

**CROWN LANDS AMENDMENT (PUBLIC OWNERSHIP OF BEACHES AND COASTAL LANDS)
BILL 2014**

Bill introduced on motion by Mr Kevin Humphries, read a first time and printed.

Second Reading

Mr KEVIN HUMPHRIES (Barwon—Minister for Natural Resources, Lands and Water, and Minister for Western NSW) [4.32 p.m.]: I move:

That this bill be now read a second time.

This bill elevates into law the longstanding policy of successive New South Wales governments that beaches and important coastal areas should be retained in public ownership in perpetuity. These amendments will ensure that beaches and beach-related land within the Crown Lands estate is owned by the Minister on behalf of all New South Wales citizens. The bill defines "Crown beaches and coastal land" within the Crown Lands estate and will stop the transfer of such lands into private ownership. The issue prompting this bill is the conflict between the Government's policy of public ownership of beaches and the recent granting of a beach, in freehold, by the courts to a New South Wales Aboriginal Land Council. There are similar land claims in existence that place in question the ownership of more than 600 kilometres of beaches and coastline along New South Wales.

If the bill is not passed, the Government will be unable to prevent the further sale or transfer of beaches on Crown land to private landholders. The basis of the bill is the principle that beaches belong to everyone, and should not be owned by any particular individual or groups of individuals. The Government believes that the public ownership of beaches provides the best mechanism for the community to ensure certainty and consistency in beach access and environmental management. It also ensures maximum community and social outcomes, and lower government administration and compliance costs. Beaches and coastline generate significant economic benefits through tourism and recreation activity. Privatisation along the coastline can potentially diminish the scenic quality and public utility. Private ownership redirects the economic benefits from the citizens of New South Wales to individuals. Beaches and coastline hold great cultural value to the community. Public ownership protects this value on behalf of all citizens.

Public ownership also allows for the recognition of Aboriginal interests by providing for joint management and other mechanisms to ensure culturally significant sites are retained and preserved. With concerns about the capacity of the private sector to maintain publicly significant land to appropriate community expectations, the public ownership of beaches and important coastal land will give the community confidence that these significant assets are preserved for future generations. This bill is consistent with the foundation values of

related legislation, including the pending marine estate legislation and revised Coastal Protection Act.

These Acts will reflect the Government's principle of public ownership of beaches and other important coastal areas. Introduction of the bill precedes, and is completely separate from, the broader Crown Lands Act review announced in January this year. It is a stand-alone amendment that provides a specific mechanism. It will minimise the privatisation risk posed by the lack of legislative force behind the current policy position. The bill is focused on existing Crown land. It does not affect existing private land that may be located on or near beaches. The bill does not extend to a policy for the acquisition of such properties.

I turn now to the proposed amendments in detail. The amendments in the bill will create a new sub-type of land within the Crown Lands Act, known as beaches and coastal land. The definition of "beaches and coastal land" has three main parts. The first part is a physical description of the beach, known as core beach land, which effectively identifies the sandy part of the beach. The second part is a description of certain specified Crown land adjacent to this core beach land. This additional land includes the submerged land that is three nautical miles out from the beach. The third element of the definition includes Crown land used in conjunction with the core beach land. This includes land which has certain beach facilities upon it such as picnic areas, life saving clubs, public change rooms, kiosks and rescue facilities.

The purpose of this three-fold definition is to describe the beach in a way that is consistent with community's understanding of the beach. It describes the real footprint of the beach as an activated community facility and resource. This definition also overcomes the difficulties of a strict technical or property boundary-based definition of beaches, which may not be consistent with the actual placement or activation of a beach and its adjacent areas. I emphasise that this definition applies only to land that is existing land within the Crown Lands estate. It does not apply to land owned privately or by other government agencies that may have a facility upon it.

Most beaches in New South Wales are on New South Wales Crown land. These beaches will be covered by the changes. In some cases, local councils and certain other government bodies also own beaches. These groups are not affected by these specific changes. However, consideration of the beach land owned by councils and these bodies will be considered in 2015 as part of broader coastal reforms. As I have said, the amendments do not impact existing private land on or near beaches, including land that already has been granted to Aboriginal land councils.

