

# Coastal Protection Act 1979 No 13

[1979-13]



New South Wales

## Status Information

### Currency of version

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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.

### Notes—

- **See also**  
*Electricity Network Assets (Authorised Transactions) Bill 2015*  
*Statute Law (Miscellaneous Provisions) Bill 2015*

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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New South Wales

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# Coastal Protection Act 1979 No 13



New South Wales

An Act to make provisions relating to the use and occupation of the coastal region; and to facilitate the carrying out of certain coastal protection works.

## Part 1 Preliminary

### 1 Name of Act

This Act may be cited as the *Coastal Protection Act 1979*.

### 2 Commencement

- (1) This section and section 1 shall commence on the date of assent to this Act.
- (2) Except as provided in subsection (1), the several provisions of this Act shall commence on such day or days as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

### 3 Objects of this Act

The objects of this Act are to provide for the protection of the coastal environment of the State for the benefit of both present and future generations and, in particular:

- (a) to protect, enhance, maintain and restore the environment of the coastal region, its associated ecosystems, ecological processes and biological diversity, and its water quality, and
- (b) to encourage, promote and secure the orderly and balanced utilisation and conservation of the coastal region and its natural and man-made resources, having regard to the principles of ecologically sustainable development, and
- (c) to recognise and foster the significant social and economic benefits to the State that result from a sustainable coastal environment, including:
  - (i) benefits to the environment, and
  - (ii) benefits to urban communities, fisheries, industry and recreation, and
  - (iii) benefits to culture and heritage, and

- (iv) benefits to the Aboriginal people in relation to their spiritual, social, customary and economic use of land and water, and
- (d) to promote public pedestrian access to the coastal region and recognise the public's right to access, and
- (e) to provide for the acquisition of land in the coastal region to promote the protection, enhancement, maintenance and restoration of the environment of the coastal region, and
- (f) to recognise the role of the community, as a partner with government, in resolving issues relating to the protection of the coastal environment, and
- (g) to ensure co-ordination of the policies and activities of the Government and public authorities relating to the coastal region and to facilitate the proper integration of their management activities, and
- (h) to encourage and promote plans and strategies for adaptation in response to coastal climate change impacts, including projected sea level rise, and
- (i) to promote beach amenity.

#### 4 Definitions

- (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires:

**authorised officer** means a person who is appointed as an authorised officer under section 7.

**beach** means the area of unconsolidated or other readily erodable material between the highest level reached by wave action and the place where tidal or lake waters reach a depth of 10 metres below Australian Height Datum.

**Coastal Authority**—see section 6.

**coastal hazard** means the following:

- (a) beach erosion,
- (b) shoreline recession,
- (c) coastal lake or watercourse entrance instability,
- (d) coastal inundation,
- (e) coastal cliff or slope instability,
- (f) tidal inundation,



(g) erosion caused by tidal waters, including the interaction of those waters with catchment floodwaters.

**Coastal Panel** means the NSW Coastal Panel established under Part 2A.

**coastal protection works** means activities or works to reduce the impact of coastal hazards on land adjacent to tidal waters and includes seawalls, revetments, groynes and beach nourishment.

**coastal region** includes the coastal zone.

**coastal zone** means:

- (a) the area within the coastal waters of the State as defined in Part 10 of the [Interpretation Act 1987](#) (including any land within those waters), and
- (b) the area of land and the waters that lie between the western boundary of the coastal zone (as shown on the maps outlining the coastal zone) and the landward boundary of the coastal waters of the State, and
- (c) the seabed (if any) and the subsoil beneath, and the airspace above, the areas referred to in paragraphs (a) and (b).

**Note—**

The coastal zone consists of the area between the western boundary of the coastal zone shown on the maps outlining the coastal zone and the outermost boundary of the coastal waters of the State. The coastal waters of the State extend, generally, to 3 nautical miles from the coastline of the State.

**coastal zone management plan** means a coastal zone management plan made under Part 4A.

**council** means a council or a county council within the meaning of the [Local Government Act 1993](#).

**Department** means the Department of Environment, Climate Change and Water.

**designated authority**—see section 4C.

**Director-General** means the Director-General of the Department.

**emergency action subplan** means that part of a coastal zone management plan that deals with the matter referred to in section 55C (1) (b) (emergency action during periods of beach erosion).

**functions** includes powers, authorities and duties.

**landowner** or **owner of land**, in relation to land that is part of a strata scheme (within the meaning of the [Strata Schemes Management Act 1996](#)), means, for the purposes of Parts 4C and 4D, the relevant owners corporation.

**principles of ecologically sustainable development** means the principles of ecologically sustainable development described in section 6 (2) of the *Protection of the Environment Administration Act 1991*.

**public authority** means a Minister of the Crown of the State, a department or instrumentality of the State, a council and any other public or local authority constituted by or under any Act, and includes any prescribed body.

**public land** means:

- (a) Crown land within the meaning of the *Crown Lands Act 1989* or land within a reserve as defined in Part 5 of that Act, or
- (b) land owned or under the care, management or control of a council or a public authority,

but does not include any land reserved under the *National Parks and Wildlife Act 1974* or land acquired under Part 11 of that Act.

**regulation** means a regulation made under this Act.

**relevant local council**, in relation to temporary coastal protection works and coastal protection works, means:

- (a) if the works are within the area of a council—that council, or
- (b) if the works are not within the area of any council—the council whose area is nearest to the works.

**residential building** means a building (such as a dwelling-house or residential flat building) that is solely or principally used for residential purposes.

**road work** has the same meaning as in the *Roads Act 1993*.

**temporary coastal protection works**—see Division 1 of Part 4C.

- (2) A reference in this Act to the exercise of a function includes, where the function is a duty, the performance of that duty.
- (3) Notes included in this Act do not form part of this Act.

#### **4A Meaning of maps outlining coastal zone**

- (1) A reference to maps outlining the coastal zone is a reference to:
  - (a) the maps approved for the purposes of this Act by the Minister, and
  - (b) if those maps are amended or replaced by further maps so approved by the Minister, the maps as so amended or replaced.

**Editorial note—**

For approvals published in the Gazette, see Gazette No 140 of 18.11.2005, p 9629. This does not constitute a complete list of approvals.

- (2) The Minister is to ensure, when approving of maps for the purposes of this Act, that the western boundary of the coastal zone is determined in accordance with the principles set out in subsection (3).
- (3) The following principles apply to the determination of the western boundary of the area to be included in the coastal zone as referred to in subsection (2):
  - (a) the boundary is to be generally one kilometre landward of the western boundary of the coastal waters of the State,
  - (b) the boundary is to be generally one kilometre landward around any bay, estuary, coastal lake or lagoon,
  - (c) the boundary is to follow the length of any coastal river inland generally at a distance of one kilometre from each bank of the river:
    - (i) to one kilometre beyond the limit of any recognised mangroves on or associated with the river, or
    - (ii) if there are no such recognised mangroves—to one kilometre beyond the tidal limit of the river,
  - (d) the boundary is to be shown to the nearest cadastral boundary or easily recognisable physical boundary (determined in consultation with relevant councils),
  - (e) the boundary is to exclude:
    - (i) those parts of the local government areas of Pittwater, Warringah, Manly, Woollahra, Waverley, Randwick and Sutherland that are not, and are not likely to be, affected by and that do not, and are not likely to, affect coastal processes, including coastal wave and wind action, and
    - (ii) the waters of Sydney Harbour and Botany Bay.
- (4) In this section, **recognised mangroves** means mangroves shown on maps prepared in 1985 by the Department having the responsibility for the administration of fisheries, as updated by that Department from time to time.

**4B Inspection of maps outlining coastal zone**

- (1) The Director-General of the Department of Planning must ensure that:
  - (a) the maps outlining the coastal zone are available for inspection during normal office hours at the principal office of that Department, and

(b) at each of the relevant regional offices of that Department, such of the maps outlining the coastal zone that relate to the region are available for inspection during normal office hours.

