



New South Wales

Coastal Protection Amendment Bill 2012

Explanatory note

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

Overview of Bill

The object of this Bill is to amend the *Coastal Protection Act 1979* (the *Principal Act*):

- (a) to make changes to the regulatory scheme governing the placement of certain coastal protection works (such as sandbags) on beaches, or sand dunes adjacent to beaches, to mitigate the effects of wave erosion on land, and
- (b) to reduce the maximum penalties for offences relating to the placement, maintenance and removal of such coastal protection works, and
- (c) to remove the regulation-making power from the Principal Act, and repeal existing regulations, relating to the categorisation of certain coastal land by reference to the level of the risk that the land will be adversely affected by coastal hazards (such as beach erosion, shoreline recession and coastal inundation).

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

Amendments relating to temporary coastal protection works generally

Schedule 1 [1], [2], [4] and [12] rename “emergency coastal protection works” as “temporary coastal protection works”.

Schedule 1 [6] and [8] provide that a person does not require regulatory approval under the Principal Act or any other law (such as development consent under the *Environmental Planning and Assessment Act 1979*) for temporary coastal protection works that comply with the requirements for those works set out in the Principal Act. The amendments make it clear that such works on private land are no longer required to be authorised by a pre-existing certificate issued by an emergency works authorised officer. **Schedule 1 [7], [10] and [22]** make consequential amendments.

Schedule 1 [8] also removes current requirements that temporary coastal protection works only be placed:

- (a) to reduce the impact or likely impact of erosion on a building being lawfully used for residential, commercial or community purposes, and
- (b) when beach erosion is occurring or imminent or is reasonably foreseeable.

Schedule 1 [9] removes the requirement that temporary coastal protection works be removed 12 months after placement. (See proposed section 55VA regarding a maximum period for the placement of temporary coastal protection works on public land).

Schedule 1 [11] removes a current restriction that provides that emergency coastal protection works may be placed on private land only once.

Amendments relating to temporary coastal protection works and public land

Schedule 1 [13] and [14] make a number of amendments relating to the use and occupation of public land for the placement of temporary coastal protection works.

Under proposed section 55T (1)–(2A) and (3A) a person will be able to obtain a certificate to authorise the person to use and occupy public land for the placing and maintaining of temporary coastal protection works (without obtaining a lease, licence or permit in respect of, or an easement or right-of-way in relation to, the public land). Such a certificate must not be issued unless the issuing authority is satisfied that all reasonable measures have been taken and will be taken to avoid using or occupying the public land for the placing and maintaining of the works and to ensure reasonable public access (including access for local and public authorities) to and through the beach concerned is maintained.

It will be a condition of such a certificate that the holder of the certificate must take all reasonable measures:

- (a) to avoid damage to assets and vegetation on the public land, and
- (b) to minimise risks to the public on the public land, and
- (c) to minimise disruption of the public use of the beach concerned.

Schedule 1 [20] and [26] move and renumber certain provisions of the Principal Act relating to the use and occupation of public land for the placement of temporary coastal protection works (being current sections 55Q and 55Z (3)). Proposed section 55VA provides that the maximum period allowed for temporary coastal protection works on public land is 2 years (rather than the current 12 months) commencing on the placement of the works. Works cease to be temporary coastal protection works for the purposes of the Principal Act if the works remain in place for longer than that maximum period. That period can be extended if at the expiry of that 2-year 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 55VB continues the operation of current section 55Z (3) to provide that a public authority must not unreasonably refuse a person access to the public authority's public land to enable the person to lawfully place temporary coastal protection works on the public authority's land or on other public or private land.

Former section 55Z (2) that relates to the use and occupation of adjacent land (other than public land) for the placing, maintaining and removal of temporary coastal protection works is retained (with minor modification) as substituted section 55Z.

