Climate Change Readiness (Coastal Planning and Protection) Bill 2012

Explanatory Memorandum

1. Overview of Bill

The Bill is divided into 8 parts, which in turn may have two or more divisions. The Part headings are:

- Preliminary
- WA coastal plan
- Adaptation and management plans
- Development control in the transition zone
- Coastal protection notices
- Miscellaneous
- Consequential amendments to the Environmental Protection Act 1986
- Consequential amendments to the Planning and Development Act 2005 (PAD Act)

The main object of the Bill is to provide for the regulation of planning, development and management in the coastal zone. The Bill is divided into 8 parts, which in turn may have two or more divisions. The Part headings are:

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- Miscellaneous
- Consequential amendments to the Environmental Protection Act 1986
- Consequential amendments to the Planning and Development Act 2005 (PAD Act)

The Bill includes provisions in the Act for the review and amendment of the WA coastal plan and the local coastal plans. Reviews may be periodic or triggered in specified circumstances.
INCORPORATES TERMS DEFINED IN THE LAND ADMINISTRATION ACT 1997.

This clause provides a separate definition for the term "owner", because the definition is lengthy and

Class 5 Terms Used: Owner

of the bill. The definition of public authority includes "local government," and the operation not as wide as the definition in the PAD Act 2005, which would have vastly expanded the operation.

Development is defined as "development for which approval under a scheme under which an approval is required." This is

Terms Used: Owner

intended to ensure that the process does not stall at any stage.

Consistent with the object of the Act and taken as made as expeditiously as practicable. This is

Clause 3(3) provides that "any action, decision or exercise of discretion under this Act must be

Clause 3 Object of the Act

This clause specifies the dates on which various clauses of the Act will come into operation.

Clause 2 Commencement

This clause provides the short title of the Climate Change Readiness (Coastal Planning and

Clause 1 Short Title

Part 2—Premises

2. Summary of Substantive Provisions

Full function terms set out in the Act.

The WAPC may serve a coastal hazard notice. The WAPC may serve a coastal

The transition zone is damaged by the impact of a coastal hazard, the WAPC may serve a coastal

The EPA is required to keep climate science up to date and to notify relevant public authorities of changes. Under the Act public authorities that act in good faith and in accordance with authority of changes. Under the Act public authorities that act in good faith and in accordance with

It is the intention of the Act to reactivate the Coastal Planning and Coordination Council to advise the WAPC on matters relating to coastal planning throughout the State and to

The Act are protected from liability. These are penalties prescribed for certain breaches of the Act.

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Clause 6 - Crown bound

This clause provides that the Act binds the State and, so far as the legislative power of the State permits, the Crown in all its other capacities.

Clause 7 - Inconsistency with other Acts

Clause 7 provides that if a provision of this Act is in conflict or inconsistent with a provision of another Act, this Act prevails to the extent of the conflict or inconsistency.

Part 2 - WA coastal plan

Division 1 - Making of WA coastal plan (clauses 8 - 17)

This division sets out the steps that must be followed by the WAPC in taking the WA coastal plan from draft to gazettal.

Division 2 - WA coastal plan

Essentially this division sets out the legislative requirements relating to the WA coastal plan.
Clause 9 Draft WA coastal plan must be referred to the EPA

Clause 9 provides that the WAPC must refer any draft WA coastal plan to the Environmental Protection Authority (EPA) under clause 48A of the Environmental Protection Act 1986. For the purposes of EPA assessment and review the plan is treated as a 'scheme'.

Clause 10 Draft WA coastal plan to be submitted to Minister for publication approval

Once the process under clause 48A has been complied with (including a review if this is required by the EPA), under clause 10 the draft plan must be submitted to the Minister to consent to public notification of the draft. Under clause 10(4), the Minister must consent to public notification if the Minister is of the opinion that the draft plan complies with the objects and provisions of the Act. Under clause 10(5), consent is implied if the Minister does not either consent or refuse consent within 60 days.