(2) The Director-General of the Department of Planning must ensure that, at each of the relevant regional offices of that Department, such of the maps outlining the coastal zone that relate to the region are available for inspection during normal office hours.

(3) The council of a local government area that is within, or partly within, the coastal zone must ensure that such of the maps outlining the coastal zone that relate to that area or a part of that area are available for inspection during normal office hours at the principal office of the council.

#### **4C Designated authorities for land**

The following Coastal Authorities are designated authorities for land for the purposes of this Act:

(a) in relation to all land—the Minister,

(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,

(c) in relation to Crown land within the meaning of the [Crown Lands Act 1989](#) or land within a reserve as defined in Part 5 of that Act—the Minister administering that Act,

(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.

#### **5 Act binds Crown**

This Act, section 57 excepted, binds the Crown not only in right of New South Wales but also, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

## **Part 2 Administration**

### **Division 1 Coastal Authorities and their authorised officers**

#### **6 Coastal Authorities**

(1) For the purposes of this Act, each of the following is a Coastal Authority:

(a) the Minister,

(b) the Minister administering the [Crown Lands Act 1989](#),

(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,

- (d) a roads authority (within the meaning of the *Roads Act 1993*) 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,
- (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 *Crown Lands Act 1989*).

(2) A Coastal Authority:

- (a) may exercise the functions of an authorised officer, and
- (b) when exercising those functions, has all the immunities of an authorised officer.

## **7 Appointment of authorised officers**

- (1) A Coastal Authority may appoint a person to be an authorised officer.
- (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.
- (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 Part 15 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,
  - (e) land that is a beach is taken not to be part of premises that are used only for residential purposes.
- (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.
- (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.

#### **11 Offence relating to authorised officers and exercise of functions under Act**

- (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.
- (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.
- (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.
- (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.

(5) A person who impersonates an authorised officer is guilty of an offence.

Maximum penalty:

- (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
- (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.

## **Part 2A NSW Coastal Panel**

### **12 Constitution of NSW Coastal Panel**

- (1) There is to be a NSW Coastal Panel.
- (2) 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, 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 Association of New South Wales, 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 Association of New South Wales.
- (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.
- (4) A person appointed under subsection (2) (a)–(d) must have qualifications and experience relevant to coastal planning, coastal engineering, coastal geomorphology, coastal environmental management or estuary management.
- (5) The Coastal Panel is a NSW Government agency.

**Note—**

By virtue of section 13A of the [Interpretation Act 1987](#), a NSW Government agency has the status, privileges and immunities of the Crown.

- (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.



(7) For the avoidance of doubt, the Coastal Panel is a public authority for the purposes of the *Environmental Planning and Assessment Act 1979*.

(8) Schedule 2 contains provisions relating to the constitution and procedure of the Coastal Panel.

### **13 Functions of Coastal Panel**

(1) The Coastal Panel has the following functions:

(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,

(b) to provide advice to local councils in relation to such other matters as the Minister determines and notifies to the Coastal Panel,

(c) such functions conferred or imposed on it by or under the *Environmental Planning and Assessment Act 1979* relating to the granting of development consent,

(d) any other function conferred or imposed on it by or under this Act, the *Environmental Planning and Assessment Act 1979* or any other Act.

(2) In exercising its functions, the Coastal Panel is to have regard to the objects of this Act.

(3) 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:

(a) any member of staff of the Department, or

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

(4) Despite subsection (3), the Coastal Panel may only delegate a function conferred or imposed on it by or under the *Environmental Planning and Assessment Act 1979* relating to the granting of development consent with the concurrence of the Minister and the Minister administering that Act.

### **14-35 (Repealed)**

## **Part 3 Use of the coastal zone**

### **36 (Repealed)**

### **37 Definitions**

(1) In this Part:

***building*** includes a structure.

**consent** includes approval or permission.

**development**, in relation to the coastal zone, means:

- (a) the erection of a building within or the removal of a building from the coastal zone,
- (b) the carrying out of a work within the coastal zone,
- (c) a change of the purpose for which any part of the coastal zone or any building or work within any such part is used,
- (d) the subdivision of land within the coastal zone,
- (e) the clearing or propagation of vegetation including marine vegetation, or
- (f) any prescribed activity or any activity of a prescribed class or description.

**dune** includes a sandhill.

(2) A reference in this Part to:

- (a) the erection of a building includes a reference to the rebuilding of, the making of structural alterations to, and the enlargement or extension of, a building and the placing or relocating of a building within the coastal zone,
- (b) the carrying out of a work includes a reference to the rebuilding of, the making of alterations to, and the enlargement or extension of, a work,
- (c) the subdivision of land is a reference to the subdivision of land as defined by section 4B of the *Environmental Planning and Assessment Act 1979*, but does not include a reference to the subdivision of land under Division 1 of Part 2 of the *Strata Schemes (Freehold Development) Act 1973* or Division 1 of Part 2 of the *Strata Schemes (Leasehold Development) Act 1986*, and
- (d) the sea, an arm of the sea, or a bay, inlet, lagoon, lake, body of water, river, stream, watercourse, beach, dune, bed, bank, shoreline, margin or flood plain includes a reference to any part thereof.

### **37A Implementation of principles of ecologically sustainable development**

In exercising functions under this Part, the Minister is to promote the principles of ecologically sustainable development.

### **37B Concurrence of Minister not required for certain development**

The concurrence of the Minister under this Part 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 this Act.

**Note—**

The concurrence of the Minister under this Part is also not required for other development under the [Environmental Planning and Assessment Act 1979](#) (see projects approved under Part 3A and State significant development or infrastructure).

### **38 General supervision of coastal zone**

(1) A public authority shall not, without the concurrence of the Minister:

- (a) carry out any development in the coastal zone, or
- (b) grant any right or consent to a person:
  - (i) to use or occupy any part of the coastal zone, or
  - (ii) to carry out any development in the coastal zone,

if, in the opinion of the Minister, as advised from time to time by the Minister to the public authority, the development or the use or occupation may, in any way:

- (b1) be inconsistent with the principles of ecologically sustainable development, or
- (c) adversely affect the behaviour or be adversely affected by the behaviour of the sea or an arm of the sea or any bay, inlet, lagoon, lake, body of water, river, stream or watercourse, or
- (d) adversely affect any beach or dune or the bed, bank, shoreline, foreshore, margin or flood plain of the sea or an arm of the sea or any bay, inlet, lagoon, lake, body of water, river, stream or watercourse.

(2) The Governor may, by order published in the Gazette, declare that subsection (1) does not, to the extent specified in the order, apply to such area within the coastal zone as is specified or described in the order, and subsection (1) ceases to apply accordingly.

(3) If:

- (a) a public authority (the **developer authority**) is required to obtain the concurrence of the Minister to carry out any development in the coastal zone under subsection (1) (a), and
- (b) the developer authority is required under any law to obtain a grant of a right or consent from another public authority (the **approval authority**) to carry out that

development, and

(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),

concurrence by the Minister to the carrying out of the development by the developer authority is taken to also be concurrence to the grant of the right or consent by the approval authority.

(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 temporary coastal protection works.

### **39 Special provisions respecting coastal development**

(1) The Governor, on the recommendation of the Minister, may, by order published in the Gazette, in respect of such area within the coastal zone as is specified or described in the order, provide that a public authority so specified shall not, without the concurrence of the Minister:

(a) carry out in the area development or development of such class or description as is so specified or described, or

(b) grant any right or consent to a person to use or occupy the whole or any part of the area or to carry out in the area any development or development of such class or description as is so specified or described.

(2) The Governor, on the recommendation of the Minister, may, by regulation, in respect of such area within the coastal zone as is specified or described in the regulation, make provisions (whether by reference to the functions of a public authority or otherwise) regulating, controlling or prohibiting the use or occupation of the area or the carrying out of development in the area.

(3) The provisions of a regulation made pursuant to subsection (2) do not apply to or in respect of an area that is subject to an environmental planning instrument within the meaning of the *Environmental Planning and Assessment Act 1979* other than a State environmental planning policy.

