appointment of authorised officers	30
(1) A Coastal Authority may appoint a person to be an authorised officer.	31
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(2) A Coastal Authority must not appoint a person to be an authorised officer under this section unless the person has undergone such training or has such competency as is required by the Minister.	33
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- (3) In appointing authorised officers, a Coastal Authority may specify that the appointment is subject to conditions or restrictions relating to:
- (a) the functions that are exercisable by those officers, or
 - (b) when, where and in what circumstances those officers may exercise functions.
- 8 Identification cards**
- (1) A Coastal Authority is to issue an identification card that complies with this section to each authorised officer.
- (2) The identification card must:
- (a) state that it is issued under this Act, and
 - (b) give the name of the person to whom it is issued, and
 - (c) state the date (if any) on which it expires, and
 - (d) describe the kinds of premises to which the powers of the authorised officer extend, and
 - (e) state any limitations on the functions that the authorised officer is authorised to exercise under this Act that are imposed by the authorised officer's instrument of appointment.
- (3) Each authorised officer who is not a police officer must:
- (a) carry his or her identification card as an authorised officer while exercising functions under this Act, and
 - (b) if requested to do so by any person affected by the exercise of a function by an authorised officer under this Act, produce the officer's identification card to the person.
- Note.** See section 201 of the *Law Enforcement (Powers and Responsibilities) Act 2002* in relation to a police officer's obligation to produce evidence that the police officer is a police officer (unless the police officer is in uniform).
- (4) A person who has been issued with an identification card and who stops being an authorised officer must return his or her identification card to the appropriate Coastal Authority as soon as practicable.
- (5) A person must not contravene subsection (4) without reasonable excuse.
- Maximum penalty: 10 penalty units.

9 Delegation

A Coastal Authority may delegate the exercise of any function of the Coastal Authority under this Act (other than this power of delegation) to:

- (a) an authorised officer, or
- (b) any person, or any class of persons, authorised for the purposes of this section by the regulations.

Division 2 Powers of authorised officers**10 General powers of authorised officers: application of Chapter 7 of Protection of the Environment Operations Act 1997**

- (1) An authorised officer has and may exercise the functions of an authorised officer under Chapter 7 and section 319A of the *Protection of the Environment Operations Act 1997* (the **POEO Act**) for the following purposes:
 - (a) for determining whether there has been compliance with or a contravention of this Act and the regulations,
 - (b) for obtaining information or records for purposes connected with the administration of this Act and the regulations,
 - (c) generally for administering this Act and the regulations.
- (2) The provisions of Chapter 7 (other than Part 7.2) and section 319A of the POEO Act apply to and in respect of this Act as if those provisions were part of this Act, subject to the following modifications:
 - (a) references in those provisions to an authorised officer are to be read as references to an authorised officer appointed by a Coastal Authority under this Act,
 - (b) references in those provisions to “this Act” are to be read as references to this Act,
 - (c) references in those provisions to “the EPA” are to be read as references to a Coastal Authority,
 - (d) a Coastal Authority is taken to be the appropriate regulatory authority for matters concerning this Act.
- (3) For the avoidance of doubt, a prosecution of a person for an offence against a provision of Chapter 7 (other than Part 7.2) of the POEO Act (as applying under this section) is to be taken as if the offence were an offence against this Act.

(4)	The functions that an authorised officer has under Chapter 7 of the POEO Act are, for the purposes of any provision of this Act, taken to be functions under this Act.	1 2 3
(5)	If an authorised officer has functions in respect of a matter under both Chapter 7 of the POEO Act (as applying under this section) and under any other provision of this Act, the fact that there is a restriction on the exercise of a function under this Act does not of itself operate to restrict the exercise by an authorised officer of any similar or the same function under Chapter 7 of the POEO Act.	4 5 6 7 8 9 10
11	Offence relating to authorised officers and exercise of functions under Act	11 12
(1)	A person who, without lawful excuse, neglects or fails to comply with a requirement made of the person under this Act is guilty of an offence.	13 14 15
(2)	A person who furnishes any information or does any other thing in purported compliance with a requirement made under this Act, knowing that it is false or misleading in a material respect is guilty of an offence.	16 17 18 19
(3)	A person who wilfully delays, threatens, intimidates or obstructs an authorised officer in the exercise of the authorised officer's powers under this Act is guilty of an offence.	20 21 22
(4)	A person who interferes with, damages or destroys or does any act which may tend to interfere with, damage or destroy any vehicle, vessel, asset or equipment which is used in relation to the exercise of a function by an authorised officer under this Act is guilty of an offence.	23 24 25 26 27
(5)	A person who impersonates an authorised officer is guilty of an offence.	28 29
	Maximum penalty:	30
(a)	in the case of a corporation—500 penalty units and, in the case of a continuing offence, a further penalty of 50 penalty units for each day the offence continues, or	31 32 33
(b)	in the case of an individual—100 penalty units and, in the case of a continuing offence, a further penalty of 10 penalty units for each day the offence continues.	34 35 36

Part 2A NSW Coastal Panel

12 Constitution of NSW Coastal Panel

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| 12 Constitution of NSW Coastal Panel | 2 |
| (1) There is to be a NSW Coastal Panel. | 3 |
| (2) The Coastal Panel is to consist of 7 members appointed by the Minister of whom: | 4 |
| | 5 |
| (a) one is to be a person nominated by the Director-General, and | 6 |
| | 7 |
| (b) one is to be a person nominated by the Director-General of the Department of Planning, and | 8 |
| | 9 |
| (c) three are to be nominated by the Local Government and Shires Associations, and | 10 |
| | 11 |
| (d) one is to be a person nominated by the Chief Executive of the Land and Property Management Authority, and | 12 |
| | 13 |
| (e) one is to be appointed by the Minister with the concurrence of the Local Government and Shires Associations. | 14 |
| | 15 |
| (3) The person appointed under subsection (2) (e) is to be the Chairperson of the Coastal Panel. The person appointed under subsection (2) (a) is to be the Deputy Chairperson of the Coastal Panel. | 16 |
| | 17 |
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| (4) A person appointed under subsection (2) (a)–(d) must have qualifications and experience in coastal planning, coastal engineering, coastal geomorphology or coastal environmental management. | 20 |
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| | 23 |
| (5) The Coastal Panel is a NSW Government agency. | 24 |
| Note. By virtue of section 13A of the <i>Interpretation Act 1987</i> , a NSW Government agency has the status, privileges and immunities of the Crown. | 25 |
| | 26 |
| | 27 |
| (6) In appointing a member, the Minister is to have regard to the need to have a range of expertise represented among the Coastal Panel's members. | 28 |
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| (7) For the avoidance of doubt, the Coastal Panel is a public authority for the purposes of the <i>Environmental Planning and Assessment Act 1979</i> . | 31 |
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| (8) Schedule 2 contains provisions relating to the constitution and procedure of the Coastal Panel. | 34 |
| | 35 |

13	Functions of Coastal Panel	1
(1)	The Coastal Panel has the following functions:	2
(a)	to provide advice to the Minister on any matter referred to the Coastal Panel by the Minister relating to the coastal zone or otherwise in connection with the operation of this Act,	3 4 5 6
(b)	such functions conferred or imposed on it by or under the <i>Environmental Planning and Assessment Act 1979</i> relating to the granting of development consent,	7 8 9
(c)	any other function conferred or imposed on it by or under this Act, the <i>Environmental Planning and Assessment Act 1979</i> or any other Act.	10 11 12
(2)	The Coastal Panel may delegate the exercise of any function of the Coastal Panel under this or any other Act (other than this power of delegation) to:	13 14 15
(a)	any member of staff of the Department, or	16
(b)	any person, or any class of persons, authorised for the purposes of this section by the regulations.	17 18
(3)	Despite subsection (2), the Coastal Panel may only delegate a function conferred or imposed on it by or under the <i>Environmental Planning and Assessment Act 1979</i> relating to the granting of development consent with the concurrence of the Minister administering that Act.	19 20 21 22 23
[6]	Section 38 General supervision of coastal zone	24
	Insert after section 38 (2):	25
(3)	If:	26
(a)	a public authority (the <i>developer authority</i>) is required to obtain the concurrence of the Minister to carry out any development in the coastal zone under subsection (1) (a), and	27 28 29 30
(b)	the developer authority is required under any law to obtain a grant of a right or consent from another public authority (the <i>approval authority</i>) to carry out that development, and	31 32 33 34

