



New South Wales

# Coastal Protection Amendment Bill 1998 (No 2)

## 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*:

- (a) to redefine the coastal zone, and
- (b) to reconstitute the Coastal Council, and
- (c) to require consideration to be given to the principles of ecologically sustainable development in the exercise of certain functions under that Act.

The Bill makes a related amendment to the *Local Government Act 1993*.

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## 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.

**Clause 3** is a formal provision giving effect to the amendments to the *Coastal Protection Act 1979* set out in Schedules 1–3.

**Clause 4** is a formal provision giving effect to the amendment to the *Local Government Act 1993* set out in Schedule 4.

### **Schedule 1      Amendment of Coastal Protection Act 1979 relating to definition of coastal zone**

**Schedule 1 [1]** replaces the definition of *coastal zone* in the Principal Act. The coastal zone will extend:

- (a) to the coastal waters of the State, that is, the waters of the State out to 3 nautical miles, and
- (b) to the area of land or inland waters adjoining the coastal waters of the State with a western boundary shown on maps approved by the Minister for Urban Affairs and Planning for the purposes of the Act.

The Coastal Council has functions with respect to the coastal region (which includes the coastal zone). The Principal Act also places various controls on the development of land within the coastal zone and enables certain work for the preservation, protection, maintenance, restoration or improvement of the coastal zone to be carried out under the *Public Works Act 1912*.

**Schedule 1 [2]** provides that the western boundary of the coastal zone is to be determined in accordance with specified principles (proposed section 4A) and requires the maps relating to the coastal zone to be made available for inspection at the principal office of the Department of Urban Affairs and Planning (proposed section 4B). Maps relevant to particular regions or areas will be made available for inspection at the regional offices of the Department of Urban Affairs and Planning and the Department of Land and Water Conservation and at the offices of the relevant local councils.

**Schedule 1 [3]** preserves, despite any variation in the boundaries of the coastal zone, the power to make regulations under section 39 of the Act controlling the use of areas of water adjoining the coastal zone that are not within a local government area or subject to a local or regional environmental planning instrument.

**Schedule 1 [5]** and **[6]** contain savings and transitional provisions.

**Schedule 1 [4]** contains a consequential amendment.

**Schedule 2     Amendment of Coastal Protection Act 1979  
relating to constitution of Coastal Council**

**Schedule 2 [2]** expands the membership of the Coastal Council from 10 to 20 members. The members of the Council will be drawn from nominations made by Ministers with portfolios concerning coastal matters, the Nature Conservation Council, industry and local councils. The functions of the Coastal Council will remain unchanged, the principal function being to give advice to the Minister in relation to the conservation and utilisation of the coastal region and its resources.

**Schedule 2 [1]** and **[3]–[7]** contain consequential amendments.

**Schedule 3     Amendment of Coastal Protection Act 1979  
relating to principles of ecologically  
sustainable development**

**Schedule 3 [1]** contains a definition of *ecologically sustainable development*. The term is defined as meaning the principles of ecologically sustainable development described in section 6 (2) of the *Protection of the Environment Administration Act 1991*.