(4) The Minister shall not make a recommendation for the purposes of this section unless the Minister certifies to the Governor that the Minister is satisfied that the order or regulation relates only to development, or the use or occupation of an area that may, in any way:

(a1) be inconsistent with the principles of ecologically sustainable development, or

(a) adversely affect the behaviour or be adversely affected by the behaviour of the sea or an arm of the sea or any bay, inlet, lagoon, lake, body of water, river, stream or watercourse, or

(b) adversely affect any beach or dune or the bed, bank, shoreline, foreshore, margin or flood plain of the sea or an arm of the sea or any bay, inlet, lagoon, lake, body of water, river, stream or watercourse.

(5) If:

(a) a public authority (the **developer authority**) is required to obtain the concurrence of the Minister to carry out any development in the coastal zone under subsection (1) (a), and

(b) the developer authority is required under any law to obtain a grant of a right or consent from another public authority (the **approval authority**) to carry out that development, and

(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),

concurrence by the Minister to the carrying out of the development by the developer authority is taken to also be concurrence to the grant of the right or consent by the approval authority.

(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.

#### **40 Seeking concurrence of Minister**

(1) Where provision is made by or under this or any other Act that a public authority shall not, without the concurrence of the Minister, carry out development in the coastal zone and the public authority proposes to carry out the development, it shall, unless the concurrence of the Minister may be assumed under section 43, notify the Minister, in writing, of the proposal.

(2) Where provision is made by or under this or any other Act that a public authority shall not, without the concurrence of the Minister, grant any right or consent to a person to use or occupy any part of the coastal zone or to carry out any development in the coastal zone, the public authority shall, unless the concurrence of the Minister may be assumed under section 43:

(a) forward a copy of any application made for the grant of the right or consent to the Minister, and

(b) notify the applicant of the action taken by it under paragraph (a).

#### **41 Granting or refusal of concurrence**

The Minister may, in respect of a proposal of which the Minister has been notified under section 40 (1) or an application of which a copy has been forwarded to the Minister under section 40 (2):

- (a) give concurrence, either unconditionally or subject to conditions, or
- (b) refuse concurrence.

#### **42 Period for consideration by Minister of proposal or application**

- (1) The Minister shall inform a public authority which has, under section 40 (1), notified the Minister of a proposal or which has, under section 40 (2), forwarded to the Minister a copy of an application of the Minister's decision with respect to the proposal or application:
  - (a) except as provided by paragraph (b)—within a period of 21 days after being notified of the proposal or receiving a copy of the application, or
  - (b) where, within the period referred to in paragraph (a), the Minister sends by post to the public authority and, in the case of an application, to the applicant, a notice informing it or them, as the case may be, that the Minister is unable to deal with the proposal or application within that period and specifies in that notice a longer period within which the Minister will deal with the proposal or application—within the longer period.
- (2) Where the Minister does not inform a public authority referred to in subsection (1) of the Minister's decision with respect to a proposal or application within the period referred to in subsection (1) (a), or the longer period referred to in subsection (1) (b), as the case may be, the public authority may carry out the development or grant the right or consent the subject of the proposal or application, as the case may be, without the concurrence of the Minister.
- (3) The amendment made to subsection (1) by the *Environmental Planning and Assessment Amendment Act 2008* does not apply in relation to any proposal or application that has been notified or forwarded to the Minister before the commencement of that amendment.

#### **43 Circumstances in which concurrence may be assumed**

- (1) Where provision is made by or under this or any other Act that a public authority shall not, without the concurrence of the Minister, carry out development in the coastal zone or grant any right or consent to a person to use or occupy any part of the coastal zone or to carry out any development in the coastal zone, the Minister may inform the public authority, by notification in writing, that the Minister's concurrence may be assumed subject to the conditions, if any, specified in the notification with respect to the use or occupation, the class or description of use or occupation to which the use or occupation belongs, the development or the class or description of development to which the development belongs, as the case may be.
- (2) The Minister may, by notification in writing given to a public authority, amend or revoke a notification given by the Minister to the public authority under subsection (1).

- (3) Where, in accordance with a notification given to it under this section, a public authority carries out development or grants any right or consent, the carrying out of the development or the granting of the right or consent is as valid and effective as if the public authority had obtained the concurrence of the Minister in accordance with sections 40, 41 and 42.

#### **44 Matters for consideration in relation to concurrence**

In determining any matter relating to the granting or refusal of a concurrence required by or under this or any other Act, the Minister shall have regard only to whether or not the development or the use or occupation of the coastal zone in respect of which the concurrence is required may, in any way:

- (a1) be inconsistent with the principles of ecologically sustainable development, or
- (a) adversely affect the behaviour or be adversely affected by the behaviour of the sea or an arm of the sea or any bay, inlet, lagoon, lake, body of water, river, stream or watercourse, or
- (b) adversely affect any beach or dune or the bed, bank, shoreline, foreshore, margin or flood plain of the sea or an arm of the sea or any bay, inlet, lagoon, lake, body of water, river, stream or watercourse.

#### **45 Implementation of concurrence**

- (1) Where a public authority grants, with the concurrence of the Minister, any right or consent to a person to use or occupy any part of the coastal zone or to carry out any development in the coastal zone, the grant of the right or consent shall be:
- (a) in respect of a concurrence given under section 41 (a)—subject to the conditions, if any, of the concurrence, and
  - (b) in respect of a concurrence given pursuant to a notification under section 43—subject to the conditions, if any, specified pursuant to section 43 (1) in the notification.
- (2) Nothing in subsection (1) affects the right of a public authority to impose conditions, not inconsistent with the conditions referred to in that subsection, in granting a right or consent so referred to.

#### **46 Reasons**

Except where the concurrence of the Minister in accordance with this Part is given unconditionally, the Minister shall inform a public authority of the reasons for the Minister's decision with respect to:

- (a) a proposal of which the Minister has been notified by the public authority under section 40 (1),

(b) an application a copy of which has been forwarded to the Minister by the public authority under section 40 (2), or

(c) a notification given to the public authority under section 43,

and the public authority shall inform any applicant for a grant of a right or consent in respect of which the reasons are given of those reasons.

#### **47 Rights of Minister on appeal**

(1) In this section, **appeal** includes objection, reference or review.

(2) Where, under any law, a right of appeal is exercised by any person with respect to the determination by a public authority of an application for the grant of any right or consent to use or occupy any part of the coastal zone or to carry out any development in the coastal zone in respect of which the concurrence of the Minister is required by or under this Part, the Minister may appear and be heard on the hearing of the appeal as if the Minister were a party to the appeal.

#### **48-50 (Repealed)**

#### **51 Enforcement by notice**

(1) Without derogating from the rights of the Minister under any other law, where a person does any thing without or otherwise than in accordance with a concurrence of the Minister required by or under this or any other Act, the Minister may serve a notice on that person requiring the person:

(a) to refrain from doing that thing,

(b) to do that thing in such manner specified in the notice as, in the opinion of the Minister, is necessary to ensure that the coastal zone or any part of the coastal zone is not adversely affected thereby, or

(c) to do such other things specified in the notice in such manner and within such time, if any, as may be so specified as, in the opinion of the Minister, is necessary to ensure that the coastal zone or any part of the coastal zone is restored to the condition it was in before that thing was done.

(2) A notice under subsection (1) may require the demolition or removal of a building or work in whole or part.

(3) A person shall comply with a notice served on the person under subsection (1).

(4) If a person on whom a notice under subsection (1) is served fails to comply with the notice, the Minister may do all such things as are required by the notice and may recover the costs and expenses of so doing from the person as a debt in any court of competent jurisdiction.



- (5) A notice under subsection (1) may be served:
- (a) in the case of an individual:
    - (i) by delivering it to the individual, or
    - (ii) by sending it by prepaid post addressed to the individual at his or her usual or last known place of abode or his or her last known place of business, or
  - (b) in the case of a person not being an individual:
    - (i) by leaving it at the person's place of business, or, if the person is a corporation, at the registered office of the corporation, with a person apparently in the service of the person on whom the notice is to be served and apparently not less than 16 years of age, or
    - (ii) by sending it by prepaid post to the person at the person's last known place of business.
- (6) Notice shall, in respect of a notice sent by prepaid post in accordance with subsection (5) (a) (ii) or (b) (ii), be deemed to have been given at the time at which the notice would be delivered in the ordinary course of post.