(c)	the approval authority is required to obtain the concurrence of the Minister to the grant of the right or consent under subsection (1) (b),	1 2 3
	concurrency by the Minister to the carrying out of the development by the developer authority is taken to also be concurrency to the grant of the right or consent by the approval authority.	4 5 6 7
(4)	This section does not apply to the use or occupation of any part of the coastal zone, or the carrying out of any development in the coastal zone, for the placement or maintenance of emergency coastal protection works.	8 9 10 11
[7]	Section 39 Special provisions respecting coastal development	12
	Insert after section 39 (4):	13
(5)	If:	14
(a)	a public authority (the <i>developer authority</i>) is required to obtain the concurrence of the Minister to carry out any development in the coastal zone under subsection (1) (a), and	15 16 17 18
(b)	the developer authority is required under any law to obtain a grant of a right or consent from another public authority (the <i>approval authority</i>) to carry out that development, and	19 20 21 22
(c)	the approval authority is required to obtain the concurrence of the Minister to the grant of the right or consent under subsection (1) (b),	23 24 25
	concurrency by the Minister to the carrying out of the development by the developer authority is taken to also be concurrency to the grant of the right or consent by the approval authority.	26 27 28 29
(6)	Subsection (1) does not apply to the carrying out of any development in the coastal zone for the placement or maintenance of temporary coastal protection works.	30 31 32
[8]	Sections 48–50	33
	Omit the sections.	34
[9]	Section 53 Regulations	35
	Omit the section.	36

[10] Section 55 Carrying out of certain works	1
Insert after section 55 (6):	2
(7) Nothing in this section authorises the Minister or the Governor to direct a specified person to carry out specified work.	3 4
[11] Section 55A Definition of “beach”	5
Omit the section.	6
[12] Section 55B Requirement for coastal zone management plans	7
Insert after section 55B (4):	8
(5) For the avoidance of doubt, the Minister may give a direction under subsection (1) in relation to part of an area included within the coastal zone.	9 10 11
(6) In this section, <i>coastal zone</i> includes land that adjoins the tidal waters of the Hawkesbury River, Sydney Harbour and Botany Bay, and their tributaries.	12 13 14
[13] Section 55C Matters to be dealt with in coastal zone management plans	15
Omit “of the kind that may be carried out under the <i>State Emergency and Rescue Management Act 1989</i> , or otherwise,” from section 55C (b).	16 17
Insert instead “carried out”.	18
[14] Section 55C	19
Insert at the end of section 55C (c):	20
, and	21
(d) where the plan relates to a part of the coastline, the management of risks arising from coastal hazards, and	22 23
(e) where the plan relates to an estuary, the management of estuary health, and	24 25
(f) the impacts from climate change on risks arising from coastal hazards and on estuary health, as appropriate, and	26 27
(g) where the plan proposes the construction of coastal protection works (other than emergency coastal protection works) that are to be funded by the council or a private landowner or both, the proposed arrangements for the adequate maintenance of the works and for managing associated impacts of such works (such as changed or increased beach erosion elsewhere or a restriction of public access to beaches or headlands).	28 29 30 31 32 33 34 35

(2)	A coastal zone management plan must not include the following:	1
(a)	matters dealt with in any plan made under the <i>State Emergency and Rescue Management Act 1989</i> in relation to the response to emergencies,	2 3 4
(b)	proposed actions or activities to be carried out by any public authority or relating to any land or other assets owned or managed by a public authority, unless the public authority has agreed to the inclusion of those proposed actions or activities in the plan.	5 6 7 8 9
(3)	Despite subsection (1), the Minister may give a direction under section 55B that a council make a coastal zone management plan that makes provision for only one or more of the matters referred to in that subsection as specified in the direction.	10 11 12 13
[15]	Section 55D Guidelines for preparation of draft coastal zone management plans	14 15
	Insert after section 55D (2):	16
(3)	The Minister is to ensure that notification of any guidelines is published in the Gazette.	17 18
(4)	A copy of the Minister's guidelines must be available for public inspection on the Internet website of the Department.	19 20
[16]	Section 55G Certification by Minister	21
	Omit "for approval" from section 55G (1).	22
	Insert instead "for certification under this section".	23
[17]	Section 55G (2)–(4)	24
	Omit section 55G (2). Insert instead:	25
(2)	The Minister may certify, or refuse to certify, that a draft coastal zone management plan submitted to the Minister has been prepared in accordance with the requirements of this Act.	26 27 28
(3)	Before certifying the draft coastal zone management plan submitted to the Minister under subsection (1), the Minister may refer the plan to the Coastal Panel for advice.	29 30 31
(4)	Before submitting the draft coastal zone management plan to the Minister under subsection (1), the council must consult with other public authorities in the manner specified in the Minister's guidelines.	32 33 34 35

[18] Section 55H Gazettal and commencement of coastal zone management plans	1
	2
Omit “approves a draft coastal zone management plan” from section 55H (1).	3
Insert instead “certifies that a draft coastal zone management plan has been prepared in accordance with the requirements of this Act”.	4
	5
[19] Section 55I Amendment and repeal of coastal zone management plans	6
Insert “(in whole or in part)” after “amended” in section 55I (1).	7
[20] Section 55J Availability of coastal zone management plans	8
Insert at the end of the section:	9
(2) A copy of a coastal zone management plan must be available for public inspection on the Internet website of the council within 7 days of its publication in the Gazette.	10
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[21] Section 55K Breach of coastal zone management plan: offence	13
Insert at the end of the section:	14
(2) This section does not apply to the carrying out of work that is development for which consent has been granted, exempt development or development that does not need consent under the <i>Environmental Planning and Assessment Act 1979</i> or an approved project within the meaning of Part 3A of that Act.	15
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[22] Section 55L Breach of coastal zone management plan: restraint	20
Insert after section 55L (4):	21
(5) This section does not apply to a breach of a coastal zone management plan that is an act or omission that is development for which consent has been granted, exempt development or development that does not need consent under the <i>Environmental Planning and Assessment Act 1979</i> or an approved project within the meaning of Part 3A of that Act.	22
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(6) Despite subsection (1), a council may not bring proceedings under this section to remedy or restrain a breach of a coastal zone management plan by the State or a NSW Government agency.	28
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[23] Section 55M Breach of coastal zone management plan: order	31
Omit the section.	32

[24] Part 4B, heading	1
Omit the heading to Part 4B. Insert instead:	2
Part 4B Erosion and accretion	3
[25] Section 55M	4
Insert before section 55N:	5
55M Granting of development consent relating to coastal protection works	6 7
(1) Consent must not be granted under the <i>Environmental Planning and Assessment Act 1979</i> to development for the purpose of coastal protection works unless the consent authority is satisfied (by conditions imposed on the consent or otherwise) that satisfactory arrangements have been made for the following for the life of the works:	8 9 10 11 12 13
(a) the restoration of a beach, or land adjacent to the beach not protected by the works, if any increased erosion of the beach or adjacent land is caused by the presence of the works,	14 15 16 17
(b) the maintenance of the works.	18
(2) Where the coastal protection works are constructed by or on behalf of landowners or by landowners jointly with a council or public authority, the arrangements are to secure adequate funding for the carrying out of any such restoration and maintenance, including by either or both of the following:	19 20 21 22 23
(a) by legally binding obligations of all or any of the owners from time to time of the land protected by the works,	24 25
(b) by payment to the relevant council of an annual charge for coastal protection services (within the meaning of the <i>Local Government Act 1993</i>).	26 27 28
(3) The funding obligations of landowners referred to in subsection (2) (a) are to include the percentage share of the total funding of each landowner.	29 30 31

