

FIRST PRINT

COASTAL PROTECTION (AMENDMENT) BILL 1991

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to amend the Coastal Protection Act 1979 for the purposes of reconstituting the Coastal Council of New South Wales, redefining the functions of that Council and making further provision with respect to the development, occupation and use of the coastal zone of New South Wales.

Clause 1 specifies the short title of the proposed Act.

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

Clause 3 gives effect to the Schedule of amendments.

Clause 4 repeals the Coastal Protection (Non-Local Government Areas) Regulation 1979. The substance of the Regulation will now be included in the revised section 39 of the Principal Act; see Schedule 1 (22).

Schedule 1 (1) amends the long title of the Principal Act by substituting a reference to coastal zone for the reference to coastal region.

Schedule 1 (2) repeals section 3 of the Principal Act, which lists the major provisions of the Act. Because all Acts now include a table of provisions, the section has become redundant.

Schedule 1 (3) repeals the definition of "coastal region" (which will become redundant) and repeals and replaces the definition of "coastal zone". Basically, the coastal zone will consist of the coastal waters of the State (as defined in Part 10 of the Interpretation Act 1987) and land and water within 1 kilometre of the landward boundary of those waters. However, the Minister for Planning will be empowered, by order published in the Gazette, to extend this zone to include waters contiguous with the landward side of that landward boundary and any land within 1 kilometre of those waters.

Schedule 1 (4) amends section 6 of the Principal Act (Administration). The amendment reflects the change of the Minister's title from "Minister for Planning and Environment" to "Minister for Planning".

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Schedule 1 (5) repeals the definition of "Chairman" in section 7 of the Principal Act (which contains definitions for the purposes of Part 2 of the Principal Act) and replaces it with a definition of "chairperson". The amendment is in part consequential on the reconstitution of the Coastal Council; see Schedule 1 (6).

Schedule 1 (6) repeals and replaces section 9 of the Principal Act. Proposed section 9 provides for the membership of the Council to be increased from 10 to 15. Ten of the members are to be persons who are either the heads or officers of the Departments of Planning, Agriculture and Fisheries, Lands, Public Works, Local Government and Minerals and Energy, the National Parks and Wildlife Service, the Soil Conservation Service, the Tourism Commission and the State Pollution Control Commission. Of the remainder, three are to be members of local authorities within the coastal zone, one is to be a person nominated by the Nature Conservation Council of New South Wales and the other is to be a person having expertise in coastal protection.

Schedule 1 (7) repeals and replaces section 10 of the Principal Act. Proposed section 10 provides for the member of the Coastal Council having expertise in coastal protection to be the chairperson of the Coastal Council.

Schedule 1 (8) amends section 11 of the Principal Act (Term of office of member). Under the amended section, members may be appointed for a period not exceeding 3 years instead of a fixed period of 3 years as at present.

Schedule 1 (9) amends section 13 of the Principal Act (Alternate members). The amendment is consequential on the substitution of section 10 of the Principal Act; see Schedule 1 (7).

Schedule 1 (10) repeals and replaces section 15 of the Principal Act. Proposed section 15 specifies the circumstances under which a member of the Coastal Council is to vacate office.

Schedule 1 (11) amends section 16 of the Principal Act (Filling of casual vacancy). The amendment is consequential on the substitution of section 10 of the Principal Act by Schedule 1 (7).

Schedule 1 (12) and (13) amend sections 17 and 18 of the Principal Act, which relate to the Chairman of the Coastal Council. The amendments are consequential on the substitution of section 10 of the Principal Act, which, among other things, replaces the expression "Chairman" with the expression "chairperson"; see Schedule 1 (7).

Schedule 1 (14) repeals and replaces section 20 of the Principal Act (Quorum for meetings). Proposed section 20 provides for the quorum for a meeting of the Coastal Council to be increased from 5 to 8 members.

Schedule 1 (15) amends section 24 of the Principal Act (Ministers to be furnished with agenda and minutes) by providing that agenda and minutes of meetings of the Coastal Council need only be supplied to the Minister responsible for administering Part 2 of the Principal Act.

Schedule 1 (16) makes a minor consequential amendment to section 25 of the Principal Act (Minutes to be available for public inspection).