## **52 Enforcement by direction to public authority**

- (1) Without affecting or derogating from any function of the Minister under any law, the Minister may direct a public authority having functions under any Act in respect of the implementation or enforcement of any law relating to the use or occupation or the carrying out of development in the coastal zone to exercise those functions at such time and in such manner (not inconsistent with any provision made by or under the Act by which the function is conferred or imposed) as may be specified in the direction where any part of the coastal zone is used or occupied or development in any part of the coastal zone is carried out without or otherwise than in accordance with a concurrence of the Minister required by or under this or any other Act.
- (2) The Minister shall not give a direction to a public authority under subsection (1) to exercise a function conferred or imposed under a provision of an Act without first having obtained the consent of the Minister administering that provision.
- (3) A public authority shall comply with a direction given to it under subsection (1) in accordance with the terms of the direction.

## **53 (Repealed)**

## **Part 4 Carrying out of works in the coastal zone by the Minister**

## **54 (Repealed)**

#### **54A Implementation of principles of ecologically sustainable development**

In exercising functions under this Part, the Minister is to promote the principles of ecologically sustainable development.

#### **55 Carrying out of certain works**

- (1) Where the Minister is of the opinion that a work for the preservation, protection, maintenance, restoration or improvement of the coastal zone or any part of the coastal zone should be carried out:
  - (a) the Minister in respect of a work the estimated cost of which does not exceed \$1,000,000, or
  - (b) the Governor in respect of a work the estimated cost of which exceeds \$1,000,000,may direct that the work be carried out under the *Public Works Act 1912*.
- (2) A work in respect of which a direction has been given under subsection (1) shall be deemed to be an authorised work within the meaning of the *Public Works Act 1912*.
- (3) For the purpose of a work in respect of which a direction has been given under subsection (1), the Minister shall be the Constructing Authority within the meaning of the *Public Works Act 1912*.
- (4) The provisions of the *Public Works Act 1912*, other than section 34, 35, 36 and 37, shall apply to and in respect of a work in respect of which a direction has been given under subsection (1).
- (5) Without prejudice to the generality of the other provisions of this section, the provisions of section 38 of the *Public Works Act 1912*, shall apply to or in respect of a contract for the carrying out of a work in respect of which a direction has been given under subsection (1).
- (6) In applying the provisions of section 98 of the *Public Works Act 1912*, the Minister shall not be required, notwithstanding those provisions, to obtain the approval of the Governor to lease lands referred to in that section and which are within the coastal zone where the lease of those lands is for a term not exceeding 3 years without option of renewal.
- (7) Nothing in this section authorises the Minister or the Governor to direct a specified person to carry out specified work.

## **Part 4A Coastal zone management plans**

### **Division 1 General**

**55A Minister to have regard to objects of Act**

In exercising his or her functions under this Part, the Minister is to have regard to the objects of this Act.

**55B Requirement for coastal zone management plans**

- (1) A council whose area, or part of whose area, is included within the coastal zone may, and must, if directed to do so by the Minister, make a coastal zone management plan in accordance with this Part.
- (2) Two or more councils whose areas adjoin may decide to join in the making of a coastal zone management plan in accordance with this Part.
- (3) If, under subsection (2), two or more councils decide to join in the making of a coastal zone management plan, a reference in this Part:
  - (a) to a council includes a reference to those councils, and
  - (b) to an area includes a reference to the areas of those councils.
- (4) A coastal zone management plan may be made in relation to the whole, or any part, of the area included within the coastal zone.
- (5) A council must, if directed to do so by the Minister, review the council's existing coastal zone management plan and make a new plan in accordance with this Part to replace the existing plan.
- (6) A council required under this section to review its existing coastal zone management plan and make a new plan to replace that existing plan must do so:
  - (a) within 12 months after being directed to do so by the Minister, or
  - (b) within such longer period as may be agreed to by the Minister.
- (7) If a council fails to comply with this section, the Minister may:
  - (a) review the council's existing plan and make a new plan to replace that existing plan, and
  - (b) recover from the council the costs of doing those things, and
  - (c) publish the new plan in the Gazette.

Such a new plan is taken to have been made by the council in accordance with this Part.
- (8) For the avoidance of doubt, the Minister may give a direction under subsection (1) or (5) in relation to part of an area included within the coastal zone.

- (9) In this section, **coastal zone** includes land that adjoins the tidal waters of the Hawkesbury River, Sydney Harbour and Botany Bay, and their tributaries.

**55C Matters to be dealt with in coastal zone management plans**

- (1) A coastal zone management plan must make provision for:
- (a) protecting and preserving beach environments and beach amenity, and
  - (b) emergency actions carried out during periods of beach erosion, including the carrying out of related works, such as works for the protection of property affected or likely to be affected by beach erosion, where beach erosion occurs through storm activity or an extreme or irregular event, and
  - (c) ensuring continuing and undiminished public access to beaches, headlands and waterways, particularly where public access is threatened or affected by accretion, and
  - (d) where the plan relates to a part of the coastline, the management of risks arising from coastal hazards, and
  - (e) where the plan relates to an estuary, the management of estuary health and any risks to the estuary arising from coastal hazards, and
  - (f) the impacts from climate change on risks arising from coastal hazards and on estuary health, as appropriate, and
  - (g) where the plan proposes the construction of coastal protection works (other than temporary 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).
- (2) A coastal zone management plan must not include the following:
- (a) matters dealt with in any plan made under the *State Emergency and Rescue Management Act 1989* in relation to the response to emergencies,
  - (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.
- (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.

#### **55D Guidelines for preparation of draft coastal zone management plans**

- (1) A council is to prepare a draft coastal zone management plan in accordance with the Minister's guidelines.
- (2) Without limiting the power of the Minister to determine the guidelines, the Minister may adopt as guidelines a manual referred to in section 733 (5) (b) of the *Local Government Act 1993*.
- (3) The Minister is to ensure that notification of any guidelines is published in the Gazette.
- (4) A copy of the Minister's guidelines must be available for public inspection on the Internet website of the Department.

#### **55E Public consultation**

After preparing a draft coastal zone management plan, the council is:

- (a) to give public notice in a newspaper circulating in the locality of the place at which, the dates on which (comprising a period of not less than 21 days), and the times during which, the draft coastal zone management plan may be inspected by the public, and
- (b) to publicly exhibit the draft plan at the place, on the dates and during the times set out in the notice.

#### **55F Submissions**

- (1) During the period of public exhibition of a draft coastal zone management plan, any person may make a submission in writing to the council with respect to its provisions.
- (2) The council must consider all submissions so made.
- (3) The council may amend the draft coastal zone management plan as a result of the submissions.

#### **55G Certification by Minister**

- (1) After considering any submissions, the council is to submit the draft coastal zone management plan to the Minister for certification under this section.
- (2) 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.
- (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.

- (4) The Minister may:
- (a) 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, or
  - (b) if the Minister has referred the plan to the Coastal Panel for advice under subsection (3) and the Coastal Panel has recommended changes to the plan—return the plan to the council and direct the council to amend and resubmit the plan with the recommended changes.
- (5) A council required to amend and resubmit a plan with recommended changes must do so:
- (a) within 90 days after being directed to do so by the Minister, or
  - (b) within such longer period as may be agreed to by the Minister.
- (6) If a council fails to amend and resubmit a plan as required by this section, the Minister may:
- (a) make the plan with the recommended changes instead of the council, and
  - (b) recover the cost of making the plan from the council, and
  - (c) certify that the draft coastal zone management plan has been prepared in accordance with the requirements of this Act and publish it in the Gazette.

Such a plan is taken to have been made by the council in accordance with this Part.