[26] Parts 4C and 4D	1
Insert after Part 4B:	2
Part 4C Emergency coastal protection works	3
Note. This Part does not limit the operation of any other law in relation to the placement of works on a beach or sand dune.	4
	5
For example, clause 129 of <i>State Environmental Planning Policy (Infrastructure) 2007</i> provides that development for the purpose of flood, storm or coastal erosion emergency works may be carried out by or on behalf of a public authority without development consent. Those emergency works may include the placement of rocks or other material on a beach or sand dune.	6
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Division 1 Preliminary	11
55O Regulatory approvals not required for authorised emergency coastal protection works	12
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A person does not require regulatory approval for emergency coastal protection works if the works are authorised by a certificate under Division 2.	14
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	16
Note. This means that planning and associated approvals are not required for the placement and maintenance of authorised emergency coastal protection works—see section 55W.	17
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55P Meaning of “emergency coastal protection works”	20
(1) General meaning	21
In this Act, <i>emergency coastal protection works</i> means works comprising the placement of the following material, in compliance with the requirements of this section, on a beach, or a sand dune adjacent to a beach, to mitigate the effects of wave erosion on land:	22
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(a) sand, or fabric bags filled with sand, (other than sand taken from a beach or a sand dune adjacent to a beach),	27
	28
(b) other objects or material prescribed by the regulations (other than rocks, concrete, construction waste or other debris).	29
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(2) Requirements relating to emergency coastal protection works	32
The requirements for the placement of material as emergency coastal protection works are as follows:	33
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(a) the material must be placed in accordance with a certificate under Division 2 that authorises the works,	35
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(b) the material must be placed as an emergency action during a period of beach erosion (where the beach erosion occurs	37
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through storm activity or an extreme or irregular event) or when such beach erosion is imminent or it is reasonably likely that such beach erosion is imminent,	1 2 3
(c) the material must be placed by or on behalf of a landowner or occupier to protect the following from damage due to the erosion:	4 5 6
(i) a lawfully erected building,	7
(ii) land on which a building could be lawfully erected that is zoned residential under an environmental planning instrument and is adjacent to land on which a lawfully erected building is located,	8 9 10 11
(d) the material must be placed by or on behalf of the landowner or occupier in accordance with any emergency action subplan that applies to the land concerned,	12 13 14
(e) the material must be placed by or on behalf of the landowner or occupier in accordance with any requirements adopted by the Minister and published in the Gazette for the purposes of this section,	15 16 17 18
(f) the material must be placed by or on behalf of the landowner or occupier in accordance with any requirements specified in the regulations for the purposes of this section.	19 20 21 22
(3) A requirement in an emergency action subplan or a requirement otherwise adopted or specified under subsection (2) may:	23 24
(a) apply generally or be limited in its application by reference to specified factors or exceptions, and	25 26
(b) apply differently according to different factors of a specified kind.	27 28
(4) For the avoidance of doubt, a requirement in an emergency action subplan or a requirement otherwise adopted or specified under subsection (2) may specify locations where emergency coastal protection works may be placed and must not be placed.	29 30 31 32
55Q Maximum period allowed for emergency coastal protection works	33
(1) The maximum period allowed for emergency coastal protection works is 6 months (or such period as may be prescribed by the regulations) commencing on the placement of the works.	34 35 36
(2) Despite subsection (1), if at the expiry of the 6-month period (or other prescribed period) referred to in that subsection, a development application is pending under the <i>Environmental Planning and Assessment Act 1979</i> for consent to development	37 38 39 40

for the purposes of coastal protection works on the same land, the maximum period allowed for the works ends:	1
(a) where, on the final determination of that development application (including any appeals relating to that application), the application is refused—7 days after that final determination, or	2
(b) where, on the final determination of that development application (including any appeals relating to that application), the application is granted—3 months after that final determination.	3
(3) Works cease to be emergency coastal protection works for the purposes of this Act if the works remain in place for longer than the maximum period allowed for emergency coastal protection works under this section.	4
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55R Maintenance requirements for emergency coastal protection works	15
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(1) Emergency coastal protection works must be maintained by or on behalf of the landowner or occupier in accordance with the following requirements:	17
(a) any requirements of the certificate under Division 2 that authorises the works,	18
(b) any requirements of an emergency action subplan that applies to the land concerned,	19
(c) any requirements adopted by the Minister and published in the Gazette for the purposes of this section,	20
(d) any requirements specified in the regulations for the purposes of this section.	21
(2) Works cease to be emergency coastal protection works if they are not maintained as required by this section.	22
(3) A requirement in an emergency action subplan or a requirement otherwise adopted or specified under subsection (1) may:	23
(a) apply generally or be limited in its application by reference to specified factors or exceptions, and	24
(b) apply differently according to different factors of a specified kind.	25
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55S	Emergency coastal protection works may be placed only once by a landowner	1 2
(1)	Works are not emergency coastal protection works for the purposes of this Act if the works are placed on land (whether public or private) by or on behalf of a landowner or occupier who at any time has previously placed other emergency coastal protection works on that land.	3 4 5 6 7
(2)	Nothing in subsection (1) prevents the repair of emergency coastal protection works (including the replacement of components of the works) during the period allowed for the works.	8 9 10 11
Division 2	Certificate for emergency coastal protection works	12 13
55T	Applications for and issue of certificate relating to emergency coastal protection works	14 15
(1)	An owner or occupier of land may apply to the relevant local council or to the Director-General for a certificate authorising the placement of emergency coastal protection works on the land.	16 17 18
(2)	The function of issuing a certificate must be delegated to an emergency works authorised officer.	19 20
(3)	A certificate under this Division may be issued unconditionally or subject to conditions.	21 22
(4)	An application for a certificate is to be accompanied by the fee determined by the Minister.	23 24
(5)	In this section, <i>emergency works authorised officer</i> means an authorised officer appointed by a council or the Director-General who has been authorised in writing by the council or the Director-General, as appropriate, for the purposes of issuing certificates under this Division.	25 26 27 28 29
55U	Duration of certificates	30
	A certificate under this Division does not authorise the placement of emergency coastal protection works more than 2 years after it was issued.	31 32 33