Schedule 1 (17) repeals and replaces section 28 of the Principal Act (Functions of the Coastal Council). Under proposed section 28, the principal functions of the Council will be to give advice and make reports and recommendations to the relevant Minister with respect to:

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- * the policies that should be implemented in relation to the coastal zone; and
- * the implementation of those policies; and
- * the co-ordination of the policies and activities of the Government and public authorities with respect to the coastal zone.

Schedule 1 (18) makes a minor amendment to section 29 of the Principal Act (Committees).

Schedule 1 (19) repeals Division 4 of Part 2 of the Principal Act (Finance). Since the Coastal Council will no longer have any funds to administer, the Division is no longer needed.

Schedule 1 (20) amends section 33 of the Principal Act (Annual report). The amendment is consequential on the repeal of Division 4 of Part 2; see Schedule 1 (19).

Schedule 1 (21) amends section 37 of the Principal Act, which defines certain terms for the purposes of Part 3 of the Principal Act. The amendment introduces definitions of "body of water" and "environmental planning instrument" and consequentially repeals and replaces subsection (2) (d) of that section.

Schedule 1 (22) repeals and replaces sections 38 and 39 of the Principal Act. Proposed section 38 will in certain circumstances require the concurrence of the Minister before a public authority may carry out development in, or grant a right or consent to the development, occupation or use of, an area within the coastal zone. Proposed section 39 deals specifically with the carrying out of coastal development within any part of the coastal zone that is not within a local government area and incorporates the substance of the Coastal Protection (Non-Local Government Areas) Regulation 1979. At present there is a degree of duplication in existing sections 38 and 39 with the Minister and the Governor (acting on the recommendation of the Minister) having overlapping functions. Under the proposed sections 38 and 39, the Governor's only function will be that of making regulations regulating, controlling or prohibiting the development, occupation or use of a specified area that is within the coastal zone and not with a local government area. One additional provision, not in either of the existing sections, will require the Minister to keep a register containing copies of orders in force under proposed section 38. The register will be required to be made available for public inspection without fee.

Schedule 1 (23) amends section 44 of the Principal Act (Matters for consideration in relation to concurrence). The amendment is consequential on the amendment made by Schedule 1 (21).

Schedule 1 (24) repeals section 56 of the Principal Act (Amendment of Schedule 1). The section will become redundant with the repeal of that Schedule; see Schedule 1 (28).

Schedule 1 (25) amends section 58 of the Principal Act (Penalties) by replacing references to monetary amounts with references to the equivalent number of penalty units. (See section 56 of the Interpretation Act 1987.)

Schedule 1 (26) amends section 59 of the Principal Act (Proceedings for offences) by substituting "Local Court" for the outdated term "court of petty sessions".

Schedule 1 (27) repeals and replaces section 61 of the Principal Act. The existing section deals with matters that are adequately dealt with by the Interpretation Act 1987. Proposed section 61 will give effect to proposed Schedule 2 (Savings, transitional and other provisions).

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Schedule 1 (28) repeals Schedule 1. With the new definition of "coastal zone", the Schedule will no longer be required.

Schedule 1 (29) inserts at the end of the Principal Act proposed Schedule 2 (which contains savings, transitional and other provisions).