#### **55H Gazettal and commencement of coastal zone management plans**

- (1) If the Minister certifies that a draft coastal zone management plan has been prepared in accordance with the requirements of this Act, the council is to make the plan and publish it in the Gazette.
- (2) A coastal zone management plan takes effect on the date on which it is published in the Gazette or, if a later date is specified in the plan for its commencement, on the later date so specified.

#### **55I Amendment and repeal of coastal zone management plans**

- (1) A coastal zone management plan may be amended (in whole or in part) or repealed by a coastal zone management plan.
- (2) A coastal zone management plan can be repealed only by a coastal zone management plan that replaces it.

### **55J Availability of coastal zone management plans**

- (1) A copy of a coastal zone management plan must be available for inspection by the public without charge at the office of the council during ordinary office hours.
- (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.

## **Division 2 Enforcement**

### **55K Breach of coastal zone management plan: offence**

- (1) A person must not carry out work for the purpose, or that has the effect, of preventing or remediating beach erosion, or for protecting property affected or likely to be affected by beach erosion, unless the work is:
  - (a) in accordance with the relevant coastal zone management plan, or
  - (b) development for which consent has been granted or exempt development under the *Environmental Planning and Assessment Act 1979* or an approved project within the meaning of Part 3A of that Act or approved State significant infrastructure within the meaning of Part 5.1 of that Act, or
  - (c) temporary coastal protection works.

Maximum penalty: 4,500 penalty units (in the case of a corporation) or 2,250 penalty units (in any other case).

- (2) However, if:
  - (a) a person commits the offence under subsection (1) by placing material on a beach, or a sand dune adjacent to a beach, and
  - (b) the material is material of the kind referred to in section 55P (1) (a) or (b),

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).

### **55L Breach of coastal zone management plan: restraint**

- (1) The Minister or a council may bring proceedings in the Land and Environment Court for an order to remedy or restrain a breach of a coastal zone management plan.
- (2) If the Land and Environment Court is satisfied that a breach of a coastal zone management plan has been committed or that a breach of a coastal zone management plan will, unless restrained by an order of the Court, be committed, it may make such order as it thinks fit to remedy or restrain the breach.
- (3) The functions of the Land and Environment Court under this section are in addition to

and not in derogation of any other functions of the Court.

- (4) In this section, **a breach of a coastal zone management plan** means:
- (a) a contravention of or failure to comply with a coastal zone management plan, and
  - (b) a threatened or apprehended contravention of or a threatened or apprehended failure to comply with a coastal zone management plan.
- (5) This section does not apply to a breach of a coastal zone management plan that is an act or omission that is:
- (a) 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 or approved State significant infrastructure within the meaning of Part 5.1 of that Act, or
  - (b) temporary coastal protection works.
- (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.

## **Part 4B Erosion and accretion**

### **55M Granting of development consent relating to coastal protection works**

- (1) Consent must not be granted under the *Environmental Planning and Assessment Act 1979* to development for the purpose of coastal protection works, unless the consent authority is satisfied that:
- (a) the works will not over the life of the works:
    - (i) unreasonably limit or be likely to unreasonably limit public access to or the use of a beach or headland, or
    - (ii) pose or be likely to pose a threat to public safety, and
  - (b) satisfactory arrangements have been made (by conditions imposed on the consent) for the following for the life of the works:
    - (i) the restoration of a beach, or land adjacent to the beach, if any increased erosion of the beach or adjacent land is caused by the presence of the works,
    - (ii) the maintenance of the works.
- (2) The arrangements referred to in subsection (1) (b) 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 (including by way of financial assurance or bond) of all or any of the following:
  - (i) the owner or owners from time to time of the land protected by the works,
  - (ii) if the coastal protection works are constructed by or on behalf of landowners or by landowners jointly with a council or public authority—the council or public authority,

**Note—**

Section 80A (6) of the *Environmental Planning and Assessment Act 1979* provides that a development consent may be granted subject to a condition, or a consent authority may enter into an agreement with an applicant, that the applicant must provide security for the payment of the cost of making good any damage caused to any property of the consent authority as a consequence of the doing of anything to which the consent relates.

- (b) by payment to the relevant council of an annual charge for coastal protection services (within the meaning of the *Local Government Act 1993*).

- (3) The funding obligations referred to in subsection (2) (a) are to include the percentage share of the total funding of each landowner, council or public authority concerned.

**55N Modification of doctrine of erosion and accretion**

- (1) This section applies to land:
  - (a) which is within the coastal zone, or which adjoins the tidal waters of Sydney Harbour or Botany Bay, or their tributaries, and
  - (b) a boundary (**the water boundary**) of which is defined or otherwise determined by reference to a mean high water mark.
- (2) A court has no jurisdiction to make a declaration concerning a water boundary that would increase the area of land to the landward side of the water boundary if:
  - (a) a perceived trend by way of accretion is not likely to be indefinitely sustained by natural means, or
  - (b) as a consequence of making such a declaration, public access to a beach, headland or waterway will, or is likely to be, restricted or denied.
- (3) The Registrar-General has no power under Part 14A of the *Real Property Act 1900* to make a determination concerning a water boundary that would increase the area of land to the landward side of the water boundary.
- (4) The Minister administering the *Crown Lands Act 1989* (or a person authorised by that Minister) has no power under Part 7 of the *Surveyors (Practice) Regulation 2001* (or

any regulation made by way of replacement, or in substitution, for that Regulation) to approve a determination concerning a water boundary that would increase the area of land to the landward side of the water boundary if:

- (a) a perceived trend by way of accretion is not likely to be indefinitely sustained by natural means, or
- (b) as a consequence of making such a determination, public access to a beach, headland or waterway will, or is likely to be, restricted or denied.

## **Part 4C Temporary coastal protection works**

### **Division 1 Preliminary**

#### **55O Regulatory approvals not required for temporary coastal protection works**

A person does not require regulatory approval under this Act or any other law for temporary coastal protection works that comply with the requirements for those works set out in this Act.

**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.

#### **55P Meaning of “temporary coastal protection works”**

- (1) **General meaning** In this Act, **temporary coastal protection works** 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:
  - (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 (other than rocks, concrete, construction waste or other debris).
- (2) **Requirements relating to temporary coastal protection works** The requirements for the placement of material as temporary coastal protection works are as follows:
  - (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,
  - (b), (c) (Repealed)
  - (d) the material must be placed by or on behalf of the landowner in accordance with any emergency action subplan that applies to the land concerned,

- (e) in relation to material placed before 1 September 2011—the material must be placed by or on behalf of the landowner in accordance with any requirements adopted by the Minister and published in the Gazette for the purposes of this section before 1 January 2011,
  - (f) the material must be placed by or on behalf of the landowner in accordance with any requirements specified in the regulations for the purposes of this section.
- (3) A requirement in an emergency action subplan or a requirement otherwise adopted or specified under subsection (2) may:
- (a) apply generally or be limited in its application by reference to specified factors or exceptions, and
  - (b) apply differently according to different factors of a specified kind.
- (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 temporary coastal protection works may be placed and must not be placed.
- (5) In the event of an inconsistency between:
- (a) the regulations and an emergency action subplan or a requirement adopted by the Minister (as referred to in subsection (2) (e)), the regulations prevail to the extent of the inconsistency, and
  - (b) an emergency action subplan and a requirement adopted by the Minister (as referred to in subsection (2) (e)), the emergency action subplan prevails to the extent of the inconsistency.

**55Q (Repealed)**

**55R Maintenance requirements for temporary coastal protection works**

- (1) Temporary coastal protection works must be maintained by or on behalf of the landowner in accordance with the following requirements:
- (a) (Repealed)
  - (b) any requirements of an emergency action subplan that applies to the land concerned,
  - (c) in relation to works placed before 1 September 2011—any requirements adopted by the Minister and published in the Gazette for the purposes of this section before 1 January 2011,
  - (d) any requirements specified in the regulations for the purposes of this section.