55V	Notification of other issuing authority	1
	As soon as practicable after the issue of a certificate under this Division, the emergency works authorised officer who issued the certificate must cause a copy of the certificate to be sent to:	2
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		4
	(a) the relevant council—if the officer was appointed by the Director-General, or	5
		6
	(b) the Director-General—if the officer was appointed by a council.	7
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Division 3	General	9
55W	Placing and maintaining emergency coastal protection works not restricted by certain legislation	10
		11
	If a person does not require regulatory approval for emergency coastal protection works (as provided by section 55O), the following provisions apply to the works:	12
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	(a) placing and maintaining the works is not development for the purposes of the <i>Environmental Planning and Assessment Act 1979</i> and is not an activity for the purposes of Part 5 of that Act,	15
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	(b) Division 3 of Part 7 of the <i>Fisheries Management Act 1994</i> does not apply to reclamation work that is carried out for the purpose of the works,	19
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	(c) the placement or maintenance of the works does not, despite any regulation under the <i>Marine Parks Act 1997</i> , require the consent of the relevant Ministers within the meaning of that Act,	22
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	(d) the works may be placed and maintained on community land (within the meaning of the <i>Local Government Act 1993</i>) despite the provisions of any plan of management under that Act applying to that land,	26
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	(e) section 138 (Works and structures) of the <i>Roads Act 1993</i> does not apply in relation to emergency coastal protection works placed by a person on a public road, but only if:	30
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	(i) there are no road works on the public road, and	33
	(ii) the public road is not used by vehicular traffic, and	34
	(iii) the person took all practical measures to avoid placing those emergency coastal protection works on the public road.	35
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55X	Notice to council and others of placement of emergency coastal protection works	1 2
(1)	A landowner or occupier of land must, at or about the time the emergency coastal protection works are to be placed on land, notify the following of the placing of the works:	3 4 5
(a)	the relevant local council,	6
(b)	if the works are or are about to be placed on public land in reliance on section 55Z—the public authority that is the owner of, or has the care, control or management of, the land.	7 8 9 10
	Note. After placement of emergency coastal protection works Coastal Authorities may exercise powers under Part 4D to make orders relating to such works. Those orders include, where justified, orders to remove, alter or repair the works concerned.	11 12 13 14
(2)	The notification under subsection (1) is to be made:	15
(a)	in the manner and to the person or persons specified in the certificate issued under Division 2 for the works, or	16 17
(b)	if no such manner or person is specified—to the person or persons identified in accordance with the requirements adopted by the Minister and published in the Gazette for the purposes of section 55P.	18 19 20 21
	Maximum penalty:	22
(a)	in the case of a corporation—100 penalty units, or	23
(b)	in any other case—50 penalty units.	24
(3)	For the purposes of subsection (1) (b), public land that is Crown land within the meaning of the <i>Crown Lands Act 1989</i> or land within a reserve as defined in Part 5 of that Act is taken to be owned by, or under the care, control or management of, the Minister administering that Act.	25 26 27 28 29
55Y	Removal of emergency coastal protection works	30
(1)	A person who has placed emergency coastal protection works (or caused such works to be placed) on land must, before the expiry of the maximum period allowed for emergency coastal protection works, remove the works and restore the land in accordance with:	31 32 33 34
(a)	any requirements adopted by the Minister and published in the Gazette for the purposes of this subsection, and	35 36

(b)	any requirements specified in the regulations for the purposes of this subsection.	1 2
	Maximum penalty:	3
(a)	in the case of a corporation—4,500 penalty units and 400 penalty units for each day the offence continues, or	4 5
(b)	in any other case—2,250 penalty units and 200 penalty units for each day the offence continues.	6 7
(2)	A person may not be found guilty both of an offence under subsection (1) and an offence for a failure to comply with an order under Part 4D in relation to the same failure to remove works or restore land.	8 9 10 11
(3)	If a person does not comply with subsection (1) (whether that person has been convicted of an offence in respect of the subsection or not), the Coastal Authority concerned may remove the works and restore the land. Any costs reasonably incurred by the Coastal Authority under this subsection may be recovered in a court of competent jurisdiction from the person as a debt due to the Coastal Authority.	12 13 14 15 16 17 18
(4)	This section does not apply to material deposited on a beach, or a structure erected, as part of development for which consent has been granted or that is exempt development or development that does not need consent under the <i>Environmental Planning and Assessment Act 1979</i> or is an approved project within the meaning of Part 3A of that Act.	19 20 21 22 23 24
(5)	The removal of works and the restoration of land under subsection (3) is not an activity for the purposes of Part 5 of the <i>Environmental Planning and Assessment Act 1979</i> .	25 26 27
55Z	Use and occupation of public land for emergency coastal protection works	28 29
(1)	A certificate under Division 2 that authorises a person to place and maintain emergency coastal protection works on land owned or occupied by the person extends to authorising the person to use and occupy public land for the placing and maintaining of the works (without obtaining a lease, licence or permit in respect of, or an easement or right-of-way in relation to, the land), but only if the person takes all practical measures:	30 31 32 33 34 35 36
(a)	to avoid placing those works on the public land, and	37
(b)	to avoid damage to assets and vegetation on the public land, and	38 39

(c)	to minimise risks to the public on the public land, and	1
(d)	to maintain reasonable public access (including access for local and public authorities) to and through the beach concerned.	2 3 4
(2)	A public authority must not unreasonably refuse a person access to the public authority's public land to enable the person to lawfully place emergency coastal protection works on land (whether public or private).	5 6 7 8
Part 4D Powers with respect to material and structures on beaches		9 10
55ZA	Order to remove certain materials and structures unlawfully placed on beaches	11 12
(1)	A Coastal Authority may, in respect of a beach on land for which it is a designated authority, order a person to remove material deposited by or on behalf of the person on the beach that, in the opinion of the Coastal Authority:	13 14 15 16
(a)	causes or is likely to cause increased erosion of a beach or land adjacent to a beach, or	17 18
(b)	unreasonably limits or is likely to unreasonably limit public access to a beach or headland, or	19 20
(c)	poses or is likely to pose a threat to public safety.	21
(2)	A Coastal Authority may order a person who is the owner or occupier of land that is on or has a frontage to a beach for which it is a designated authority:	22 23 24
(a)	to refrain from erecting a structure on the beach or on or near the boundary of the land and the beach, or	25 26
(b)	to remove a structure erected by or on behalf of the person on the beach or on or near the boundary of the land and the beach (not being a structure lawfully erected before the commencement of this section),	27 28 29 30
	if the structure, in the opinion of the Coastal Authority:	31
(c)	causes or is likely to cause increased erosion of a beach or land adjacent to a beach, or	32 33
(d)	unreasonably limits or is likely to unreasonably limit public access to a beach or headland, or	34 35
(e)	poses or is likely to pose a threat to public safety.	36

(3)	An order under this section that requires a person to remove material or a structure from land may, if the Coastal Authority that made the order is of the opinion that the material or structure has caused increased erosion of a beach, or land adjacent to a beach, include a requirement that the person restore the eroded beach or land concerned in accordance with:	1 2 3 4 5 6
(a)	any requirements adopted by the Minister and published in the Gazette for the purposes of this subsection, and	7 8
(b)	any requirements specified in the regulations for the purposes of this subsection.	9 10
(4)	A person who carries out work in compliance with a requirement of an order given under this section by a Coastal Authority is not subject to Part 5 of the <i>Environmental Planning and Assessment Act 1979</i> in carrying out the work.	11 12 13 14
(5)	Before giving an order under this section that relates to Crown land within the meaning of the <i>Crown Lands Act 1989</i> or land within a reserve as defined in Part 5 of that Act, a Coastal Authority must consult the Minister administering that Act.	15 16 17 18
(6)	This section does not apply to material deposited on a beach, or a structure erected, as part of development for which consent has been granted or that is exempt development or development that does not need consent under the <i>Environmental Planning and Assessment Act 1979</i> or is an approved project within the meaning of Part 3A of that Act.	19 20 21 22 23 24
(7)	This section does not apply in relation to emergency coastal protection works.	25 26
(8)	A council may not give an order under this section to a Minister or another public authority.	27 28
55ZB	Stop work orders relating to materials and structures unlawfully being placed on beaches	29 30
(1)	A Coastal Authority that is a designated authority for land may order a person not to carry out an activity on a beach on the land that the person is carrying out, or is about to carry out, if the Coastal Authority is of the opinion that the activity:	31 32 33 34
(a)	causes or is likely to cause increased erosion of a beach or land adjacent to a beach, or	35 36
(b)	unreasonably limits or is likely to unreasonably limit public access to a beach or headland, or	37 38
(c)	poses or is likely to pose a threat to public safety.	39