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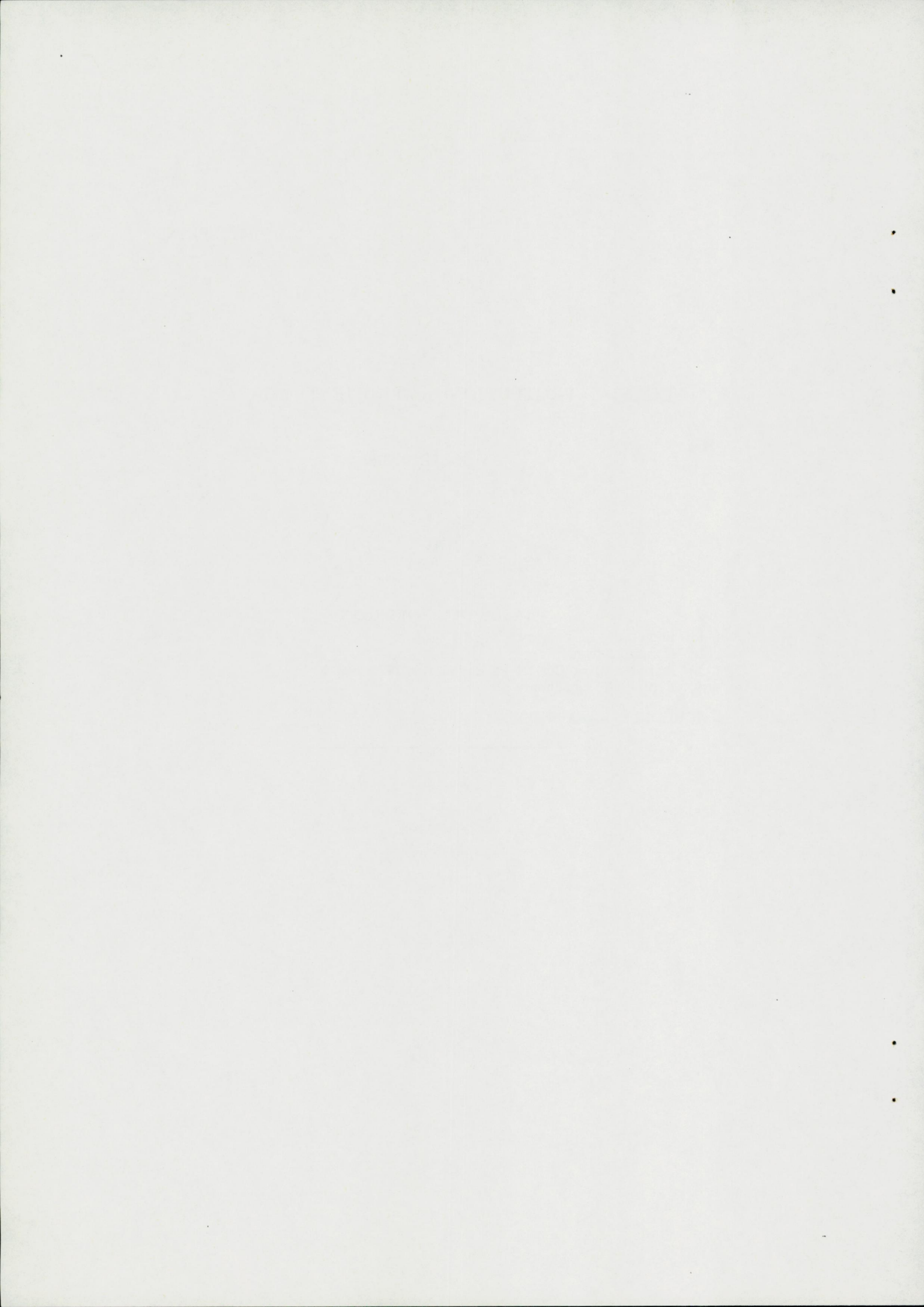
NEW SOUTH WALES



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SCHEDULE 1—AMENDMENTS



COASTAL PROTECTION (AMENDMENT) BILL 1991

NEW SOUTH WALES



No. , 1991

A BILL FOR

An Act to amend the Coastal Protection Act 1979 for the purposes of reconstituting the Coastal Council of New South Wales, redefining the functions of that Council and making further provision with respect to the development, occupation and use of the coastal zone of New South Wales; and for other purposes.

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The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Coastal Protection (Amendment) Act 1991.

Commencement

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

Amendment of Coastal Protection Act 1979 No. 13

3. The Coastal Protection Act 1979 is amended as set out in Schedule 1.

Repeal of Regulation

4. The Coastal Protection (Non-Local Government Areas) Regulation 1979 is repealed.

SCHEDULE 1—AMENDMENTS

(Sec. 3)

(1) Long title:

Omit "coastal region", insert instead "coastal zone".

(2) Section 3 (**Arrangement**):

Omit the section.

(3) Section 4 (**Definitions**):

(a) From section 4 (1), omit the definition of "coastal region".