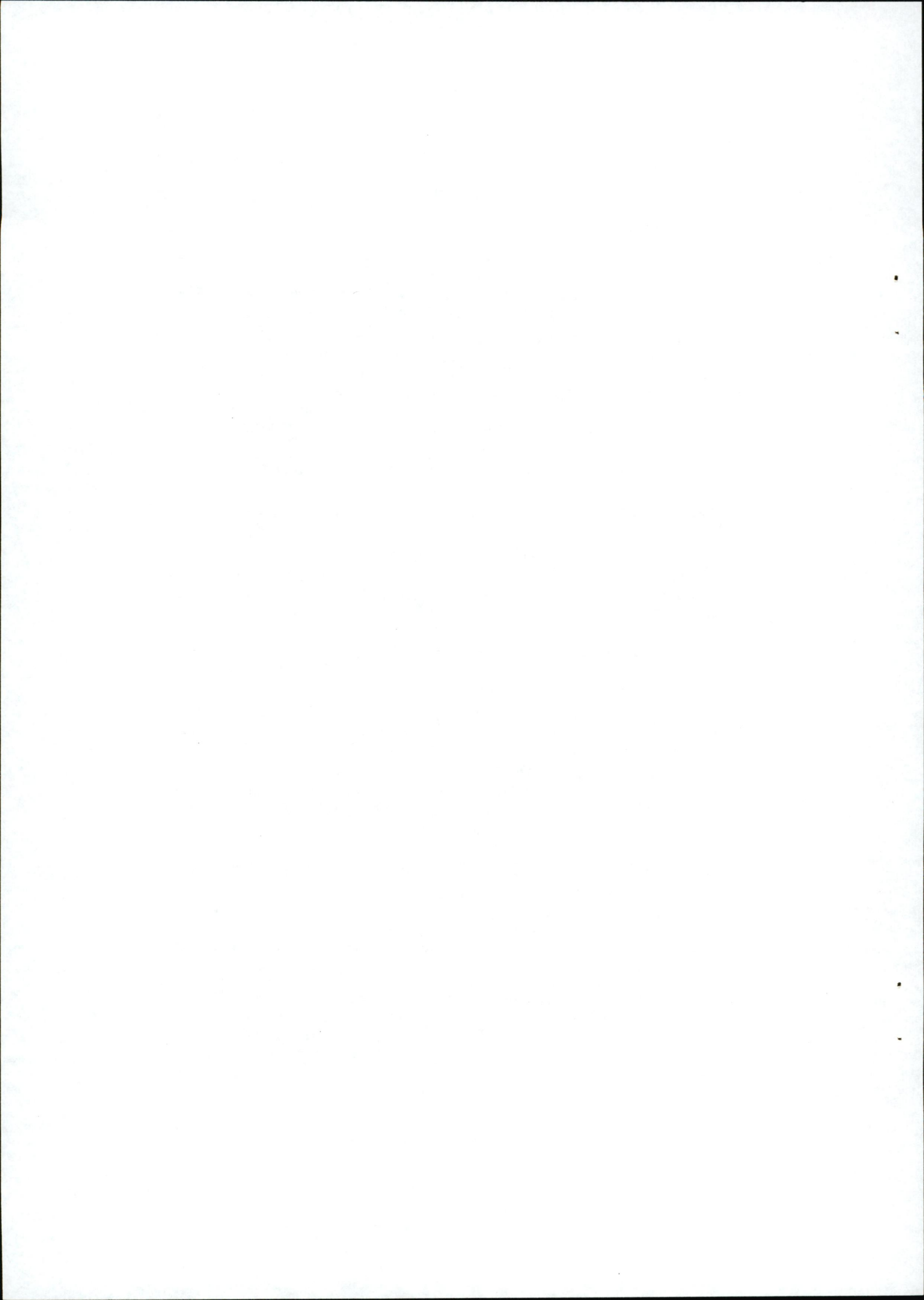
**Schedule 3 [2]** requires the Coastal Council in exercising its functions, and the Minister in exercising functions in relation to the Coastal Council, to have regard to the principles of ecologically sustainable development.

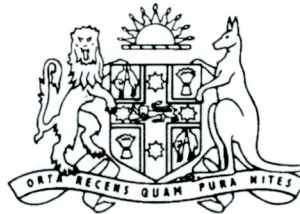
**Schedule 3 [3]** requires the Minister, in exercising functions under Part 3 (Use of the coastal zone) of the *Coastal Protection Act 1979*, to have regard to the principles of ecologically sustainable development.

**Schedule 3 [4]** requires the Minister, in exercising functions under Part 4 (Carrying out of works in the coastal zone by the Minister) of the *Coastal Protection Act 1979*, to have regard to the principles of ecologically sustainable development.

**Schedule 4     Amendment of Local Government Act 1993**

**Schedule 4** amends section 733 of the *Local Government Act 1993* which provides that a council does not incur any liability for any actions, or the giving of advice, relating to the likelihood of land in the coastal zone being affected by a coastline hazard. The section extends to the making of an environmental planning instrument, the grant or refusal of a development application or an application for the erection of a building, advice furnished in a section 149 certificate under the *Environmental Planning and Assessment Act 1979* and the carrying out of flood mitigation works and coastal management works. The amendment ensures that the section continues to operate in relation to land formerly within the definition of *coastal zone*.