Clause 11 Public notification, public submissions and final approval of WA coastal plan

Clauses 11 - 14 deal with the process for public notification of the draft plan, public submissions, and submission of the plan to the Minister for final approval. Under clause 14 the Minister has the right to approve the plan, refuse to approve it, or approve it "subject to amendments being made to it as directed by the Minister". Under clause 14(3) the Minister must give final approval "if the Minister is of the opinion that the draft WA coastal plan complies with the objects and provisions of the Act".

Clause 15 Gazetteal of WA coastal plan

Under clause 15, the WAPC must publish a notice in the Gazette that the WA coastal plan has been approved, where it can be inspected, and where a copy of the plan can be obtained.

Clause 16 Parliament may disallow WA coastal plan

If there is no disallowance motion within the stipulated time periods or a disallowance motion is defeated, the final WA coastal plan comes into operation.

Clauses 17 Availability of WA coastal plan

Clause 17 specifies that the WA coastal plan must be available for inspection during office hours free of charge and on a public website maintained by the WAPC. Regulations may prescribe a fee for obtaining a copy of the plan.

Division 2 Vulnerability Assessment (clauses 18 - 19)

Clause 18 Vulnerability assessment of coastal zone

Clause 18 provides that the WAPC must cause a vulnerability assessment to be carried out on all parts of the Western Australian coast that are already developed and any other parts that are likely to be developed within 5 years from the day after Royal Assent. The assessment must be prepared by the WAPC and be referred to the WAPC for approval. Regulations may prescribe a fee for obtaining a copy of the assessment.

Clause 19

Clause 19 addresses the matters set out in clause 17(5).
A number of vulnerability assessments have already been carried out globally, nationally and at state, regional and local levels. Under clause 18(1)(b), the WAPC must adopt such an assessment provided it conforms with the guidelines in clause 18(5).

Under clause 18(2), the initial WA coastal plan must include the vulnerability assessment prepared or adopted under clause 18(1). A map drawn from this vulnerability assessment will be included as part of the coastal plan.

Clause 18(6) requires the precautionary principle to be applied in preparing the vulnerability assessment. Clause 18(7) requires the WAPC to have regard to the latest scientific projections available as at the date of preparation as advised by the EPA under clause 73(b). Clause 18(8) makes provision for the amendment of a vulnerability assessment from time to time.

Clause 19 provides that development may not be carried out on land within the coastal zone unless a vulnerability assessment of that land has been included in the WA coastal plan.

Division 3 - Transition Zone (clauses 20-23)

Under clause 20(1), the transition zone is the area of the coastal zone which, in the opinion of the WAPC, is likely to be vulnerable to adverse impacts of a coastal hazard, either current or future, under the latest scientific projections available as at the date of preparation as advised by the EPA under clause 73(b). Under clause 20(2), the WAPC must have regard to the relevant vulnerability assessment when identifying any part of the coastal zone as the transition zone in the WA coastal plan.

Clause 21 requires a memorial to be lodged in respect of land included in the transition zone and that memorial must be registered against the relevant land. Under clause 22 notice of the memorial must be given to the parties specified in the clause as so soon as practicable.

An amendment to the transition zone may be requested by the responsible authority or owner in accordance with clause 23 or under division 5 (see below).

Division 4 - Effect of WA coastal plan (clauses 24-26)

Under clause 24, the responsible authority must comply with the coastal plan when making a decision about the approval of development in the coastal zone. Under clause 25, the plan will prevail to the extent that it is in conflict or inconsistent with a scheme or local law. Under clause 26, the plan will have legislative effect.

Division 5 - Review and amendment (clauses 27-31)

Under clause 27, there is a general review of the WA coastal plan every 5 years. In addition, the WAPC must carry out a review as soon as practicable after the occurrence of one or more of the

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Division 5 - Review and amendment (clauses 27-31)

Under clause 27, there is a general review of the WA coastal plan every 5 years. In addition, the WAPC must carry out a review as soon as practicable after the occurrence of one or more of the
change criteria set out in clause 28. The procedure for amendment pursuant to a general review or change criterion review is set out in clauses 29 - 31.