Schedule 1 [3], [15]–[19] and [30] make amendments to remove the requirement that authorities responsible for issuing those certificates for the use and occupation of public land for temporary coastal protection works must appoint emergency works authorised officers and delegate functions relating to those certificates to those officers. Under the amended provisions those authorities may (but are not required to) delegate such functions to authorised officers under the Principal Act or persons, or any classes of persons, authorised by the regulations.

Schedule 1 [21], [23] and [27]–[29] make consequential amendments.

Amendments reducing maximum penalties for certain offences

Schedule 1 [5] reduces the maximum penalty for the offence of carrying out certain unauthorised anti-beach erosion work if:

- (a) a person commits the offence under section 55K (1) by placing material on a beach, or a sand dune adjacent to a beach, and
- (b) the material is material of the kind permitted for temporary coastal protection works.

Schedule 1 [24] and [25] reduce the maximum penalty for the offence of failing to remove temporary coastal protection works from public land, and to restore that land, before the expiry of the maximum period allowed for those works. The amendments

also renumber the section that contains the offence (section 55Y) and move it to a more appropriate location in the Principal Act as the provision now deals only with public land. **Schedule 1 [36]** and **Schedule 2 [2]** make consequential amendments.

Schedule 1 [31] and [32] reduce the maximum penalty for the offence relating to the failure to comply with certain orders of a Coastal Authority under the Principal Act relating to temporary coastal protection works. The penalty relating to other orders under the Principal Act relating to other materials and structures on beaches remains unchanged.

Amendments repealing the regulation-making power in relation to the categorisation of land

Schedule 1 [35] removes section 56B from the Principal Act. That section enables regulations to be made with regard to categorisation of land within the coastal zone into risk categories according to the level of the risk that particular land will be adversely affected by coastal hazards and related matters (including regulations requiring planning certificates issued under section 149 of the *Environmental Planning and Assessment Act 1979* to include information regarding such categorisations). See also **Schedule 2 [3]** for the repeal of existing regulations made under this power.

Miscellaneous amendments

Schedule 1 [33] and [34] make consequential amendments to provisions relating to successors in title and temporary coastal protection works.

Schedule 1 [37] enables regulations of a savings or transitional nature consequent on the enactment of the proposed Act to be made.

Schedule 2 Amendment of Coastal Protection Regulation 2011

Schedule 2 [1] and [2] make consequential amendments to the *Coastal Protection Regulation 2011*.

Schedule 2 [3] omits Part 4 of that Regulation. That Part provides for a scheme of categorisation of land within the coastal zone into risk categories according to the level of the risk that particular land will be adversely affected by coastal hazards. The scheme also provides for the inclusion in planning certificates issued under section 149 of the *Environmental Planning and Assessment Act 1979* of information regarding such categorisations.

Schedule 3 Amendment of other legislation

Schedule 3 contains consequential amendments to other legislation.

First print

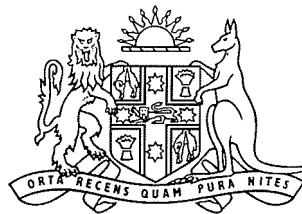


New South Wales

Coastal Protection Amendment Bill 2012

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New South Wales

Coastal Protection Amendment Bill 2012

No. , 2012

A Bill for

An Act to amend the *Coastal Protection Act 1979* to make further provision with respect to the use and occupation of the coastal region and to facilitate the carrying out of certain temporary coastal protection works; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Coastal Protection Amendment Act 2012</i> .	3
2 Commencement	4
This Act commences on a day or days to be appointed by proclamation.	5

