



New South Wales

Coastal Protection Amendment Bill 2012

Explanatory note

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

Overview of Bill

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

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

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Schedule 1 Amendment of Coastal Protection Act 1979 No 13

Amendments relating to temporary coastal protection works generally

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

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

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

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

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

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

Amendments relating to temporary coastal protection works and public land

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

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

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

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

Schedule 1 [20] and [26] move and renumber certain provisions of the Principal Act relating to the use and occupation of public land for the placement of temporary coastal protection works (being current sections 55Q and 55Z (3)). Proposed section 55VA provides that the maximum period allowed for temporary coastal protection works on public land is 2 years (rather than the current 12 months) commencing on the placement of the works. Works cease to be temporary coastal protection works for the purposes of the Principal Act if the works remain in place for longer than that maximum period. That period can be extended if at the expiry of that 2-year period, a development application under the *Environmental Planning and Assessment Act 1979* for consent to development for the purposes of coastal protection works on the same land (that is, long term works) is pending.

Proposed section 55VB continues the operation of current section 55Z (3) to provide that a public authority must not unreasonably refuse a person access to the public authority's public land to enable the person to lawfully place temporary coastal protection works on the public authority's land or on other public or private land.

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

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

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

Amendments reducing maximum penalties for certain offences

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

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

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

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

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

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

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

Miscellaneous amendments

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

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

Schedule 2 Amendment of Coastal Protection Regulation 2011

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

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

Schedule 3 Amendment of other legislation

Schedule 3 contains consequential amendments to other legislation.