New South Wales

# Coastal Protection Amendment Bill 1998 (No 2)

## Contents

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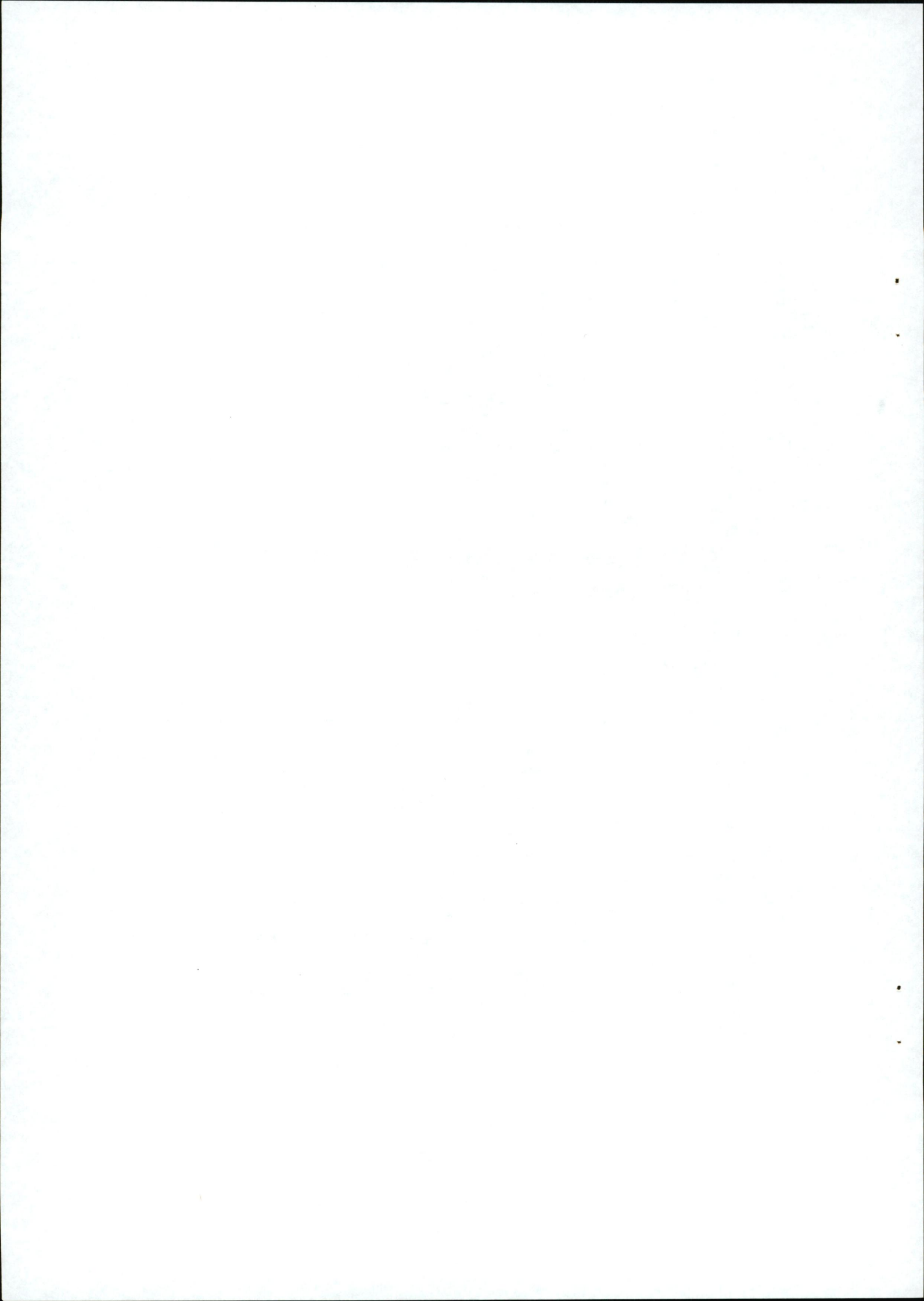
	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Coastal Protection Act 1979 No 13	2
4 Amendment of Local Government Act 1993 No 30	2