Schedule 1	Amendment of Coastal Protection Act	1
	1979 No 13	2
[1]	The whole Act (except as otherwise amended by this Act)	3
	Omit “emergency coastal protection works” and “Emergency coastal protection works” wherever occurring.	4 5
	Insert instead “temporary coastal protection works” and “Temporary coastal protection works”, respectively.	6 7
[2]	Section 4 Definitions	8
	Omit the definition of <i>emergency coastal protection works</i> from section 4 (1).	9
	Insert in alphabetical order:	10
	<i>temporary coastal protection works</i> —see Division 1 of Part 4C.	11
[3]	Section 4 (1), definition of “emergency works authorised officer”	12
	Omit the definition.	13
[4]	Section 4 (1), definition of “relevant local council”	14
	Omit “emergency coastal protection works”.	15
	Insert instead “temporary coastal protection works”.	16
[5]	Section 55K Breach of coastal zone management plan: offence	17
	Insert at the end of the section:	18
	(2) However, if:	19
	(a) a person commits the offence under subsection (1) by placing material on a beach, or a sand dune adjacent to a beach, and	20 21 22
	(b) the material is material of the kind referred to in section 55P (1) (a) or (b),	23 24
	the maximum penalty for the offence is 2,250 penalty units (in the case of a corporation) or 1,125 penalty units (in any other case).	25 26 27
[6]	Section 55O Regulatory approvals not required for temporary coastal protection works	28 29
	Omit “if the works are authorised by a certificate under Division 2”.	30
	Insert instead “that comply with the requirements for those works set out in this Act”.	31 32

[7]	Section 55O, note	1
	Omit the note. Insert instead:	2
	Note. This means that planning and associated approvals are not required for the placement and maintenance of temporary coastal protection works that comply with the requirements for such works set out in this Act—see section 55W.	3 4 5 6
[8]	Section 55P Meaning of “temporary coastal protection works”	7
	Omit section 55P (2) (a), (b) and (c). Insert instead:	8
	(a) the material must be placed by or on behalf of an owner of land to reduce the impact or likely impact from wave erosion on that land,	9 10 11
[9]	Section 55Q Maximum period allowed for emergency coastal protection works	12 13
	Omit the section.	14
[10]	Section 55R Maintenance requirements for temporary coastal protection works	15 16
	Omit section 55R (1) (a).	17
[11]	Section 55S Emergency coastal protection works may be placed only once	18 19
	Omit the section.	20
[12]	Part 4C, Division 2, heading	21
	Omit the heading. Insert instead:	22
	Division 2 Temporary coastal protection works and public land	23 24
[13]	Section 55T Certificates relating to temporary coastal protection works on public land	25 26
	Omit section 55T (1) and (2). Insert instead:	27
	(1) A certificate under this Division authorises the certificate holder to use and occupy public land for the placing and maintaining of the temporary coastal protection works to mitigate the effects of wave erosion on the holder’s land (without obtaining a lease, licence or permit in respect of, or an easement or right-of-way in relation to, the public land).	28 29 30 31 32 33
	(2) An owner of land (or a person acting on behalf of, and with the written authority of, the owner of land) may apply to the relevant	34 35

	local council or to the Director-General for a certificate under this Division.	1 2
(2A)	An issuing authority must not issue a certificate unless the authority is satisfied that all reasonable measures have been taken and will be taken:	3 4 5
	(a) to avoid using or occupying the public land for the placing and maintaining of the works, and	6 7
	(b) to ensure reasonable public access (including access for local and public authorities) to and through the beach concerned is maintained.	8 9 10
[14]	Section 55T (3A)	11
	Insert after section 55T (3):	12
(3A)	It is a condition of a certificate under this Division that the holder of the certificate must take all reasonable measures:	13 14
	(a) to avoid damage to assets and vegetation on the public land, and	15 16
	(b) to minimise risks to the public on the public land, and	17
	(c) to minimise disruption of the public use of the beach concerned.	18 19
[15]	Section 55T (6), note	20
	Omit the note.	21
[16]	Section 55T (7A)	22
	Insert after section 55T (7):	23
(7A)	An issuing authority may delegate the exercise of any function of the authority under this section to:	24 25
	(a) an authorised officer, or	26
	(b) any person, or any class of persons, authorised for the purposes of this section by the regulations.	27 28
[17]	Section 55T (8)	29
	Omit the definition of <i>emergency works authorised officer</i> .	30
[18]	Section 55V Notification of other issuing authority	31
	Omit “emergency works authorised officer who”.	32
	Insert instead “person or body that”.	33