Part 3
Adaptation and management plans
Clause 32 Terms used
The terms controlling body and local coastal plan are defined in clause 32.

Clause 33 Draft local coastal adaptation plans and draft local coastal management plans
Under clause 32, before submitting a draft local coastal plan to the Minister for approval, the controlling body must prepare a draft local coastal plan.

Clause 34 Principles, guidelines and measures for preparation
The controlling body must prepare a draft local coastal plan in accordance with the principles, guidelines and measures set out in clauses 8(2)(e) and (f). The controlling body must prepare a draft local coastal plan in accordance with the principles, guidelines and measures for preparation of coastal management plans.

Clause 35 and 36 Matters to be provided for in local coastal plans
The matters that must be covered in the local coastal plans are in clauses 35 and 36. Such matters include integrated management for coastal erosion and conservation or rehabilitation, coastal buffers, beach management, monitoring and reporting.

Clause 37 Local coastal plans may adopt codes or other documents
Local coastal plans may adopt codes or other documents. The matters that must be covered in the local coastal plans are in clauses 35 and 36. Such matters include integrated management for coastal erosion and conservation or rehabilitation, coastal buffers, beach management, monitoring and reporting.

Clause 38 Consultation with other controlling bodies
Under clause 38, before submitting a draft local coastal plan to the Minister for approval, the controlling body that prepared the draft must submit it to the controlling body of any adjoining land, and may amend the draft to take account of any submissions made by that controlling body.

Clause 39 - 42 Approval procedure for draft local coastal plans
Draft local coastal plans must go through an approval procedure similar to that in relation to the WA coastal plan, with submission to the EPA and Ministerial approval prior to being gazetted.

Under clause 37, where an approved local plan already exists this may be adopted or incorporated into a local coastal plan. Since the content of the local coastal plans will depend on the final WA coastal plan, it is unlikely that any existing plan will be adopted without modification but this provision means that valuable work in this regard will not be lost.

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The controlling body must prepare a draft local coastal plan in accordance with the principles, guidelines and measures set out in clauses 8(2)(e) and (f). The controlling body must prepare a draft local coastal plan in accordance with the principles, guidelines and measures for preparation of coastal management plans.

Under clause 34, the controlling body that prepares the local coastal plan must work with and consult the various bodies, groups and people mentioned in clause 33(5) and have regard to their views.

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Clause 39 - 42 Approval procedure for draft local coastal plans
Draft local coastal plans must go through an approval procedure similar to that in relation to the WA coastal plan, with submission to the EPA and Ministerial approval prior to being gazetted (clauses 39 - 42). Draft plans must be submitted to the Minister within 5 years from the day after Royal Assent (clause 45(5)).
Clause 43

Parliament may disallow local coastal plan

If there is no disallowance motion within the stipulated time periods or a disallowance motion is defeated, the final local coastal plan comes into operation.

Clauses 44 - 46

Review, amendment and repeal of local coastal plans

Under clause 44, the responsible authority must:

- Review any local coastal plan prepared by it every 10 years, using 30 year projections from the date of the review.

- Amend a local coastal plan that it has approved if it is satisfied that the impact will not endure beyond clause 33, or if it is satisfied that the amendment is necessary.

Under clause 45, the responsible authority must:

- Amend any local coastal plan that it has approved if it is satisfied that the amendment is necessary.

- Repeal any local coastal plan that it has approved if it is satisfied that the amendment is necessary.

Clause 47

Inconsistency with other instruments

This clause sets out what happens in the event of a conflict or inconsistency between a local coastal plan and another instrument.

Clause 48

Functions to be carried out in accordance with local coastal plans

Compliance with local coastal plans is mandatory.

Clause 49

Offences and penalties

Clause 49 sets out the penalties for contravention of a local coastal plan.