- (2) Works cease to be temporary coastal protection works if they are not maintained as required by this section.
- (3) A requirement in an emergency action subplan or a requirement otherwise adopted or specified under subsection (1) may:
  - (a) apply generally or be limited in its application by reference to specified factors or exceptions, and
  - (b) apply differently according to different factors of a specified kind.

**55S (Repealed)**

**Division 2 Temporary coastal protection works and public land**

**55T Certificates relating to temporary coastal protection works on public land**

- (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).
- (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 local council or to the Director-General for a certificate under this Division.
- (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:
  - (a) to avoid using or occupying the public land for the placing and maintaining of the works, and
  - (b) to ensure reasonable public access (including access for local and public authorities) to and through the beach concerned is maintained.
- (3) A certificate under this Division may be issued unconditionally or subject to conditions.
- (3A) It is a condition of a certificate under this Division 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.
- (4) An application for a certificate is to be accompanied by the fee determined by the

Minister.

- (5) A certificate under this Division issued to an owner of land extends to authorise the placement of temporary coastal protection works by or on behalf of a successor in title to the land concerned.

**Note—**

See also section 55ZH for more specific provisions relating to successors in title to land.

- (6) For the avoidance of doubt, works are not or cease to be temporary coastal protection works for the purposes of this Act if the works are not placed or maintained, respectively, in accordance with the requirements set out in the conditions of a certificate issued under this Division.
- (7) A person must not make an application to an issuing authority for a certificate to authorise the placement of temporary coastal protection works if:
- (a) a certificate relating to the same works has been issued by another issuing authority and is in force, or
  - (b) an application to another issuing authority in relation to the same works is pending.
- (7A) An issuing authority may delegate the exercise of any function of the authority under this section to:
- (a) an authorised officer, or
  - (b) any person, or any class of persons, authorised for the purposes of this section by the regulations.
- (8) In this section:
- issuing authority***, in relation to an application for a certificate under this Division, means the relevant local council and the Director-General.

**55U Duration of certificates**

A certificate under this Division does not authorise the placement of temporary coastal protection works more than 2 years after it was issued.

**55V Notification of other issuing authority**

As soon as practicable after the issue of a certificate under this Division, the person or body that issued the certificate must cause a copy of the certificate to be sent to the following:

- (a) the relevant council—if the certificate was issued by the Director-General,
- (b) the Director-General—if the certificate was issued by a council,

- (c) the Chief Executive of the Land and Property Management Authority—if the temporary coastal protection works are to be placed on Crown land (within the meaning of the *Crown Lands Act 1989*) or the placement or maintenance of those works requires the use or occupation of Crown land.

**55VA Maximum period allowed for temporary coastal protection works on public land**

- (1) The maximum period allowed for temporary coastal protection works on public land is 2 years commencing on the placement of the works.
- (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 *Environmental Planning and Assessment Act 1979* for consent to development for the purposes of coastal protection works on the public land, the maximum period allowed for the works ends:
  - (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
  - (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.
- (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.

**55VB Public authorities not to unreasonably refuse access to public land**

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.

**55VC Removal of temporary coastal protection works from public land**

- (1) A person who has placed temporary coastal protection works (or caused such works to be placed) on public land must, before the expiry of the maximum period allowed for temporary coastal protection works, remove the works and restore the land in accordance with:
  - (a) in relation to works placed before 1 September 2011—any requirements adopted by the Minister and published in the Gazette for the purposes of this subsection before 1 January 2011, and
  - (b) any requirements specified in the regulations for the purposes of this subsection.

Maximum penalty:

- (a) in the case of a corporation—4,500 penalty units and 400 penalty units for each

day the offence continues, or

(b) in any other case—2,250 penalty units and 200 penalty units for each day the offence continues.

- (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.
- (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.
- (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 *Environmental Planning and Assessment Act 1979* or is an approved project within the meaning of Part 3A of that Act or approved State significant infrastructure within the meaning of Part 5.1 of that Act.
- (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 *Environmental Planning and Assessment Act 1979*.

## Division 3 General

### 55W Placing and maintaining temporary coastal protection works not restricted by certain legislation

If a person does not require regulatory approval under this Act or any other law for temporary coastal protection works (as provided by section 55O), the following provisions apply to the works:

- (a) placing and maintaining the works is not development for the purposes of the *Environmental Planning and Assessment Act 1979* and is not an activity for the purposes of Part 5 of that Act,
- (b) Division 3 of Part 7 of the *Fisheries Management Act 1994* does not apply to reclamation work that is carried out for the purpose of the works,
- (c) the placement or maintenance of the works does not, despite any regulation under the *Marine Estate Management Act 2014*, require the consent of the relevant Ministers within the meaning of that Act,
- (d) the works may be placed and maintained on community land (within the meaning of

the *Local Government Act 1993*) despite the provisions of any plan of management under that Act applying to that land,

- (e) section 138 (Works and structures) of the *Roads Act 1993* does not apply in relation to temporary coastal protection works placed by a person on a public road, but only if:
  - (i) there are no road works on the public road, and
  - (ii) the public road is not used by vehicular traffic, and
  - (iii) the person took all practical measures to avoid placing those temporary coastal protection works on the public road.

**55X Notice to council and others of placement of temporary coastal protection works**

- (1) An owner of land must, at or about the time the temporary coastal protection works are to be placed on land, notify the following of the placing of the works:
  - (a) the relevant local council,
  - (b) if the works are or are about to be placed on public land—the public authority that is the owner of, or has the care, control or management of, the land.

**Note—**

After placement of temporary 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.

- (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.

Maximum penalty:

- (a) in the case of a corporation—100 penalty units, or
  - (b) in any other case—50 penalty units.
- (3) For the purposes of subsection (1) (b), public land that is Crown land within the meaning of the *Crown Lands Act 1989* 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.

**55Y** (Renumbered as section 55VC)

**55Z Use and occupation of adjacent private land with permission**

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.



## **Part 4D Powers with respect to material and structures on beaches**

### **55ZA Order to remove certain materials and structures unlawfully placed on beaches (other than temporary coastal protection works)**

- (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:
  - (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.
- (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:
  - (a) to refrain from erecting a structure on the beach or on or near the boundary of the land and the beach, or
  - (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),  
if the structure, in the opinion of the Coastal Authority:
    - (c) causes or is likely to cause increased erosion of a beach or land adjacent to a beach, or
    - (d) unreasonably limits or is likely to unreasonably limit public access to a beach or headland, or
    - (e) poses or is likely to pose a threat to public safety.
- (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:
  - (a) in relation to an order made before 1 September 2011—any requirements adopted by the Minister and published in the Gazette for the purposes of this subsection before 1 January 2011, and
  - (b) any requirements specified in the regulations for the purposes of this subsection.

- (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 *Environmental Planning and Assessment Act 1979* in carrying out the work.
- (5) Before giving an order under this section that relates to Crown land within the meaning of the *Crown Lands Act 1989* or land within a reserve as defined in Part 5 of that Act, a Coastal Authority must consult the Minister administering that Act.
- (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 *Environmental Planning and Assessment Act 1979* or is an approved project within the meaning of Part 3A of that Act or approved State significant infrastructure within the meaning of Part 5.1 of that Act.
- (7) This section does not apply in relation to temporary coastal protection works.
- (8) A council may not give an order under this section to a Minister or another public authority.

**552B Stop work orders relating to materials and structures unlawfully being placed on beaches (other than temporary coastal protection works)**

- (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:
  - (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.
- (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 *Environmental Planning and Assessment Act 1979* or is an approved project within the meaning of Part 3A of that Act or approved State significant infrastructure within the meaning of Part 5.1 of that Act.
- (3) This section does not apply if the activity comprises the placement or maintenance of temporary coastal protection works.
- (4) A council may not give an order under this section to a Minister or another public authority.