[19] Section 55V (a) and (b)	1
Omit the paragraphs. Insert instead:	2
(a) the relevant council—if the certificate was issued by the Director-General,	3 4
(b) the Director-General—if the certificate was issued by a council,	5 6
[20] Sections 55VA and 55VB	7
Insert after section 55V:	8
55VA Maximum period allowed for temporary coastal protection works on public land	9 10
(1) The maximum period allowed for temporary coastal protection works on public land is 2 years commencing on the placement of the works.	11 12 13
(2) Despite subsection (1), if at the expiry of the 2-year 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 for the purposes of coastal protection works on the public land, the maximum period allowed for the works ends:	14 15 16 17 18 19
(a) where, on the final determination of that development application (including any appeals relating to that application), the application is refused—21 days after that final determination, or	20 21 22 23
(b) where, on the final determination of that development application (including any appeals relating to that application), the application is granted—such further period as is specified in the consent.	24 25 26 27
(3) Works cease to be temporary coastal protection works for the purposes of this Act if the works remain in place for longer than the maximum period allowed for temporary coastal protection works under this section.	28 29 30 31
55VB Public authorities not to unreasonably refuse access to public land	32 33
A public authority must not unreasonably refuse a person access to the public authority’s public land to enable the person to lawfully place temporary coastal protection works on the land or on other public or private land.	34 35 36 37

[21] Section 55X Notice to council and others of placement of temporary coastal protection works	1 2
Omit “in reliance on section 55Z” from section 55X (1) (b).	3
[22] Section 55X (2)	4
Omit the subsection. Insert instead:	5
(2) The notification under subsection (1) is to be made in the manner and to the person or persons specified by the regulations for the purposes of this subsection.	6 7 8
Maximum penalty:	9
(a) in the case of a corporation—100 penalty units, or	10
(b) in any other case—50 penalty units.	11
[23] Section 55Y Removal of temporary coastal protection works from public land	12 13
Omit “on land” from section 55Y (1). Insert instead “on public land”.	14
[24] Section 55Y (1)	15
Omit the following:	16
Maximum penalty:	17
(a) in the case of a corporation—4,500 penalty units and 400 penalty units for each day the offence continues, or	18 19
(b) in any other case—2,250 penalty units and 200 penalty units for each day the offence continues.	20 21
Insert instead:	22
Maximum penalty:	23
(a) in the case of a corporation—2,250 penalty units and 200 penalty units for each day the offence continues, or	24 25
(b) in any other case—1,125 penalty units and 100 penalty units for each day the offence continues.	26 27
[25] Section 55Y (as amended by this Act)	28
Renumber the section as section 55VC and move it to its appropriate location in Division 2 of Part 4C.	29 30

[26] Section 55Z	1
Omit the section. Insert instead:	2
55Z Use and occupation of adjacent private land with permission	3
An owner of land may use and occupy adjacent land (other than public land) for the placing, maintaining and removal of temporary coastal protection works, but only if that landowner has obtained a lease, easement, right-of-way or other interest in land from the owner of the adjacent land to use and occupy the adjacent land for that purpose.	4 5 6 7 8 9
[27] Section 55ZC Orders relating to temporary coastal protection works	10
Insert “on public land” before “or the works are not being maintained” in section 55ZC (1) (d).	11 12
[28] Section 55ZC (3) (a) and (d)	13
Omit the paragraphs.	14
[29] Section 55ZC (6)	15
Insert “on public land” after “protection works” where firstly occurring.	16
[30] Section 55ZC (6), note	17
Omit the note.	18
[31] Section 55ZF Failure to comply with order	19
Omit “under this Part” from section 55ZF (1).	20
Insert instead “under section 55ZA or 55ZB”.	21
[32] Section 55ZF (1A)	22
Insert after section 55ZF (1):	23
(1A) A person who does not comply with an order under section 55ZC is guilty of an offence.	24 25
Maximum penalty:	26
(a) in the case of a corporation—2,250 penalty units and 200 penalty units for each day the offence continues, or	27 28
(b) in any other case—1,125 penalty units and 100 penalty units for each day the offence continues.	29 30