Part 4 - Development control in the transition zone

Division 1 - Development in the transition zone

Clause 50

Development principles in the transition zone

Clause 50 provides that a responsible authority must comply with the principles in this division when making a decision about the approval of development in the transition zone.

Clause 51

What development can be carried out in the transition zone

The only development that is permitted in the transition zone is exempt development (defined in clause 51(5)) and short term development (defined in clause 51(4)), which are themselves subject to the provisions of clauses 53 and 54 (see below).

Clause 52

Accommodating sea level rise

Under clause 52, the responsible authority must try to accommodate sea level rise in relation to exempt development.

Clause 53

Certain short-term development must not be approved

Under clause 53, short term development must not be approved if it poses a significant risk to coastal processes unless the responsible authority is satisfied that the risk is unlikely to endure beyond clause 33.

Under clause 55, short term development must not be approved if it poses a significant risk to the environment or human health.

Clause 54

Repeal of local coastal plans

If there is no disallowance motion within the stipulated time periods or a disallowance motion is defeated, the final local coastal plan comes into operation.

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Under clause 44, the responsible authority must:

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Under clause 52, the responsible authority must try to accommodate sea level rise in relation to exempt development.

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Under clause 55, short term development must not be approved if it poses a significant risk to the environment or human health.

Clause 54

Repeal of local coastal plans

If there is no disallowance motion within the stipulated time periods or a disallowance motion is defeated, the final local coastal plan comes into operation.
Clause 54 Certain exempt development must not be approved

Under clause 54, exempt development must not be approved if it is at significant risk of harming or being harmed by coastal processes unless the responsible authority is satisfied that it meets prescribed standards for reasonable resistance to damage from coastal hazards for the duration of its expected life.

Clause 55 Responsible authority must advise of effect of the Act

Under clause 55, before a responsible authority grants approval for any development in the transition zone, it must give the applicant for approval notice of the relevant provisions of the Act, including that the development may have to be removed or abandoned under the regulations or in accordance with a coastal protection notice (see below Part 5).

Division 2 Transactions relating to short-term development

Clause 56 Maximum term for lease or licence

Clause 56 sets out the maximum length of lease or licence that may be granted in relation to short-term development in the transition zone.

Clause 57 Acknowledgment in lease or licence

Clause 58 acknowledges in lease or licence that any short-term development on the land may have to be removed or abandoned.

Division 3 Land surrender (clauses 59–65)

This division relates to a land surrender condition for coastal management purposes that may be applied to approvals for subdivision or amalgamation of lots within the transition zone.

Clause 59 Minister may approve inclusion of land surrender condition

Clause 59 provides that the Minister may approve a condition to a land surrender condition (for coastal management purposes) that may be applied to approvals for subdivision or amalgamation of lots within the transition zone.

Clause 60 Notice of condition about land surrender

Clause 60 provides that before a decision is made on an application for approval to subdivide or amalgamate a lot in the transition zone, notice of the condition about land surrender must be given to the applicant.

Clause 61 Criteria for decision

Clause 61 provides that in deciding whether to include a land surrender condition, the Minister must consider whether the surrender of the land would avoid or minimise detrimental impact on coastal management and coastal processes.

Clause 62 Transactions relating to short-term development

Clause 62 regroups the provisions of the PAD Act that provide protection for coastal management purposes under the Division 2 of the Act, including the requirement for notice of the condition about land surrender.

Clause 63 Certain exempt development must not be approved

Clause 64 provides that certain exempt development must not be approved unless the responsible authority is satisfied that it meets prescribed standards for reasonable resistance to damage from coastal hazards for the duration of its expected life.
Clause 63 Notice of decision about land surrender

Clause 63 provides that notice of a decision about whether or not a land surrender condition will be imposed must be given to the applicant with all relevant details relating to the decision.

Clause 64 When land surrender condition may not be included

Clause 64 sets out the circumstances in which a land surrender condition may not be made.

Clause 65 Surrendered land to be dedicated for coastal management purposes

Under clause 65, land subject to a land surrender condition vests in the State and must be reserved under any applicable local planning scheme for the public purpose of coastal management.