(b) From section 4 (1), omit the definition of "coastal zone", 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

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SCHEDULE 1—AMENDMENTS—*continued*

- (b) the area of land or water on the landward side of the landward boundary of the coastal waters of the State that is within 1 kilometre of that boundary; and
 - (c) any waters contiguous with the landward side of the area referred to in paragraph (b), and any specified land that is within 1 kilometre of those waters, declared by the Minister for Planning, by order published in the Gazette, to be a part of the coastal zone; and
 - (d) the sea-bed or water-bed (if any) and the subsoil beneath, and the airspace above, the areas referred to in paragraphs (a)–(c).
- (4) Section 6 (**Administration**):
Omit “Minister for Planning and Environment”, insert instead “Minister for Planning”.
- (5) Section 7 (**Definitions**):
Omit the definition of “Chairman”, insert instead:
“**chairperson**” means the chairperson of the Coastal Council referred to in section 10;
- (6) Section 9:
Omit the section, insert instead:
Members of the Coastal Council
9. (1) The Coastal Council is to consist of 15 members appointed by the Minister.
(2) Of the members:
(a) one is to be the Director of Planning or an officer of the Department of Planning; and
(b) one is to be either the Director of National Parks and Wildlife or an officer of the National Parks and Wildlife Service, as nominated by the Minister for Environment; and
(c) one is to be an officer of the Department of Agriculture and Fisheries nominated by the Minister for Agriculture and Rural Affairs; and

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SCHEDULE 1—AMENDMENTS—*continued*

- (d) one is to be either the Commissioner of the Soil Conservation Service or an officer of that Service, as nominated by the Minister for Agriculture and Rural Affairs; and
 - (e) one is to be an officer of the Department of Lands nominated by the Minister for Lands and Forests; and
 - (f) one is to be either the General Manager of the Tourism Commission or an officer of that Commission, as nominated by the Minister for Tourism; and
 - (g) one is to be an officer of the Public Works Department nominated by the Minister for Public Works; and
 - (h) one is to be an officer of the Department of Local Government nominated by the Minister for Local Government; and
 - (i) one is to be an officer of the Department of Minerals and Energy nominated by the Minister for Minerals and Energy; and
 - (j) one is to be either the Director of the State Pollution Control Commission or an officer of that Commission, as nominated by the Minister for the Environment; and
 - (k) one is to be a person nominated by the Nature Conservation Council of New South Wales; and
 - (l) three are to be persons who are members of councils whose local government areas are located wholly or partly within the coastal zone, being persons selected by the Minister from a panel of 6 members of councils jointly nominated by the Local Government Association of New South Wales and the Shires Association of New South Wales; and
 - (m) one is to be a person who, in the opinion of the Minister, has expertise in coastal protection.
- (3) If a nomination for the purposes of this section is not made within the period or in the manner specified by the Minister in a notice in writing given to the person entitled to make the nomination, the Minister may appoint as a member any person who is qualified for nomination.
- (4) Part 2 of the Public Sector Management Act 1988 does not apply to the appointment of a member.

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SCHEDULE 1—AMENDMENTS—*continued*

(5) If, by or under an Act, provision is made:

- (a) requiring a person who is the holder of a specified office to devote the whole of the person's 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, as a member, any remuneration or allowance payable under this Act.

(6) The office of a member is not, for the purpose of any Act, an office or place of profit under the Crown.

(7) Section 10:

Omit the section, insert instead:

Chairperson of the Coastal Council

10. The member referred to in section 9 (2) (m) is to be the chairperson of the Coastal Council.

(8) Section 11 (**Term of office of member**):

Omit "hold office for a period of 3 years", insert instead "hold office for such period (not exceeding 3 years) as is specified in the member's instrument of appointment".

(9) Section 13 (**Alternate members**):

Omit "Chairman" wherever occurring, insert instead "chairperson".

(10) Section 15:

Omit the section, insert instead:

Vacation of office of member

15. 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 notice in writing addressed to the Minister; or
- (d) is removed from office by the Minister under section 14 or by the Governor under Part 8 of the Public Sector Management Act 1988; or

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SCHEDULE 1—AMENDMENTS—*continued*

- (e) is absent from 4 consecutive meetings of the Council of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Council or unless, within 4 weeks after the last of those meetings, the Council excuses the member 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 the member's creditors or makes an assignment of the member's 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 penal servitude or 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; or
 - (i) ceases to hold the qualification by virtue of which the member was appointed.
- (11) Section 16 (**Filling of casual vacancy**):
From section 16 (1), omit "for the balance of his predecessor's term of office".
- (12) Section 17 (**Chairperson to preside**):
Omit "Chairman", insert instead "chairperson".
- (13) Section 18 (**Absence of chairperson**):
Omit "Chairman" wherever occurring, insert instead "chairperson".
- (14) Section 20:
Omit the section, insert instead:
Quorum for meetings
20. The quorum for a meeting of the Coastal Council is 8 members.
- (15) Section 24 (**Minister to be provided with agenda and minutes**):
Omit "each Minister to be furnished", insert instead "the Minister to be provided".