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| (2) | This section does not apply to an activity in the course of development for which consent has been granted or that is exempt development or development that does not need consent under the <i>Environmental Planning and Assessment Act 1979</i> or is an approved project within the meaning of Part 3A of that Act. | 1
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| (3) | This section does not apply if the activity comprises the placement or maintenance of emergency coastal protection works. | 6
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| (4) | A council may not give an order under this section to a Minister or another public authority. | 9
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| 55ZC | Orders relating to emergency coastal protection works | 11 |
| (1) | A Coastal Authority that is a designated authority for land on which a person has placed (or caused to be placed) emergency coastal protection works may order the person to remove, alter or repair the works and restore the land if the Coastal Authority is of the opinion that: | 12
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| (a) | the works are causing increased erosion of a beach or land adjacent to a beach, or | 17
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| (b) | the works unreasonably limit public access to a beach or headland, or | 19
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| (c) | the works pose a threat to public safety, or | 21 |
| (d) | the works have ceased to be emergency coastal protection works (for example, the works have been in place for longer than the maximum period allowed for emergency coastal protection works or the works are not being maintained as required by this Part). | 22
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| (2) | A Coastal Authority that is a designated authority for land on which a person has placed (or caused to be placed) emergency coastal protection works (whether public or private land) may order the person to restore any assets or vegetation on public land that have been damaged in the course of the placement of the works. | 27
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| (3) | A Coastal Authority that is a designated authority for public land on which a person has placed (or caused to be placed) emergency coastal protection works may order the person to move, alter or remove the works and restore the land if the Coastal Authority is of the opinion that the person did not take all practical measures: | 33
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| (a) | to avoid placing those works on the public land, or | 38 |
| (b) | to avoid damage to assets or vegetation on the public land, or | 39
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(c)	to minimise risks to the public on the public land, or	1
(d)	to maintain reasonable public access (including access for local and public authorities) to and through the beach concerned.	2 3 4
(4)	An order under this section that requires a person to restore land may include a requirement that the person restore the land concerned in accordance with:	5 6 7
(a)	any requirements adopted by the Minister and published in the Gazette for the purposes of this subsection, and	8 9
(b)	any requirements specified in the regulations for the purposes of this subsection.	10 11
(5)	Before giving an order under this section relating to emergency coastal protection works, a Coastal Authority must ensure that the person or body that issued the certificate under Division 2 of Part 4C for the works is aware of the intention to make the order.	12 13 14 15
	Note. Certificates under Division 2 of Part 4C for emergency coastal protection works are issued by emergency works authorised officers as delegates of councils or of the Director-General of the Department of Environment, Climate Change and Water.	16 17 18 19
	If an emergency works authorised officer who issued such a certificate was appointed by a council, any other Coastal Authority intending to make an order under this section relating to the works must ensure that the council is aware of the proposal to make the order.	20 21 22 23
	If an emergency works authorised officer who issued such a certificate was appointed by the Director-General, any Coastal Authority intending to make an order under this section relating to the works must ensure that the Director-General is aware of the proposal to make the order.	24 25 26 27
	See section 55ZG for resolution of disputes between Coastal Authorities.	28 29
(6)	Before making an order under this section that relates to Crown land within the meaning of the <i>Crown Lands Act 1989</i> or land within a reserve as defined in Part 5 of that Act, the Coastal Authority must consult the Minister administering that Act.	30 31 32 33
(7)	A council may not give an order under this section to a Minister or another public authority.	34 35
55ZD	General provisions relating to orders	36
(1)	An order under this Part may be given to a person by notice in writing or orally.	37 38

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| (2) An order under this Part: | 1 |
| (a) takes effect immediately (or from a later date specified in the written notice or at the time the order is given orally), and | 2
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| (b) is subject to such conditions as the Coastal Authority may specify in the written notice or at the time the order is given orally, and | 5
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| (c) may require a person to cease doing, or causing or permitting to be done, the relevant activity for a specified time, and | 8
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| (d) may require a person to do, or cause or permit to be done, the relevant activity within a specified time. | 11
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| (3) The Coastal Authority concerned may vary or revoke the order or the conditions of the order by further notice in writing or further oral order given to the person subject to the order. | 13
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| (4) An order given orally to a person ceases to have effect on the expiration of 72 hours from the time it was given unless confirmed by the Coastal Authority who gave the order by a notice in writing given to the person. | 16
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| (5) Subject to subsection (4), an order under this Part remains in force until whichever of the following happens first: | 20
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| (a) the order is revoked by the Coastal Authority concerned, | 22 |
| (b) the activity to which the order relates obtains planning permission and evidence of the planning permission is provided to the Coastal Authority concerned. | 23
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| (6) A Coastal Authority is not required, before making an order under this Part, to notify any person who may be affected by the order. | 26
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| (7) A Coastal Authority (other than a council) that makes an order under this Part must notify the relevant local council of the making of the order. | 29
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| (8) A council must keep a record of all orders under this Part made by it or notified to it under subsection (7). | 32
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| (9) In this section, <i>evidence of planning permission</i> means evidence that: | 34
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| (a) development consent or approval under the <i>Environmental Planning and Assessment Act 1979</i> has been granted, or | 36
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| (b) the development concerned has become exempt development under that Act. | 38
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55ZE	Fee	1
(1)	The purpose of this section is to enable a Coastal Authority to recover the administrative costs of preparing and giving orders under this Part.	2 3 4
(2)	A person who is given an order under this Part by a Coastal Authority must within 30 days pay a fee of \$320 (or such higher fee as may be prescribed by the regulations) to the Coastal Authority.	5 6 7 8
(3)	The Coastal Authority may:	9
	(a) extend the time for payment of the fee, on the application of the person required to pay the fee, or	10 11
	(b) waive payment of the whole or any part of the fee, on the Coastal Authority's own initiative or on the application of the person required to pay the fee.	12 13 14
(4)	A fee is not payable for the variation of an order made under this Part.	15 16
(5)	A person who does not pay the fee within the time provided under this section is guilty of an offence. Maximum penalty: 200 penalty units.	17 18 19
55ZF	Failure to comply with order	20
(1)	A person who does not comply with an order under this Part is guilty of an offence. Maximum penalty:	21 22 23
	(a) in the case of a corporation—4,500 penalty units and 400 penalty units for each day the offence continues, or	24 25
	(b) in any other case—2,250 penalty units and 200 penalty units for each day the offence continues.	26 27
(2)	If a person does not comply with the requirements of an order under this Part within the time specified (whether that person has been convicted of an offence in respect of the order or not), the Coastal Authority concerned may, where the order required the doing of any act or thing, do the act or thing.	28 29 30 31 32
(3)	Any costs reasonably incurred by the Coastal Authority under subsection (2) may be recovered in a court of competent jurisdiction from the person who is the subject of the order as a debt due to the Coastal Authority.	33 34 35 36

55ZG	Resolution of disputes under Part 4C and this Part	1
(1)	If a dispute arises between a council and a Coastal Authority that is a Minister in relation to the exercise of a function under Part 4C or this Part, the Minister may direct the council as to the exercise of the function.	2 3 4 5
(2)	If a dispute arises between two Coastal Authorities in relation to the exercise of a function under Part 4C or this Part (other than a dispute between a council and a Minister), the dispute may be referred to the Premier for resolution:	6 7 8 9
	(a) by a party to the dispute, if that party is a Minister, or	10
	(b) by the Minister responsible for a party to the dispute, if that party is not a Minister.	11 12
(3)	The Premier may give directions as the Premier sees fit to resolve the dispute.	13 14
(4)	A Coastal Authority is to comply with a direction under this section.	15 16
(5)	This section applies to the Director-General in the same way as it applies to a Minister.	17 18
55ZH	Successors in title and emergency coastal protection works	19
(1)	If an original owner of land protected by emergency coastal protection works ceases, before the works are removed and the land is restored in accordance with this Act, to be the owner of that land, a successor in title may be made the subject of an order under this Part as if the successor in title were the original owner.	20 21 22 23 24
(2)	If an order is made under this Part requiring an original owner of land protected by emergency coastal protection works to carry out work in relation to the works on the land and the original owner ceases, before the work is carried out, to be the owner of the land, a successor in title:	25 26 27 28 29
	(a) is required to carry out that work, and	30
	(b) to that extent, is bound by the order in the same way as the original owner (except as provided by this section).	31 32
(3)	A successor in title is bound by the order under subsection (2) only if the Coastal Authority that made the order:	33 34
	(a) before the land concerned was transferred— notified the relevant local council under section 55ZD (7), and	35 36
	(b) has given a copy of the order to the successor in title.	37