**55ZC Orders relating to temporary coastal protection works**

- (1) A Coastal Authority that is a designated authority for land on which a person has placed (or caused to be placed) temporary 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:
  - (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 temporary coastal protection works (for example, the works have been in place for longer than the maximum period allowed for temporary coastal protection works on public land or the works are not being maintained as required by Part 4C or this Part or the requirements of the certificate under Division 2 of Part 4C that authorises the works).
- (2) A Coastal Authority that is a designated authority for land on which a person has placed (or caused to be placed) temporary 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.
- (3) A Coastal Authority that is a designated authority for public land on which a person has placed (or caused to be placed) temporary 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 reasonable measures:
  - (a) (Repealed)
  - (b) to avoid damage to assets or vegetation on the public land, or
  - (c) to minimise risks to the public on the public land, or
  - (d) (Repealed)
- (4) A Coastal Authority that is a designated authority for land on which a person has placed (or caused to be placed) temporary coastal protection works may order the person to restore land that is adjacent to the land on which the works were placed if the Coastal Authority is of the opinion that the adjacent land has been damaged or disturbed by:
  - (a) the placement, maintenance or removal of the works, or
  - (b) erosion caused by the works.
- (5) 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:

- (a) in relation to an order made before 1 September 2011—any requirements adopted by the Minister and published in the Gazette for the purposes of this subsection before 1 January 2011, and
  - (b) any requirements specified in the regulations for the purposes of this subsection.
- (6) Before giving an order under this section relating to temporary coastal protection works on public land, 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.
- (7) Before making an order under this section that relates to Crown land within the meaning of the *Crown Lands Act 1989* or land within a reserve as defined in Part 5 of that Act, the Coastal Authority must consult the Minister administering that Act.
- (8) A council may not give an order under this section to a Minister or another public authority.

**552D General provisions relating to orders**

- (1) An order under this Part may be given to a person by notice in writing or orally.
- (2) An order under this Part:
- (a) takes effect immediately (or from a later date specified in the written notice or at the time the order is given orally), and
  - (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
  - (c) may require a person to cease doing, or causing or permitting to be done, the relevant activity for a specified time, and
  - (d) may require a person to do, or cause or permit to be done, the relevant activity within a specified time.
- (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.
- (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.
- (5) Subject to subsection (4), an order under this Part remains in force until whichever of the following happens first:
- (a) the order is revoked by the Coastal Authority concerned,

- (b) the activity to which the order relates obtains planning permission and evidence of the planning permission is provided to the Coastal Authority concerned.
- (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.
- (7) A Coastal Authority (other than a council) that makes an order under this Part must notify the relevant local council of the following:
  - (a) the making of the order,
  - (b) full compliance with the order.
- (8) A council must keep a record of the following:
  - (a) all orders under this Part made by it or notified to it under subsection (7) (a),
  - (b) full compliance with an order under this Part made by it,
  - (c) full compliance (notified to it by another Coastal Authority) with an order under this Part made by the other Coastal Authority.
- (9) An order under this Part given to a person does not authorise the person to enter land without the permission of the owner of the land.
- (10) In this section, **evidence of planning permission** means evidence that:
  - (a) development consent or approval under the [Environmental Planning and Assessment Act 1979](#) has been granted, or
  - (b) the development concerned has become exempt development under that Act.

**55ZE Fee**

- (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) A person who is given an order under this Part by a Coastal Authority must within 30 days pay a fee of \$444 (or such higher fee as may be prescribed by the regulations) to the Coastal Authority.
- (3) The Coastal Authority may:
  - (a) extend the time for payment of the fee, on the application of the person required to pay the fee, or
  - (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.
- (4) A fee is not payable for the variation of an order made under this Part.

- (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.

**55ZF Failure to comply with order**

- (1) A person who does not comply with an order under section 55ZA or 55ZB is guilty of an offence.

Maximum penalty:

- (a) in the case of a corporation—4,500 penalty units and 400 penalty units for each day the offence continues, or
- (b) in any other case—2,250 penalty units and 200 penalty units for each day the offence continues.

- (1A) A person who does not comply with an order under section 55ZC is guilty of an offence.

Maximum penalty:

- (a) in the case of a corporation—2,250 penalty units and 200 penalty units for each day the offence continues, or
- (b) in any other case—1,125 penalty units and 100 penalty units for each day the offence continues.

- (2) It is a defence to a prosecution for an offence under this section if the defendant establishes that the failure to comply with the order concerned was caused by the refusal of an owner of land to give the defendant permission to enter the land to do the act or thing required by the order.
- (3) 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.
- (4) Any costs reasonably incurred by the Coastal Authority under subsection (3) 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.
- (5) An authorised officer of a Coastal Authority may, for the purposes of doing the act or thing referred to in subsection (3), enter any premises at any reasonable time. However, this section does not empower an authorised officer to enter any part of a building used only for residential purposes without the permission of the occupier.
- (6) Before an authorised officer enters premises under this section, the Coastal Authority

concerned must give the occupier of the premises oral or written notice of the intention to enter the occupier's premises on a day or within a period of days specified in the notice.

- (7) The day or any day within the period of days specified must not be the day on which the notice is given.
- (8) This section does not require notice to be given if entry to the premises is made with the consent of the occupier of the premises.

#### **55ZG Resolution of disputes under Part 4C and this Part**

- (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) 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:
  - (a) by a party to the dispute, if that party is a Minister, or
  - (b) by the Minister responsible for a party to the dispute, if that party is not a Minister.
- (3) The Premier may give directions as the Premier sees fit to resolve the dispute.
- (4) A Coastal Authority is to comply with a direction under this section.
- (5) This section applies to the Director-General in the same way as it applies to a Minister.

#### **55ZH Successors in title and temporary coastal protection works**

- (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.

##### **Note—**

A person who places temporary coastal protection works may be made the subject of an order under this Part—see section 55ZC.

- (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.

- (3) If an order is made under this Part requiring an original owner of land who has placed temporary coastal protection works in accordance with this Act to carry out work in relation to the works and the original owner ceases, before the work is carried out, to be the owner of the land, a successor in title:
  - (a) is required to carry out that work, and
  - (b) to that extent, is bound by the order in the same way as the original owner (except as provided by this section).
- (4) A successor in title is bound by the order under subsection (3) only if the Coastal Authority that made the order:
  - (a) before the land concerned was transferred—notified the relevant local council under section 55ZD (7), and
  - (b) has given a copy of the order to the successor in title.
- (5) For the purposes of subsection (3), 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.

## Part 5 General

### 56 (Repealed)

#### 56A Restoration orders

- (1) The Land and Environment Court, in proceedings under this Act, may order a person to take such steps as are specified in the order, within such time as is so specified (or such further time as the Court on application may allow):
  - (a) to prevent, control, abate or mitigate any harm to the environment or any loss of amenity caused by anything done or omitted to be done by the person, or
  - (b) to make good any resulting environmental damage, or
  - (c) to prevent the continuance or recurrence of any such harm to the environment or any such loss of amenity.
- (2) Without limiting subsection (1), the Court may order a person to remove or clean up material dumped during or following a beach erosion event.
- (3) In this section, **environment** and **harm** have the same meanings as in the [Protection of the Environment Operations Act 1997](#).

#### 56B (Repealed)



## **57 Offences against this Act and the regulations**

- (1) Where any matter or thing is by or under this Act, other than by or under the regulations, directed or forbidden to be done, or where a Minister or other person or body is authorised by or under this Act, other than by or under the regulations, to direct any matter or thing to be done, or to forbid any matter or thing to be done, and that matter or thing if so directed to be done remains undone, or if so forbidden to be done is done, a person offending against that direction or prohibition shall be guilty of an offence against this Act.
- (2) Where any matter or thing is by or under the regulations directed or forbidden to be done, or where a Minister or any other person or body is authorised by the regulations to direct any matter or thing to be done, or to forbid any matter or thing to be done, and that matter or thing if so directed to be done remains undone, or if so forbidden to be done is done, a person offending against that direction or prohibition shall be guilty of an offence against the regulations.

## **58 Penalties**

- (1) A person guilty of an offence against this Act for which a specific penalty is not provided shall be liable to a penalty not exceeding 4,500 penalty units (in the case of a corporation) or 2,250 penalty units (in any other case).
- (2) A person guilty of an offence against the regulations shall be liable to a penalty not exceeding 400 penalty units (in the case of a corporation) or 200 penalty units (in any other case).