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SCHEDULE 1—AMENDMENTS—*continued*

- (16) Section 25 (**Minutes to be available for public inspection**):
Omit “furnished to each Minister”, insert instead “provided to the Minister”.
- (17) Section 28:
Omit the section, insert instead:
Functions of the Coastal Council
28. (1) The principal functions of the Council are to give advice and make reports and recommendations to the Minister with respect to:
- (a) the policies that may or should be implemented by the Government and by public authorities for the purpose of protecting, maintaining, enhancing, restoring, conserving and using the coastal zone; and
 - (b) the implementation of those policies and the management of the coastal zone; and
 - (c) the co-ordination of the policies and activities of the Government and of public authorities concerning the coastal zone.
- (2) Without limiting subsection (1), the principal functions of the Coastal Council include:
- (a) acting as a forum for consultation and exchanging information between the Government, public authorities and community organisations with respect to the coastal zone; and
 - (b) providing councils whose local government areas lie wholly or partly within the coastal zone with policy advice, guidance and assistance with respect to their functions concerning the management of that zone and the planning of its use; and
 - (c) issuing to those councils advisory guidelines with respect to the exercise of their planning functions within the coastal zone and with respect to the environmental protection and development of that zone; and
 - (d) providing advice to the Minister and the Director of Planning with respect to the exercise of their planning and management functions relating to the coastal zone,

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SCHEDULE 1—AMENDMENTS—*continued*

including advice with respect to the environmental protection of that zone and proposals for developments within it that are, in its opinion, of major importance.

(3) The Coastal Council has power to do all things necessary or convenient to be done for, or in connection with, the exercise of its functions and, in particular, may:

- (a) enter into an arrangement or agreement with any person on such terms and conditions as may be agreed between the Coastal Council and that person with respect to the conduct of any investigation, study, research or inquiry concerning the coastal zone; and
- (b) carry out such investigations, studies, research and inquiries as it considers relevant; and
- (c) record and evaluate such information with respect to the natural and man-made resources of the environment of the coastal zone as it considers appropriate; and
- (d) arrange and co-ordinate consultations, discussions, seminars and conferences relating to the matters referred to in this section; and
- (e) publish or otherwise provide information with respect to its functions and activities.

(4) The Coastal Council is required to exercise its functions in a manner that, as regards the coastal zone, will contribute to the attainment of the objects set out in section 5 of the Environmental Planning and Assessment Act 1979.

(18) Section 29 (**Committees**):

From section 29 (1), omit “standing or special”.

(19) Part 2, Division 4 [sections 30–32] (**Finance**):

Omit the Division.

(20) Section 33 (**Annual report**):

Omit section 33 (2), insert instead:

(2) The report must, in respect of the year for which it is prepared, include a summary of all recommendations made by the Coastal Council to the Minister during that year.

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SCHEDULE 1—AMENDMENTS—*continued*

(21) Section 37 (**Definitions**):

- (a) In section 37 (1), before the definition of “building”, insert:
“body of water” means the sea or an arm of the sea or any bay, inlet, lagoon, lake, pool, river, stream or watercourse;
- (b) In section 37 (1), after the definition of “dune”, insert:
“environmental planning instrument” has the same meaning as in section 4 of the Environmental Planning and Assessment Act 1979.
- (c) Omit section 37 (2) (d), insert instead:
 (d) a body of water, beach, dune, bed, bank, shoreline, foreshore, margin or flood plain includes a reference to any part of it.

(22) Sections 38 and 39:

Omit the sections, insert instead:

Minister’s concurrence required for development etc. within coastal zone

38. (1) A public authority must not, without the concurrence of the Minister:

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

if the public authority is required by the Minister to obtain that concurrence by an order in force under this section.