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### Schedules

1 Amendment of Coastal Protection Act 1979 relating to definition of coastal zone	3
2 Amendment of Coastal Protection Act 1979 relating to constitution of Coastal Council	8
3 Amendment of Coastal Protection Act 1979 relating to principles of ecologically sustainable development	11
4 Amendment of Local Government Act 1993	12

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New South Wales

# Coastal Protection Amendment Bill 1998 (No 2)

No , 1998

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## **A Bill for**

An Act to amend the *Coastal Protection Act 1979* to redefine the coastal zone, to reconstitute the Coastal Council to apply the principles of ecologically sustainable development; and to amend the *Local Government Act 1993* consequentially.

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Coastal Protection Amendment Act 1998*.

**2 Commencement**

This Act commences on a day or days to be appointed by proclamation. 5

**3 Amendment of Coastal Protection Act 1979 No 13**

The *Coastal Protection Act 1979* is amended as set out in Schedules 1-3.

**4 Amendment of Local Government Act 1993 No 30**

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The *Local Government Act 1993* is amended as set out in Schedule 4.



## Schedule 1 Amendment of Coastal Protection Act 1979 relating to definition of coastal zone

(Section 3)

### [1] Section 4 Definitions 5

Omit the definition of *coastal zone* from section 4 (1).  
Insert instead:

*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 10
- (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 15
- (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. 20

### [2] Sections 4A and 4B 25

Insert after section 4:

#### 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 administering Part 2, and 30
  - (b) if those maps are amended or replaced by further maps so approved by the Minister administering Part 2, the maps as so amended or replaced.

Coastal Protection Amendment Bill 1998 (No 2)

Schedule 1      Amendment of Coastal Protection Act 1979 relating to definition of coastal zone

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- (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, 10
  - (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: 15
    - (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, 20
  - (d) the boundary is to be shown to the nearest cadastral boundary or easily recognisable physical boundary (determined in consultation with relevant councils), 25
  - (e) the boundary is to exclude the urban regions of Sydney, Newcastle, Illawarra and the Central Coast (extending from Newcastle in the north to Shellharbour in the south). 30
- (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. 35

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

- (1) The Director-General of the Department of Urban Affairs and Planning must ensure that:
  - (a) the maps outlining the coastal zone are available for inspection during normal office hours at the principal office of the Department, and 5
  - (b) at each of the relevant regional offices of the Department, such of the maps outlining the coastal zone that relate to the region are available for inspection during normal office hours. 10
- (2) The Director-General of the Department of Land and Water Conservation must ensure that, at each of the relevant regional offices of the Department, such of the maps outlining the coastal zone that relate to the region are available for inspection during normal office hours. 15
- (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. 20

**[3] Section 37 Definitions**

Insert in alphabetical order in section 37 (1):

- coastal zone* includes any area of water (and the seabed and the subsoil beneath and the airspace above any such area) adjoining the westward boundary of the coastal waters of the State as defined in Part 10 of the *Interpretation Act 1987*: 25
- (a) that is not within a local government area, and
  - (b) that is not subject to an environmental planning instrument within the meaning of the *Environmental Planning and Assessment Act 1979* other than a State environmental planning policy. 30

Schedule 1      Amendment of Coastal Protection Act 1979 relating to definition of coastal zone

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**[4]      Section 56 Amendment of Schedule 1**

Omit the section.

**[5]      Section 62**

Insert after section 61:

**62 Savings, transitional and other provisions** 5

Schedule 1 has effect.

**[6]      Schedule 1**

Omit the Schedule. Insert instead:

**Schedule 1      Savings, transitional and other provisions** 10

(Section 62)

**1 Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts: 15

*Coastal Protection Amendment Act 1998*

- (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: 20
- (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 25

- (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**

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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.