## **59 Proceedings for offences**

- (1) Proceedings for an offence against this Act (other than an offence against section 55K or 55VC or Part 4D) or the regulations may be taken before the Local Court.
- (2) Proceedings for an offence against section 55K or 55VC or Part 4D of this Act may be taken before the Land and Environment Court.
- (3) Proceedings for an offence under this Act may be commenced within but not later than 12 months after the date on which the offence is alleged to have been committed.

## **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 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):
  - (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

(b) is guilty of a continuing offence for each day the contravention continues.

- (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.
- (3) This section does not apply to the extent that a requirement of an order is revoked.

### **59B Penalty notices**

- (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.
- (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.
- (3) A penalty notice under this section is declared to be a penalty notice for the purposes of the *Fines Act 1996*.
- (4) A penalty notice may be served personally or by post.
- (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.
- (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.
- (7) The regulations may:
  - (a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence, and
  - (b) prescribe the amount of penalty payable for the offence if dealt with under this section, and
  - (c) prescribe different amounts of penalties for different offences or classes of offences.
- (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.
- (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.

## **60 Regulations**

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.

## **61 Service of notices**

- (1) For the purposes of this Act, any notice or other document may be issued or given to a person, or may be served on a person:
  - (a) by delivering it personally to the person, or
  - (b) by delivering it to the place of residence or business of the person and by leaving it there for the person with some other person, or
  - (c) by sending it by post addressed to the person at the place last shown in the records of the authority concerned as the person's place of residence or business, or
  - (d) by sending it by post addressed to the person at the place indicated by the person as an address to which correspondence may be posted (including for example a post office box), or
  - (e) by sending it by facsimile or electronic transmission (including for example the Internet) to the person in accordance with arrangements indicated by the person as appropriate for transmitting documents to the person, or
  - (f) by leaving it addressed to the person at a document exchange or other place (in accordance with usual arrangements for the exchange or other place) indicated by the person as an exchange or place through which correspondence may be forwarded to the person.
- (2) This section does not affect any other mode of issuing, giving or serving a notice or other document under any other law.

## **62 Savings, transitional and other provisions**

Schedule 1 has effect.

## **63 Delegation**

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:

- (a) any member of staff of the Department, or
- (b) any person, or any class of persons, authorised for the purposes of this section by the

regulations.

#### **64 Review of Part 4C of Act**

- (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.
- (2) The review is to be undertaken as soon as possible after the period of 2 years from the date of assent to the *Coastal Protection and Other Legislation Amendment Act 2010*.
- (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.

#### **65 Review of Act**

- (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.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to the *Coastal Protection and Other Legislation Amendment Act 2010*.
- (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.

### **Schedule 1 Savings, transitional and other provisions**

(Section 62)

#### **Part 1 General**

##### **1 Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:
  - Coastal Protection Amendment Act 1998*
  - Coastal Protection and Other Legislation Amendment Act 2010*
  - Coastal Protection Amendment Act 2012*
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later day.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

## **2 Definition of coastal zone**

Any order, concurrence, condition, authorisation or notice made or given under this Act as in force immediately before the commencement of Schedule 1 [3] to the *Coastal Protection Amendment Act 1998* has effect after that commencement, but only in relation to land or waters within the coastal zone (within the meaning of Part 3) after that commencement.

## **Part 2 Provisions consequent on enactment of Coastal Protection Amendment Act 2002**

### **3 Preparation of coastal zone management plan**

- (1) A council to which section 55B applies must submit a draft coastal zone management plan to the Minister in accordance with section 55G (1):
  - (a) within 12 months after it is directed by the Minister under section 55B to make a coastal zone management plan, or
  - (b) within such longer period as may be agreed to by the Minister.
- (2) If a council fails to comply with this clause, the Minister may:
  - (a) make a coastal zone management plan instead of the council, and
  - (b) recover the cost of making the coastal zone management plan from the council, and
  - (c) publish the coastal zone management plan in the Gazette.

Such a plan is taken to have been made by the council in accordance with Part 4A.

## **Part 3 Provisions consequent on enactment of Statute Law (Miscellaneous Provisions) Act 2009**

### **4 Coastal zone management plans applying to only part of a coastal zone**

A coastal zone management plan that was made by a council or councils under section 55B before the commencement of section 55B (4) (as inserted by the *Statute Law (Miscellaneous Provisions) Act 2009*), that would have been validly made had that

subsection been in force, is taken to have been validly made.

## **Schedule 2 Constitution and procedure of Coastal Panel**

(Section 12 (8))

### **Part 1 General**

#### **1 Definitions**

In this Schedule:

**Chairperson** means the Chairperson of the Coastal Panel.

**Deputy Chairperson** means the Deputy Chairperson of the Coastal Panel.

**member** means any member of the Coastal Panel.

### **Part 2 Constitution**

#### **2 Terms of office of members**

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 Remuneration**

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.

#### **4 Deputies**

- (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.
- (2) The Minister may, at any time, revoke any such appointment.
- (3) In the absence of a member, the member's deputy may, if available, act in the place of the member.
- (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.
- (5) For the purposes of this clause, a vacancy in the office of a member is taken to be an absence of the member.
- (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.

## **5 Vacancy in office of member**

- (1) The office of a member becomes vacant if the member:
  - (a) dies, or
  - (b) completes a term of office and is not re-appointed, or
  - (c) resigns the office by instrument in writing addressed to the Minister, or
  - (d) is removed from office by the Minister under this clause, or
  - (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 Minister or unless the member is excused by the Minister for having been absent from those meetings, or
  - (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
  - (g) becomes a mentally incapacitated person, or
  - (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.
- (2) The Minister may remove a member from office at any time.
- (3) Despite subclause (2), the Minister must not remove from office a member who was nominated by the Local Government and Shires Association of New South Wales unless the Minister has consulted with the Association.

## **6 Filling of vacancy in office of member**

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.

## **7 Disclosure of pecuniary interests**

- (1) If:
  - (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
  - (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,

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.

- (2) A disclosure by a member at a meeting of the Coastal Panel that the member:
- (a) is a member, or is in the employment, of a specified company or other body, or
  - (b) is a partner, or is in the employment, of a specified person, or
  - (c) has some other specified interest relating to a specified company or other body or to a specified person,
- 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).
- (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.
- (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:
- (a) be present during any deliberation of the Coastal Panel with respect to the matter, or
  - (b) take part in any decision of the Coastal Panel with respect to the matter.
- (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:
- (a) be present during any deliberation of the Coastal Panel for the purpose of making the determination, or
  - (b) take part in the making by the Coastal Panel of the determination.
- (6) A contravention of this clause does not invalidate any decision of the Coastal Panel.
- (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.

## **8 Effect of certain other Acts**

- (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.



(2) If by or under any Act provision is made:

- (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
- (b) prohibiting the person from engaging in employment outside the duties of that office,

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.

## **9 Personal liability**

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.

## **Part 3 Procedure**

### **10 General procedure**

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.

### **11 Quorum**

The quorum for a meeting of the Coastal Panel is a majority of its members for the time being.

### **12 Presiding member**

- (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.
- (2) The presiding member has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

### **13 Voting**

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.

#### **14 Transaction of business outside meetings or by telephone**

- (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.
- (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 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.
- (3) For the purposes of:
  - (a) the approval of a resolution under subclause (1), or
  - (b) a meeting held in accordance with subclause (2),the Chairperson and each member have the same voting rights as they have at an ordinary meeting of the Coastal Panel.
- (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.
- (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.

#### **15 First meeting**

The Minister may call the first meeting of the Coastal Panel in such manner as the Minister thinks fit.

#### **16 Minutes of meetings**

The Coastal Panel must cause full and accurate minutes to be kept of the proceedings of its meetings.

#### **17 Minutes to be available for public inspection**

The Chairperson must, on request, make available to any member of the public a copy of the minutes of the proceedings of the meetings of the Coastal Panel.