[33] Section 55ZH Successors in title and temporary coastal protection works	1
	2
Omit section 55ZH (1) and (2). Insert instead:	3
(1) If an original owner of private land to whom a certificate under Division 2 of Part 4C has been issued ceases, before placing temporary coastal protection works on public land, to be the owner of the private land, a successor in title is taken for the purposes of this Act to be the original owner. Such a successor in title may place and maintain those authorised temporary coastal protection works on the public land in accordance with that certificate.	4
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Note. A person who places temporary coastal protection works may be made the subject of an order under this Part—see section 55ZC.	12
	13
(2) If an original owner of land, after placing temporary coastal protection works on that land, but before the works are removed and the land restored in accordance with this Act, ceases to be the owner of that land, a successor in title is taken for the purposes of this Act to be the original owner. Such 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.	14
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[34] Section 55ZH (3)	21
Omit “in accordance with a certificate under Division 2 of Part 4C”.	22
Insert instead “in accordance with this Act”.	23
[35] Section 56B Categorisation of coastal risks to land	24
Omit the section.	25
[36] Section 59 Proceedings for offences	26
Omit “55Y” wherever occurring in section 59 (1) and (2).	27
Insert instead “55VC”.	28
[37] Schedule 1 Savings, transitional and other provisions	29
Insert at the end of clause 1 (1):	30
<i>Coastal Protection Amendment Act 2012</i>	31

Schedule 2	Amendment of Coastal Protection Regulation 2011	1
		2
[1] The whole Regulation		3
	Omit “emergency coastal protection works” wherever occurring.	4
	Insert instead “temporary coastal protection works”.	5
[2] Clauses 9 and 12		6
	Omit “55Y” wherever occurring. Insert instead “55VC”.	7
[3] Part 4 Categorisation of coastal risks to land		8
	Omit the Part.	9

Schedule 3	Amendment of other legislation	1
3.1	Conveyancing (Sale of Land) Regulation 2010	2
	Schedule 3 Prescribed warranties	3
	Omit “emergency coastal protection works” from clause 22 of the Schedule.	4
	Insert instead “temporary coastal protection works”.	5
3.2	Environmental Planning and Assessment Regulation 2000	6
[1]	Schedule 4 Planning certificates	7
	Omit “emergency coastal protection works” wherever occurring in clause 4A of the Schedule.	8
	Insert instead “temporary coastal protection works”.	10
[2]	Schedule 4, clause 4A (3)	11
	Omit the subclause.	12
3.3	Local Government Act 1993 No 30	13
[1]	Section 733 Exemption from liability—flood liable land, land subject to risk of bush fire and land in coastal zone	14
	Omit “emergency coastal protection works authorised by a certificate under Division 2 of Part 4C of the <i>Coastal Protection Act 1979</i> ” from section 733 (3) (f6).	15
	Insert instead “temporary coastal protection works”.	16
[2]	Section 733 (8), definition of “coastal management works”	17
	Omit “emergency coastal protection works”.	18
	Insert instead “temporary coastal protection works”.	19
[3]	Dictionary	20
	Omit “emergency coastal protection works” from the definition of <i>coastal protection service</i> .	21
	Insert instead “temporary coastal protection works”.	22
		23
		24
		25
		26

Coastal Protection Amendment Bill 2012

Schedule 3 Amendment of other legislation

[4] Dictionary

Omit the definition of *emergency coastal protection works*.

Insert in appropriate order:

temporary coastal protection works has the same meaning as in
the *Coastal Protection Act 1979*.

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