(4)	For the purposes of subsection (2), the specified period within which the work is required to be carried out under the order is taken to commence from the date on which the copy of the order is given to the successor in title.	1 2 3 4
(5)	In this section: <i>land protected by emergency coastal protection works</i> means land that is protected from wave erosion by emergency coastal protection works that have been placed (or caused to be placed) by the land’s owner (whether placed on the owner’s land or on adjacent public land). <i>original owner</i> means an owner of land who has placed (or caused to be placed) emergency coastal protection works on the owner’s land or on public land adjacent to that land.	5 6 7 8 9 10 11 12 13
[27]	Section 56A Restoration orders Insert “or following” after “during” in section 56A (2).	14 15
[28]	Section 58 Penalties Omit “100 penalty units” from section 58 (1). Insert instead “4,500 penalty units (in the case of a corporation) and 2,250 penalty units (in any other case)”.	16 17 18 19
[29]	Section 58 (2) Omit “10 penalty units”. Insert instead “400 penalty units (in the case of a corporation) and 200 penalty units (in any other case)”.	20 21 22 23
[30]	Section 59 Proceedings for offences Insert “(other than an offence against section 55Y or Part 4D)” after “this Act”.	24 25
[31]	Section 59 (2) Insert at the end of the section: (2) Proceedings for an offence against section 55Y or Part 4D of this Act may be taken before the Land and Environment Court.	26 27 28 29
[32]	Sections 59A and 59B Insert after section 59: 59A Continuing offences (1) A person who is guilty of an offence because the person contravenes a requirement made by or under this Act or the	30 31 32 33 34

regulations (whether the requirement is imposed by an order or otherwise) to do or cease to do something (whether or not within a specified period or before a particular time):	1 2 3
(a) continues, until the requirement is complied with and despite the fact that any specified period has expired or time has passed, to be liable to comply with the requirement, and	4 5 6 7
(b) is guilty of a continuing offence for each day the contravention continues.	8 9
(2) This section does not apply to an offence if the relevant provision of this Act or the regulations does not provide for a penalty for a continuing offence.	10 11 12
(3) This section does not apply to the extent that a requirement of an order is revoked.	13 14
59B Penalty notices	15
(1) An authorised officer may serve a penalty notice on a person if it appears to the officer that the person has committed an offence against this Act or the regulations, being an offence prescribed by the regulations as a penalty notice offence.	16 17 18 19
(2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person can pay, within the time and to the person specified in the notice, the amount of the penalty prescribed by the regulations for the offence if dealt with under this section.	20 21 22 23 24
(3) A penalty notice under this section is declared to be a penalty notice for the purposes of the <i>Fines Act 1996</i> .	25 26
(4) A penalty notice may be served personally or by post.	27
(5) If the amount of penalty prescribed for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.	28 29 30
(6) Payment under this section is not to be regarded as an admission of liability for the purpose of, and does not in any way affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.	31 32 33 34
(7) The regulations may:	35
(a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence, and	36 37 38

(b)	prescribe the amount of penalty payable for the offence if dealt with under this section, and	1 2
(c)	prescribe different amounts of penalties for different offences or classes of offences.	3 4
(8)	The amount of a penalty prescribed by the regulations under this section for an offence is not to exceed the maximum amount of penalty that could be imposed for the offence by a court.	5 6 7
(9)	This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.	8 9 10
[33]	Section 60	11
	Omit sections 60 and 61. Insert instead:	12
	60 Regulations	13
	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.	14 15 16 17
[34]	Sections 63–65	18
	Insert after section 62:	19
	63 Delegation	20
	The Minister may delegate the exercise of any function of the Minister under this Act (other than a function of the Minister as a Coastal Authority or this power of delegation) to:	21 22 23
	(a) any member of staff of the Department, or	24
	(b) any person, or any class of persons, authorised for the purposes of this section by the regulations.	25 26
	64 Review of Part 4C of Act	27
	(1) The Minister is to review Part 4C of this Act to determine whether the policy objectives of the Part remain valid and whether the terms of the Part remain appropriate for securing those objectives.	28 29 30 31
	(2) The review is to be undertaken as soon as possible after the period of 2 years from the date of assent to the <i>Coastal Protection and Other Legislation Amendment Act 2010</i> .	32 33 34

(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 2 years.	1 2 3
65	Review of Act	4
(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.	5 6 7
(2)	The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to the <i>Coastal Protection and Other Legislation Amendment Act 2010</i> .	8 9 10
(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.	11 12 13
[35]	Schedule 1 Savings, transitional and other provisions	14
	Insert at the end of clause 1 (1):	15
	<i>Coastal Protection and Other Legislation Amendment Act 2010</i>	16
[36]	Schedule 2	17
	Insert after Schedule 1:	18
	Schedule 2 Constitution and procedure of Coastal Panel	19 20
	(Section 12 (8))	21
	Part 1 General	22
	1 Definitions	23
	In this Schedule:	24
	<i>Chairperson</i> means the Chairperson of the Coastal Panel.	25
	<i>Deputy Chairperson</i> means the Deputy Chairperson of the Coastal Panel.	26 27
	<i>member</i> means any member of the Coastal Panel.	28

Part 2	Constitution	1
2	Terms of office of members	2
	Subject to this Schedule and the regulations, a member holds office for such period (not exceeding 3 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.	3 4 5 6
3	Remuneration	7
	A member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.	8 9 10
4	Deputies	11
	(1) The Minister may, from time to time, appoint a person to be the deputy of a member. The appointment is to be made in the same manner as the appointment of the member.	12 13 14
	(2) The Minister may, at any time, revoke any such appointment.	15
	(3) In the absence of a member, the member's deputy may, if available, act in the place of the member.	16 17
	(4) While acting in the place of a member, a person has all the functions of the member and is taken to be a member.	18 19
	(5) For the purposes of this clause, a vacancy in the office of a member is taken to be an absence of the member.	20 21
	(6) This clause does not operate to confer on the deputy of a member who is the Chairperson or Deputy Chairperson the member's functions as Chairperson or Deputy Chairperson.	22 23 24
5	Vacancy in office of member	25
	(1) The office of a member becomes vacant if the member:	26
	(a) dies, or	27
	(b) completes a term of office and is not re-appointed, or	28
	(c) resigns the office by instrument in writing addressed to the Minister, or	29 30
	(d) is removed from office by the Minister under this clause, or	31 32
	(e) is absent from 3 consecutive meetings of the Coastal Panel of which reasonable notice has been given to the member personally or by post, except on leave granted by the	33 34 35

