



environmental defender's office new south wales

Submission on the draft Minister's Requirements under the *Coastal Protection Act 1979*

10 September 2010

The EDO Mission Statement

To empower the community to protect the environment through law, recognising:

- ◆ *the importance of public participation in environmental decision making in achieving environmental protection*
- ◆ *the importance of fostering close links with the community*
- ◆ *that the EDO has an obligation to provide representation in important matters in response to community needs as well as areas the EDO considers to be important for law reform*
- ◆ *the importance of indigenous involvement in protection of the environment.*

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Introduction

The Environmental Defenders Office (NSW) (EDO) welcomes the opportunity to provide comment on the Draft Minister's Requirements under the *Coastal Protection Act 1979*. The EDO is a community legal centre specialising in public interest environmental law.

We are of the view that short-term emergency protection works allowable under proposed amendments to the *Coastal Protection Act 1979* should only be permissible if there are appropriate checks and balances to limit the scope of works and therefore minimise impacts on sensitive coastal environments. As such, we support the draft Minister's requirements which limit the circumstances where short-term emergency works will be permissible.

However, we note that providing practical feedback on the Minister's requirements is difficult for 2 reasons. First, the Bill before parliament has not passed so we base our comments on the assumption that some of the limitations to constructing emergency works set out in the Bill, will pass without amendment. Second, much of the remaining detail is to be provided in emergency sub-plans for regions which are yet to be drafted. The EDO submits that these upcoming emergency sub-plans should be publicly exhibited once they are drafted. This will allow the community to ensure that these plans are robust and that coastal ecosystems and public land is protected.

We provide brief comment below on:

1. Imminent erosion
2. Protection of native vegetation
3. Emergency sub-plans
4. Enforcement and monitoring

1. Imminent erosion

The draft requirements stipulate that works can only be placed in 12 locations around NSW known to be at imminent risk of erosion and sea level rise. In these locations, specific beach access points and exclusion zones will be prescribed in upcoming emergency sub-plans.

We submit that the new distance-based definition of 'imminent erosion' set out in the Draft Minister's requirements provides an easier test for determining if emergency works may be constructed. The previous definitions based on tidal conditions and weather forecasts, while these are certainly the relevant factors, are uncertain and subjective. This new definition will provide certainty for landholders who are at imminent threat and allow them to make an informed decision when to exercise their one-off right to place emergency protection works on their properties.

The EDO supports the additional safety requirements limiting the placement of emergency works during period of beach erosion (such as storm events). The draft requirements stipulate that works can only be placed during a period of beach erosion where a senior police officer advises that the area is not unsafe for placing the works and a professional engineer certifies that the escarpment has a low likelihood of failure. These requirements will limit the risks to the physical safety of landholders.

2. Protection of native vegetation

The EDO welcomes the proposed use of exclusion zones, fenced and signed dune restoration areas and the protection of coastal vegetation. The Minister's requirements stipulate that landholders cannot disturb vegetation other than grass or other non-woody vegetation on public land when placing emergency works unless prior approval is obtained from public authority managing the area. However, although we welcome this protection, we submit that it should be extended to include grass and non-woody vegetation. It is important that sensitive coastal ecosystems, including all components of dune systems, are protected, not just woody vegetation. The Minister's requirements should therefore be amended to facilitate this.

The EDO welcomes proposed maintenance and removal requirements in relation to emergency works. For example, we support the requirement to rehabilitate land, assets or vegetation that are damaged directly or indirectly by the placement of the works. This rehabilitation must be conducted consistently with NSW Government guidelines on dune management and approved rehabilitation techniques. However, it is important that there is appropriate monitoring and enforcement action by state authorities and local councils to ensure that these requirements are in fact carried out and to deter landholders from non-compliance.

3. Emergency sub-plans

The EDO supports the development of emergency sub-plans for each region that have regard to community and local ecosystem requirements, however as noted above, we recommend that coastal communities in the relevant areas have an opportunity to comment on the detail of the sub-plans. In terms of what detail the plans should address, we recommend that consideration of the following issues would enhance ecosystem protection at a local level:

- *Material specifications*

The draft requirements discuss material (sand) specifications in terms of Australian Standard 2758 *Aggregates and rock for engineering purposes*. The EDO submits that emergency sub-plans develop a site-specific requirement for particulate in recognition of the range of variation between sands of different beaches, and the detrimental effect additional material can have on marine ecosystems including: siltation, turbidity, lowered oxygen levels and increased water temperatures.

- *Ecosystems above the high-tide mark*

The EDO submits that each emergency sub-plan conducts an environmental impact assessment of flora and fauna species that utilise dunes above the high-tide zone on a permanent or migratory basis.

4. Enforcement and monitoring

As noted above in relation to vegetation rehabilitation requirements, there must be appropriate monitoring and enforcement action by state authorities and local councils to ensure that the requirements are in fact carried out and to deter landholders from non-compliance. For example, there must be a clear process for who assesses and determines that rehabilitation has been done to "the greatest extent practical". This must be

monitored and enforced, and not simply in the landowner's opinion. Similarly, it should be made clear that the Minister's requirements relating to sand quality (1.3.1) will be enforced, and testing for toxicity for example, will be measured against the appropriate standard¹ by the appropriate authority.

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¹ National Environment Protection (Assessment of Site Contamination) Measure 1999.