

Coastal Protection Regulation 2011

[2011-127]



New South Wales

Status Information

Currency of version

Historical version for 21 January 2013 to 14 August 2013 (accessed 29 December 2024 at 7:11)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

Provisions in force

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

Authorisation

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File last modified 21 January 2013

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Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Coastal Protection Regulation 2011*.

2 Commencement

This Regulation commences on the day on which it is published on the NSW legislation website.

3 Definitions

(1) In this Regulation:

Code of Practice means the document entitled *Code of Practice under the Coastal Protection Act 1979* published by the Office of Environment and Heritage in December 2012.

Note—

A copy of the Code of Practice is available for inspection at www.environment.nsw.gov.au.

the Act means the *Coastal Protection Act 1979*.

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

Part 2 Regulation of coastal development

4 Application of Part

(1) This Part applies to such part of the coastal zone as is below the mean high water mark, excluding any estuary, lake or artificial harbour.

(2) In this clause, **estuary** includes:

(a) any part of a river whose level is affected (including intermittently affected) by coastal tides, or

(b) any partially enclosed body of water that is intermittently open to the sea.

5 Regulation of development generally

A person (including a public authority) must not, without the concurrence of the Minister, carry out development on any part of the coastal zone to which this Part applies.

Note—

Contravention of this clause (otherwise than by the Crown) constitutes an offence for which the maximum penalty under section 58 of the Act is 400 penalty units (in the case of a corporation) or 200 penalty units (in any other case).

Section 37B of the Act provides that concurrence of the Minister under Part 3 of the Act is not required in relation to the carrying out in the coastal zone of any development (within the meaning of the *Environmental Planning and Assessment Act 1979*) that:

- (a) requires development consent under that Act, or
- (b) is exempt development under that Act, or
- (c) is carried out in accordance with a coastal zone management plan under Part 4A of the Act.

Section 39 (3) of the Act provides that this Part does not apply to or in respect of an area that is subject to an environmental planning instrument (other than a State environmental planning policy).

Section 75U (1) (a) of the *Environmental Planning and Assessment Act 1979* provides that concurrence under this Part is not required for an approved project within the meaning of Part 3A of that Act.

6 Exemption of certain development from this Part

Clause 5 does not apply to the following:

- (a) the dredging of sediment from the seabed, where the dredging occurs in water of a depth greater than 30 metres below mean sea level and the volume of sediment removed is less than 100 cubic metres per year,
- (b) the placement of sediment on the seabed where the depth of water following the placement will be greater than 30 metres below mean sea level and the volume of sediment placed is less than 10,000 cubic metres per year,
- (c) the placement of any solid object on the seabed where the top of the object after placement is to be greater than 30 metres below mean sea level,
- (d) the temporary disturbance of the seabed (less than 30 days in any location) associated with the carrying out of development under the seabed such as the laying of pipes and cables.

Part 3 Requirements relating to temporary coastal protection works

7 Requirements for placement of material as temporary coastal protection works

For the purposes of section 55P of the Act, the requirements set out in Parts 1 and 2 of the Code of Practice relating to the placement of material as temporary coastal protection works are specified.

8 Requirements for maintenance of temporary coastal protection works

For the purposes of section 55R of the Act, the requirements set out in Parts 1 and 3 of the Code of Practice relating to the maintenance of temporary coastal protection works are specified.

9 Requirements for removal of temporary coastal protection works and restoration of land

For the purposes of section 55VC (1) of the Act, the requirements set out in Parts 1 and 4 of the Code of Practice are specified.

10 Requirements for restoration of land in compliance with order to remove certain materials and structures unlawfully placed on beaches

For the purposes of section 55ZA (3) (b) of the Act, the requirements set out in Part 5 of the Code of Practice are specified.

11 Requirements for restoration of land in compliance with order relating to temporary coastal protection works

For the purposes of section 55ZC (5) (b) of the Act, the requirements set out in Part 4 of the Code of Practice are specified.

12 Failure to comply with any requirements not an offence

For the avoidance of doubt, requirements set out in the Code of Practice are specified for the purposes of sections 55P, 55R, 55VC, 55ZA and 55ZC of the Act only and are not directions or prohibitions by or under this Regulation. Therefore, a failure to comply with any such requirement is not an offence under section 57 (2) of the Act.

Note—

If works have been placed or maintained contrary to a requirement set out in the Code of Practice, the works are not “temporary coastal protection works” for the purposes of the Act. Such works therefore cannot benefit from the operation of section 55O of the Act. That section provides that a person who places temporary coastal protection works that are authorised by a certificate under Division 2 of Part 4C of the Act is not required to obtain regulatory approval under the Act or any other law.

Part 4

13-15 (Repealed)

Part 5 Miscellaneous

16 Delegation of functions of Coastal Authorities

For the purposes of section 9 of the Act, the following persons and classes of persons are authorised:

- (a) in relation to the Minister—any member of staff of the Department,
- (b) in relation to the Minister administering the *Crown Lands Act 1989*—any member of

staff of the Land and Property Management Authority,

(c) in relation to a council—any member of staff of the council,

(d) in relation to a roads authority:

(i) any member of staff of the Land and Property Management Authority, and

(ii) if the roads authority is a Minister—any member of staff of a Department responsible to the Minister, and

(iii) if the roads authority is not a Minister—any member of staff of the roads authority,

(e) in relation to a public authority—any member of staff of the public authority.

17 Penalty notice offences and penalties

(1) For the purposes of section 59B of the Act:

(a) each offence created by a provision specified in Column 1 of Schedule 1 is an offence for which a penalty notice may be served, and

(b) the penalty prescribed for each such offence is the amount specified opposite the provision in Column 2 of the Schedule.

(2) If the reference to a provision in Column 1 of Schedule 1 is qualified by words that restrict its operation to specified kinds of offences, an offence created by the provision is a prescribed offence only if it is an offence of a kind so specified or committed in the circumstances so specified.

18 Transitional provision—draft coastal zone management plans submitted to Minister for certification before 1 January 2011

(1) Section 55C (1) (d)–(g) of the Act, as inserted by the [Coastal Protection and Other Legislation Amendment Act 2010](#), do not apply in relation to a draft coastal zone management plan submitted to the Minister for approval under section 55G of the Act before 1 January 2011.

(2) This clause is taken to have commenced on 1 January 2011.

Schedule 1 Penalty notice offences

(Clause 17)

Column 1

Column 2

Provision

Penalty

Offences under the Act

Section 55X	\$550 for an individual \$1,100 for a corporation
Section 55ZE (5)	\$1,100