The effect of erosion and accretion of beaches on private property boundaries, along with the broader issues of maintaining public access and the use and enjoyment of beaches, will

be subject to consideration through other government processes. The outcomes of those processes may be implemented through further legislative changes, if needed.

The principal operative part of the bill deals with the prohibition of sale or other disposal of the defined Crown beaches and coastal lands. This is the crux of the bill and it ensures that beaches that come within the definition of "Crown beach" and "coastal land" are not sold or transferred into private ownership through any mechanism in the Crown lands legislation or any other legislation. The bill does not prevent the ongoing activities permitted on beaches and coastal lands. It preserves the capacity of the Government or agencies to make appropriate management arrangements or agreements. This means, for example, that the bill does not disrupt any current or future leases, licenses or joint management arrangements between the Crown Lands Division and tenants, local councils or local Aboriginal land councils.

Further, it does not interfere with the capacity of other Ministers or agencies to undertake their statutory activities. This means, for example, that the Department of Planning and Infrastructure maintains its role in imposing zoning controls or granting development approvals, and that the Department of Environment and Heritage may still activate any restrictions it deems necessary for marine or wildlife protection. Where necessary, the bill also allows the Government to restrict activities on beach or coastal land to ensure public benefit or public safety. Before I elaborate on the last component of the bill, I will outline some background to the Aboriginal land rights legislation and the Government's view.

As I have mentioned, the prompt for this bill is an emerging risk of private ownership of beach land triggered by a recent court decision under the New South Wales Aboriginal Land Rights Act. In layman's terms, the intent of the New South Wales Aboriginal Land Rights Act 1983 was to allow certain "vacant or surplus Crown land" to be claimed and transferred to Aboriginal land councils. Where the land is transferred, the land council is granted freehold ownership of the land. The Government does not regard New South Wales beaches and coastline as "vacant Crown land that is surplus to the community's needs. The Government views beaches as a shared community resource for recreation and environmental protection. On this basis, the bill voids land claims to the extent that they are currently lodged on beach and coastal land as defined in the bill and prevents any future claims of such land.

The bill also explicitly provides that no damages or other monetary compensation is payable to Aboriginal land councils as a result of the effect of the bill on these particular claims. The Government agrees that where Aboriginal cultural significance is associated with a beach, then acknowledgment and agreement about this cultural value is explored. This may or may not encompass any native title connections also associated with beach land. The policy that public ownership of beaches is desirable has been held by this Government and previous

New South Wales governments and has been reflected in coastal policies since the 1990s. However, this policy was not recognised as sufficient by the courts to prevent the transfer of land in freehold to an Aboriginal land council, which is permissible under the New South Wales Aboriginal Land Rights Act. It is for this reason the policy of public ownership of beaches is being affirmed in law.

I highlight to the House that the bill will not affect Commonwealth native title claims on beaches. The recognition of traditional connection to relevant beach areas remains available to Indigenous communities. I also re-emphasise that the New South Wales Government and Aboriginal land councils may negotiate access or joint management arrangements on a voluntary or case-by-case basis. The bill makes it clear that any Aboriginal land claims that have been determined and finalised are not affected by the amendments. Land councils with beach land that has already been granted will have the same rights and protections as other private landholders who have land on or near a beach. Land claims which have been lodged but not yet determined and which contain land that is defined as "beach and coastal land" will be affected by the bill. The bill makes it clear that the Aboriginal Land Rights Act does not apply to this new sub type of Crown land.

I am sure every member of the House agrees that beaches hold a special place in the hearts of all Australians and for all the people of New South Wales. We have a coastline of amazing natural beauty and environmental richness. It is a shared source of recreation and identity for millions of citizens. We have a duty of care to ensure it is available to future generations to enjoy. I am aware that there will be some members of the House who see the bill as having a particular focus on one section of the community. However, I remind the House that these amendments to the Crown Lands Act will have consistent application to all New South Wales citizens. They will prevent beaches from being sold, transferred or disposed of into private hands. This is what the community wants, it is sound policy, and it is the foundation of this bill. I commend the bill to the House.

Debate adjourned on motion by Ms Sonia Hornery and set down as an order of the day for a future day.