(2) An order of the Minister under this section may be given:

- (a) to all or any specified class of public authorities within the coastal zone or a specified part of that zone, by order published in the Gazette; or
 (b) to any specified public authority, by order in writing given to that authority.

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SCHEDULE 1—AMENDMENTS—*continued*

(3) An order under this section may apply to:

- (a) all or any specified class of development, occupation or use of the coastal zone or any specified development, occupation or use; or
- (b) the whole of the coastal zone or any specified part of the coastal zone.

(4) The Minister must cause an order given in writing under this section to a specified public authority to be publicly notified in a manner determined by the Minister.

(5) The Minister may give an order under this section only if of the opinion that the development, occupation or use to which the order applies could:

- (a) adversely affect, or be adversely affected by, the physical behaviour of a body of water within or adjacent to the coastal zone; or
- (b) adversely affect the physical nature of any beach or dune or the bed, bank, shoreline, foreshore, margin or flood plain of such a body of water.

(6) The Minister is required to maintain a register containing a copy of all orders in force under this section.

(7) The Minister must ensure that the register is made available for public inspection without fee at the head office of the Public Works Department during the ordinary business hours of that office.

(8) This section does not apply to any case in which the concurrence of the Minister is required for the purposes of section 39.

Coastal development outside local government areas

39. (1) This section applies only to that part of the coastal zone that:

- (a) does not form part of a local government area within the meaning of the Local Government Act 1919; and
- (b) is not subject to environmental planning instruments that comprehensively specify:
 - (i) the purposes for which development is prohibited; and

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SCHEDULE 1—AMENDMENTS—*continued*

- (ii) the purposes for which development may be carried out, either with or without consent.
- (2) A public authority must not, without the concurrence of the Minister, grant any right or consent to a person:
 - (a) to carry out any development in a part of the coastal zone to which this section applies; or
 - (b) to occupy or use such a part of the coastal zone.
- (3) A person (including a public authority) must not, without the concurrence of the Minister, carry out any development in a part of the coastal zone to which this section applies.
- (4) A person is taken not to have carried out development in contravention of subsection (3) if:
 - (a) a public authority has granted to the person a right or consent to carry out the development; and
 - (b) the Minister has concurred in the granting of that right or consent.
- (5) Regulations under section 53, not inconsistent with this section, may be made on the recommendation of the Minister for regulating, controlling or prohibiting:
 - (a) the carrying out of development in any specified part of the coastal zone to which this section applies; or
 - (b) the occupation or use of any such part.
- (23) Section 44 (**Matters for consideration in relation to concurrence**):
 - Omit section 44 (a) and (b), insert instead:
 - (a) adversely affect, or be adversely affected by, the physical behaviour of a body of water; or
 - (b) adversely affect the physical nature of any beach or dune or the bed, bank, shoreline, foreshore, margin or a flood plain of a body of water.
- (24) Section 56 (**Amendment of Schedule 1**):
 - Omit the section.
- (25) Section 58 (**Penalties**):
 - (a) From section 58 (1), omit "\$1,000", insert instead "10 penalty units".

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SCHEDULE 1—AMENDMENTS—*continued*

- (b) From section 58 (2), omit "\$200", insert instead "2 penalty units".
- (26) Section 59 (**Proceedings for offences**):
Omit "court of petty sessions held before a stipendiary magistrate", insert instead "Local Court constituted by a Magistrate".
- (27) Section 61:
Omit the section, insert instead:
Savings, transitional and other provisions
61. Schedule 2 has effect.
- (28) Schedule 1:
Omit the Schedule.
- (29) Schedule 2:
At the end of the Act, insert:

**SCHEDULE 2—SAVINGS, TRANSITIONAL AND
OTHER PROVISIONS**

(Sec. 61)

Closure of the Coastal Protection Fund

1. (1) The Coastal Protection Fund in the Special Deposits Account in the Treasury is closed.

(2) The balance standing to the credit of that Fund is to be paid into the Consolidated Fund.

Existing orders under sections 38 and 39

2. Any order in force under section 38 or 39 immediately before the commencement of Schedule 1 (22) to the Coastal Protection (Amendment) Act 1991 ceases to have effect on that commencement.