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**Schedule 2      Amendment of Coastal Protection Act  
1979 relating to constitution of  
Coastal Council**

(Section 3)

**[1]      Section 7 Definitions** 5

Omit the definition of *Chairperson*. Insert instead:

*Chairperson* means the Chairperson of the Coastal Council appointed under section 9 (2) (a).

**[2]      Section 9 Members** 10

Omit section 9 (1) and (2). Insert instead:

- (1) The Coastal Council is to consist of 20 members appointed by the Minister.
- (2) The members of the Coastal Council are to consist of the following:
  - (a) an expert in coastal protection who is to be the Chairperson of the Coastal Council, 15
  - (b) a member of Parliament,
  - (c) a person nominated by the Minister administering the *Environmental Planning and Assessment Act 1979*, 20
  - (d) a person nominated by the Minister for Land and Water Conservation,
  - (e) a person nominated by the Minister administering the *National Parks and Wildlife Act 1974*,
  - (f) a person nominated by the Minister administering the *Mining Act 1992*, 25
  - (g) a person nominated by the Minister administering the *Fisheries Management Act 1994*,
  - (h) a person nominated by the Minister administering the *Local Government Act 1993*, 30

- (i) a person nominated by the Minister administering the *Protection of the Environment Administration Act 1991*,
  - (j) a person nominated by the Minister for Aboriginal Affairs, 5
  - (k) a person nominated by the Minister for State and Regional Development,
  - (l) a person nominated by the Minister for Tourism,
  - (m) a person nominated by the Minister for Sport and Recreation, 10
  - (n) a person nominated by the Minister administering the *Ports Corporatisation and Waterways Management Act 1995*,
  - (o) a person approved by the Minister and selected by the Minister from a panel of 3 persons nominated by the Nature Conservation Council, 15
  - (p) a person selected by the Minister from a panel of 3 persons nominated by an industry group with an interest in coastal matters, approved by the Minister, 20
  - (q) a person selected by the Minister from a panel of 3 persons nominated by a professional organisation with an interest in coastal matters, approved by the Minister,
  - (r) 3 persons, each being a member of a council for a local government area within or partly within the coastal zone, nominated by the Local Government and Shires Associations and approved by the Minister. 25
- [3] Section 9 (3)** 30  
Omit “(b), (c), (e), (f), (g) and (i)”.  
Insert instead “(o), (p), (q) or (r)”.
- [4] Section 9 (3)**  
Omit “person entitled”. Insert instead “body entitled”.

Coastal Protection Amendment Bill 1998 (No 2)

Schedule 2      Amendment of Coastal Protection Act 1979 relating to constitution of  
Coastal Council

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**[5]      Section 10 Chairperson**

Omit the section.

**[6]      Section 15 Vacation of office**

Omit "section 9 (2) (a)–(g) or (i)" from section 15 (g).  
Insert instead "section 9 (2) (b) or (r)".

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**[7]      Section 20 Quorum**

Omit "five". Insert instead "eleven".



**Schedule 3 Amendment of Coastal Protection Act 1979 relating to principles of ecologically sustainable development**

(Section 3)

- [1] Section 4 Definitions** 5
- Insert in alphabetical order in section 4 (1):
- 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*. 10
- [2] Section 27 General**
- Insert after section 27 (2):
- (3) The Coastal Council, in the exercise of its functions, and the Minister in the exercise of the Minister's functions under this Division, are to have regard to the principles of ecologically sustainable development. 15
- [3] Section 37A**
- Insert after section 37:
- 37A Consideration of principles of ecologically sustainable development** 20
- In exercising functions under this Part, the Minister is to have regard to the principles of ecologically sustainable development.
- [4] Section 54A**
- Insert after section 54: 25
- 54A Consideration of principles of ecologically sustainable development**
- In exercising functions under this Part, the Minister is to have regard to the principles of ecologically sustainable development. 30

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**Schedule 4    Amendment of Local Government Act  
1993**

(Section 4)

**Section 733 Exemption from liability—flood liable land and land  
in coastal zone**

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Insert “, and includes land previously in the coastal zone under that  
Act” after “*Coastal Protection Act 1979*” in section 733 (8).