Minister or unless the member is excused by the Minister for having been absent from those meetings, or	1
(f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or	2
(g) becomes a mentally incapacitated person, or	3
(h) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.	4
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(2) The Minister may remove a member from office at any time.	7
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6 Filling of vacancy in office of member	13
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If the office of any member becomes vacant, a person is, subject to this Act and the regulations, to be appointed to fill the vacancy.	15
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7 Disclosure of pecuniary interests	17
(1) If:	18
(a) a member has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Coastal Panel, and	19
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(b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,	22
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the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Coastal Panel.	25
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(2) A disclosure by a member at a meeting of the Coastal Panel that the member:	28
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(a) is a member, or is in the employment, of a specified company or other body, or	30
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(b) is a partner, or is in the employment, of a specified person, or	32
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(c) has some other specified interest relating to a specified company or other body or to a specified person,	34
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is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).	36
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- (3) Particulars of any disclosure made under this clause must be recorded by the Coastal Panel in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee determined by the Coastal Panel. 1
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- (4) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the Coastal Panel otherwise determines: 6
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- (a) be present during any deliberation of the Coastal Panel with respect to the matter, or 9
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- (b) take part in any decision of the Coastal Panel with respect to the matter. 11
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- (5) For the purposes of the making of a determination by the Coastal Panel under subclause (4), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not: 13
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- (a) be present during any deliberation of the Coastal Panel for the purpose of making the determination, or 17
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- (b) take part in the making by the Coastal Panel of the determination. 19
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- (6) A contravention of this clause does not invalidate any decision of the Coastal Panel. 21
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- (7) This clause applies to a member of a committee of the Coastal Panel and the committee in the same way as it applies to a member of the Coastal Panel and the Coastal Panel. 23
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- 8 Effect of certain other Acts** 26
- (1) Chapter 2 of the *Public Sector Employment and Management Act 2002* does not apply to or in respect of the appointment of a member. 27
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- (2) If by or under any Act provision is made: 30
- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or 31
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- (b) prohibiting the person from engaging in employment outside the duties of that office, 34
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- the provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as a member. 36
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9	Personal liability	1
	A matter or thing done or omitted to be done by the Coastal Panel, a member of the Coastal Panel or a person acting under the direction of the Coastal Panel does not, if the matter or thing was done or omitted to be done in good faith for the purpose of executing this or any other Act, subject a member or a person so acting personally to any action, liability, claim or demand.	2 3 4 5 6 7
Part 3	Procedure	8
10	General procedure	9
	The procedure for the calling of meetings of the Coastal Panel and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Coastal Panel.	10 11 12 13
11	Quorum	14
	The quorum for a meeting of the Coastal Panel is a majority of its members for the time being.	15 16
12	Presiding member	17
	(1) The Chairperson (or, in the absence of the Chairperson, the Deputy Chairperson, or in the absence of both the Chairperson and the Deputy Chairperson, a person elected by the members of the Coastal Panel who are present at a meeting of the Coastal Panel) is to preside at a meeting of the Coastal Panel.	18 19 20 21 22
	(2) The presiding member has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.	23 24
13	Voting	25
	A decision supported by a majority of the votes cast at a meeting of the Coastal Panel at which a quorum is present is the decision of the Coastal Panel.	26 27 28
14	Transaction of business outside meetings or by telephone	29
	(1) The Coastal Panel may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Coastal Panel for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Coastal Panel.	30 31 32 33 34
	(2) The Coastal Panel may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by	35 36

telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.	1 2 3
(3) For the purposes of:	4
(a) the approval of a resolution under subclause (1), or	5
(b) a meeting held in accordance with subclause (2),	6
the Chairperson and each member have the same voting rights as they have at an ordinary meeting of the Coastal Panel.	7 8
(4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the Coastal Panel.	9 10 11
(5) Papers may be circulated among the members for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.	12 13 14
15 First meeting	15
The Minister may call the first meeting of the Coastal Panel in such manner as the Minister thinks fit.	16 17

Schedule 2	Amendment of Local Government Act	1
	1993 No 30	2
[1] Section 496B		3
Insert after section 496A:		4
496B Making and levying of annual charges for coastal protection services		5
		6
(1) If a council provides coastal protection services that benefit a parcel of rateable land in the council's area, being services that relate to coastal protection works that were (or are being) constructed by or on behalf of the owner or occupier (or a previous owner or occupier) of the parcel of land, the council must, in accordance with this Act and the regulations, make and levy an annual charge on that parcel for those services.		7 8 9 10 11 12 13
(2) A council may, in accordance with this Act and the regulations, make and levy an annual charge for the provision by the council of coastal protection services for a parcel of rateable land that benefits from the services, being services that relate to coastal protection works that were (or are being) constructed jointly by or on behalf of:		14 15 16 17 18 19
(a) the owner or occupier (or a previous owner or occupier) of the parcel of land, and		20 21
(b) a public authority or a council.		22
(3) An annual charge for the provision of coastal protection services must be calculated so as to not exceed the reasonable cost to the council of providing those services (including any legal, insurance, engineering, surveying, project management, financing and similar costs associated with providing those services).		23 24 25 26 27 28
(4) If a person is aggrieved by the amount of the annual charge, the person may appeal to the Land and Environment Court and that Court may determine the amount.		29 30 31
(5) The fact that an appeal is pending does not in the meantime affect the levying of the annual charge to which the appeal relates and the charge may be recovered as if no appeal were pending.		32 33 34
(6) If a person's appeal is, in whole or in part, successful, the council must refund any amount paid in excess of a requirement for payment under this Act.		35 36 37

(7)	If the Land and Environment Court, in the course of determining an appeal under subsection (4), determines the reasonable cost to the council of providing coastal protection services in relation to particular coastal protection works, that determination is binding in relation to the calculation of the annual charge for all other parcels of land that benefit from those same services.	1 2 3 4 5 6
(8)	For the avoidance of doubt, a parcel of land benefits from the provision of coastal protection services even if:	7 8
(a)	the services relate to private coastal protection works (such as a seawall) wholly on the parcel or on a neighbouring parcel of private land, or	9 10 11
(b)	the services are carried out on land that is outside the council's area.	12 13
(9)	Subsections (1) and (2) do not authorise or permit a council to make or levy an annual charge for the provision of coastal protection services for rateable land that is held under a lease for private purposes granted under the <i>Aboriginal Housing Act 1998</i> or the <i>Housing Act 2001</i> .	14 15 16 17 18
(10)	The Minister administering the <i>Coastal Protection Act 1979</i> may issue guidelines relating to the making and levying of charges under this section. A council is to have regard to any such guidelines when making and levying such charges.	19 20 21 22
[2]	Section 505 Application of Part	23
	Insert after section 505 (a) (v):	24
	(vi) annual charges for coastal protection services, and	25
[3]	Chapter 15, Part 5, Division 3	26
	Insert after Division 2 of Part 5 of Chapter 15:	27
	Division 3 Coastal protection service charges	28
553B	Restriction on levying coastal protection service charges	29
(1)	An annual charge for coastal protection services may not be levied on a parcel of rateable land in relation to any coastal protection works that existed before the commencement of this section without the consent of the owner of that land.	30 31 32 33

(2)	An annual charge for coastal protection services may not be levied on a parcel of rateable land in relation to any coastal protection works if:	1 2 3
(a)	the maintenance of the works or the management of the impacts of the works (as appropriate) is a condition of an approval or consent under the <i>Environmental Planning and Assessment Act 1979</i> relating to the works, and	4 5 6 7
(b)	that maintenance or management work is not being carried out by or on behalf of the council.	8 9
[4]	Sections 606A and 606B	10
	Insert after section 606:	11
606A	Estimates of coastal protection service charges	12
(1)	A council must, on request, provide a person who would be liable to pay an annual charge for coastal protection services in relation to proposed coastal protection works with an estimate of the person's liability for that annual charge (if the council were to make such a charge) for each of the following 5 years.	13 14 15 16 17
(2)	A request for an estimate under subsection (1) must include any information required by the council in order to make the estimate, including but not limited to, information relating to proposed coastal protection works such as the location and type of works and their expected on-site and off-site impacts.	18 19 20 21 22
(3)	A request for an estimate under subsection (1) is to be accompanied by a fee determined by the council to cover the council's reasonable costs in providing the estimate.	23 24 25
(4)	A council must provide the estimate within 30 days of the submission of the request (including the required information) and fee.	26 27 28
(5)	An estimate provided by the council does not bind or limit the council in the making or levying of a charge for coastal protection services under this Act.	29 30 31
606B	Review of cost of coastal protection service charges	32
(1)	A council must, on request, provide a person who is liable to pay an annual charge for coastal protection services with a report prepared by an independent person on the cost to the council of providing those services.	33 34 35 36