Part 5
Coastal protection notices (clauses 66–72)

This part provides that if short term development on land in the transition zone is damaged by the impact of a coastal hazard, the WAPC may cause a coastal protection notice to be given requiring the owner, occupier or other person to remove the development and restore the land to its previous condition. Clause 66(6) provides that any person who does not comply with a coastal protection notice is subject to a fine.

Under clauses 67 and 68 a coastal protection notice may be amended or reviewed.

Under clause 69, a coastal protection notice must be registered on the title of the land to which it relates.

Clause 70 sets out the duties of a person who ceases to be the owner or occupier of land to which a coastal protection notice relates.

Under clause 71, the WAPC must keep a record of the prescribed particulars of a coastal protection notice.

Clause 72 provides that if action that is required to be taken under a coastal protection notice is not taken, the WAPC may cause that action to be taken and recover the cost of taking that action from any person bound by the notice.

Part 6
Miscellaneous (clauses 73–77)

There are 3 important provisions in this part:

Clause 73 Role of EPA

Clause 73 provides that the EPA must keep itself informed and advise relevant public authorities of changes to coastal climate science and the impact of those changes on proposed performance of a function under the Act, and the other matters set out in clause 74(3).

Clause 74 Protection from liability

Clause 74 provides that the EPA must keep itself informed and advise relevant public authorities of changes to coastal climate science and the impact of those changes on proposed performance of a function under the Act, and the other matters set out in clause 74(3).

Clause 75 Role of EPA

There are 3 important provisions in this part:

Clause 76 Coastal protection notice duties

Any person bound by the notice:

Under clause 66, the WAPC may cause the action to be taken and recover the cost of taking that action from the person who did not comply with the notice.

Clause 77 Coastal protection notice duties

The WAPC must keep a record of the prescribed particulars of a coastal protection notice and publish particulars of that record.

Under clause 72, the WAPC must keep a record of the prescribed particulars of a coastal protection notice.

Part 5 – Coastal protection notices (clauses 66–72)

This part provides that if short term development on land in the transition zone is damaged by the impact of a coastal hazard, the WAPC may cause a coastal protection notice to be given requiring the owner, occupier or other person to remove the development and restore the land to its previous condition.

Clause 66 Surrounded land to be dedicated for coastal management purposes

Under clause 65, land subject to a land surrender condition vests in the State and must be reserved under any applicable local planning scheme for the public purpose of coastal management.

Clause 67 When land surrender condition may not be included

Clause 67 sets out the circumstances in which a land surrender condition may not be made.

Clause 68 Notice of decision about land surrender

If a decision is made by the WAPC to impose a land surrender condition, notice of that decision must be given to the applicant.

Clause 69 Deadline for filing objections

Any person who wishes to object to the imposition of a land surrender condition must file an objection within the specified period.

Clause 70 Enforcement of land surrender condition

The WAPC has the power to enforce the land surrender condition, and may take action to ensure compliance with the condition.
The rationale for including the "protection from liability" provision is to enable public authorities to act in accordance with the Act without fear of liability either way.

Clause 75 No compensation for injurious affection

Western Australia is the only state that still retains a provision in the PAD Act for compensation to be paid to owners for "injurious affection" arising as a result of rezoning of their land. Clause 75 provides that no compensation is payable in respect of land that is injuriously affected by the making or amendment of the WA coastal plan or a local coastal plan.

It is recognised that striking a balance between achieving essential adaptation outcomes, making or amendment of the WA coastal plan or a local coastal plan, respecting property rights and avoiding the creation of compensable rights under new regulatory schemes is difficult. It is also recognised that the impacts of climate change are not equally borne. The state cannot be legally liable for compensation every time loss occurs as a result of a natural disaster.

Excluding compensation for injurious affection arising from compliance with this Act also brings Western Australia into line with other states.

The other provisions in this Part relate to the making of regulations (clause 76) and the review of the Act (clause 77) which is required every 5 years.

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