(2)	A request for a report under subsection (1) is to be accompanied by a fee determined by the council to cover the council's reasonable costs in providing the report.	1 2 3
(3)	If a council provides a report to a person under subsection (1) the council is to make the report available to all other persons liable to pay an annual charge in relation to the same services.	4 5 6
(4)	A council is not required to provide a report under subsection (1) to a person if the council has in the previous 3 years provided or made available to the person such a report in relation to the same coastal protection services.	7 8 9 10
[5]	Section 733 Exemption from liability—flood liable land and land in coastal zone	11 12
	Insert after section 733 (3) (a):	13
	(b) the preparation or making of a coastal zone management plan, or the giving of an order, under the <i>Coastal Protection Act 1979</i> , and	14 15 16
[6]	Section 733 (3) (f2)–(f5)	17
	Insert in appropriate order in section 733 (3):	18
	(f2) anything done or omitted to be done regarding beach erosion or shoreline recession on Crown land, land within a reserve as defined in Part 5 of the <i>Crown Lands Act 1989</i> or land owned or controlled by a council or a public authority, and	19 20 21 22 23
	(f3) the failure to upgrade flood mitigation works or coastal management works in response to projected or actual impacts of climate change, and	24 25 26
	(f4) the failure to undertake action to enforce the removal of illegal or unauthorised structures that results in erosion of a beach or land adjacent to a beach, and	27 28 29
	(f5) the provision of information relating to climate change or sea level rise, and	30 31
[7]	Section 733 (8)	32
	Omit the subsection. Insert instead:	33
	(8) In this section:	34
	<i>coastal management works</i> includes the placement and maintenance of emergency coastal protection works.	35 36

	<i>coastal zone</i> has the same meaning as in the <i>Coastal Protection Act 1979</i> , and includes land previously in the coastal zone under that Act and land that adjoins the tidal waters of the Hawkesbury River, Sydney Harbour and Botany Bay, and their tributaries.	1
	<i>manual</i> includes guidelines.	2
		3
		4
		5
[8]	Schedule 6 Regulations	6
	Insert after item 7:	7
	7A Coastal protection services	8
	Examples. The minimum standards in carrying out such coastal protection services	9
		10
[9]	Schedule 8 Savings, transitional and other provisions consequent on the enactment of other Acts	11
	Insert at the end of clause 1 (1):	12
	<i>Coastal Protection and Other Legislation Amendment Act 2010</i>	13
		14
[10]	Dictionary	15
	Insert in alphabetical order:	16
	<i>coastal protection service</i> means a service:	17
	(a) to maintain and repair coastal protection works, or	18
	(b) to manage the impacts of such works (such as changed or increased beach erosion elsewhere),	19
		20
	but does not include a service that relates to emergency coastal protection works.	21
		22
	<i>coastal protection works</i> means activities or works to reduce the impact of coastline hazards on land adjacent to tidal waters and includes seawalls, revetments, groynes and beach nourishment.	23
		24
		25
	<i>coastline hazard</i> means the following:	26
	(a) beach erosion,	27
	(b) shoreline recession,	28
	(c) coastal lake or watercourse entrance instability,	29
	(d) coastal inundation,	30
	(e) coastal cliff or slope instability.	31
	<i>emergency coastal protection works</i> has the same meaning as in the <i>Coastal Protection Act 1979</i> .	32
		33

Coastal Protection and Other Legislation Amendment Bill 2010

Schedule 2 Amendment of Local Government Act 1993 No 30

<i>flooded</i> , in relation to land, means inundated by waters derived from the runoff of rainfall on land.	1
	2
<i>shoreline recession</i> means the progressive landward movement of the average long term position of the coastline.	3
	4

Schedule 3	Amendment of other legislation	1
3.1	Conveyancing (Sale of Land) Regulation 2005	2
[1]	Clause 3 Definitions	3
	Insert in alphabetical order in clause 3 (1):	4
	<i>section 603 certificate</i> means a certificate issued under	5
	section 603 (3) of the <i>Local Government Act 1993</i> .	6
[2]	Schedule 3 Prescribed warranties	7
	Insert at the end of item 1 (e) in Part 1 of the Schedule:	8
	, and	9
	(f) the land is not subject to an annual charge for the provision	10
	of coastal protection services under the <i>Local Government</i>	11
	<i>Act 1993</i> .	12
[3]	Schedule 3, Part 1, item 2 (e)	13
	Insert at the end of item 2 (d) (iv):	14
	, and	15
	(e) without limiting any other manner in which disclosure may	16
	occur, the vendor may disclose that land is subject to an	17
	annual charge for the provision of coastal protection	18
	services under the <i>Local Government Act 1993</i> by	19
	attaching a section 603 certificate relating to the land to the	20
	contract.	21
[4]	Schedule 3, Part 2, item 1 (f)	22
	Insert at the end of item 1 (e) in Part 2:	23
	, and	24
	(f) the land is not subject to an annual charge for the provision	25
	of coastal protection services under the <i>Local Government</i>	26
	<i>Act 1993</i> .	27
[5]	Schedule 3, Part 2, item 2 (e)	28
	Insert at the end of item 2 (d) (iv):	29
	, and	30
	(e) without limiting any other manner in which disclosure may	31
	occur, the vendor may disclose that land is subject to an	32
	annual charge for the provision of coastal protection	33

	services under the <i>Local Government Act 1993</i> by attaching a section 603 certificate relating to the land to the option.	1 2 3
3.2	Environmental Planning and Assessment Regulation 2000	4
[1]	Clause 228 What factors must be taken into account concerning the impact of an activity on the environment?	5 6
	Insert after clause 228 (2) (o):	7
	(p) any impact on coastal processes and coastal hazards, including those under projected climate change conditions.	8 9
[2]	Schedule 4 Planning certificates	10
	Insert after clause 4:	11
4A	Orders under Part 4D of the Coastal Protection Act 1979	12
	Whether an order has been made under Part 4D of the <i>Coastal Protection Act 1979</i> in relation to emergency coastal protection works (within the meaning of that Act) on the land (or on public land adjacent to that land), except where the council is satisfied that such an order has been fully complied with.	13 14 15 16 17
4B	Emergency coastal protection works under the Coastal Protection Act 1979	18 19
	Whether the council has been notified under section 55X of the <i>Coastal Protection Act 1979</i> that emergency coastal protection works (within the meaning of that Act) have been placed on the land (or on public land adjacent to that land), except where the council is satisfied that the works have been removed and the land restored in accordance with that Act.	20 21 22 23 24 25
3.3	Local Government (General) Regulation 2005	26
[1]	Clause 201 Annual statement of council's revenue policy	27
	Insert after clause 201 (3) (d):	28
	(e) in relation to an annual charge for the provision by the council of coastal protection services (if any)—a map or list (or both) of the parcels of rateable land that are to be subject to the charge.	29 30 31 32

[2] Clause 217 Additional information for inclusion in annual report	1
Omit clause 217 (1) (e). Insert instead:	2
(e) if the council has levied an annual charge for stormwater management services—a statement detailing the stormwater management services provided by the council during that year,	3 4 5 6
(e1) if the council has levied an annual charge for coastal protection services—a statement detailing the coastal protection services provided by the council during that year,	7 8 9 10
[3] Part 13, Division 12	11
Insert after Division 11 of Part 13:	12
Division 12 Standards of coastal protection services	13
413B Standards of coastal protection services	14
(1) A coastal protection service carried out by a council to maintain coastal protection works must maintain the structural integrity of the works to a reasonable engineering standard.	15 16 17
(2) A coastal protection service carried out by a council to manage the impacts of coastal protection works must ensure that the works do not result in any significant change in the long term position of the coastline.	18 19 20 21