

Submission on the Marine Estate Management Act Review

September 2020

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Opening

Local Government NSW (LGNSW) is the peak body for local government in NSW, representing NSW general purpose councils and related entities. LGNSW facilitates the development of an effective community-based system of local government in the State.

LGNSW welcomes the opportunity to provide input to the review of the *Marine Estate Management Act 2014*. Councils play a pivotal role in the management of the marine estate including the protection of marine biodiversity, the restoration of coastal habitats, the adaptation to climate change, and managing stormwater and marine debris.

As managers and planners of the coastal zone, councils are strong advocates for working collaboratively and transparently with all levels of government, regional bodies, industry and the community to deliver positive outcomes for the marine environment. Clear legislation that enables and supports that collaboration is vital, as is the commitment from the NSW Government to transparently oversee, administer and implement the legislation.

Background

The *Marine Estate Management Act 2014* (the Act) provides for the strategic and integrated management by the NSW Government of the marine estate of NSW (marine waters, coasts and estuaries), and the declaration and management of marine parks and aquatic reserves.

Section 84 of the Act requires the Act to be reviewed after five years of the Act commencing, to “determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives”.

The NSW Government has elected to conduct targeted stakeholder consultation on these matters to inform the review, which included LGNSW. We have consulted with coastal councils and other local government organisations such as the Sydney Coastal Councils Group to prepare this response.

Scope of review

Section 3 provides the objects of the Act, as follows:

1. to provide for the management of the marine estate of New South Wales consistent with the principles of ecologically sustainable development in a manner that:
 - a. promotes a biologically diverse, healthy and productive marine estate, and
 - b. facilitates:
 - economic opportunities for the people of New South Wales, including opportunities for regional communities, and
 - the cultural, social and recreational use of the marine estate, and
 - the maintenance of ecosystem integrity, and
 - the use of the marine estate for scientific research and education,
2. to promote the coordination of the exercise, by public authorities, of functions in relation to the marine estate,
3. to provide for the declaration and management of a comprehensive system of marine parks and aquatic reserves.

LGNSW understands the “terms of the Act” (s84) to refer to the provisions in the Act i.e. the mechanisms by which the objects are to be achieved. This includes sections of the Act which instruct:

- the establishment of the Marine Estate Management Authority
- the preparation and implementation of the Marine Estate Management Strategy
- the declaration and management of marine parks and reserves.

This submission therefore also makes comment on the composition of the Act and whether this is sufficient and appropriate to achieve the objectives.

Response

Act Objectives

The objects of the Act are largely appropriate. They recognise that the marine environment has ecological, social and economic values, multiple uses and a range of activities on- and off-shore that can influence these values and uses. These activities are managed, conducted and regulated by a wide array of individuals and organisations.

There is an opportunity with the current review to make the links between the MEM Act and the Coastal Management Act 2016 (CM Act) more explicit. This would help to clarify responsibilities under the respective Acts and facilitate better leadership and coordination of actions for sustainable management of our marine estate.

There is significant overlap between the marine estate and at least two of the coastal management areas identified in the CM Act (coastal wetlands and littoral rainforests and coastal environment area; much of the coastal vulnerability area would also lie within the marine estate). While the MEM Act preceded the CM Act, the policy objectives of MEMA, as well as the objects of the CM Act, should be consistent.

Recommendation 1: Include a new object, mirroring that of the CM Act: “Object (d) to support the objects of the Coastal Management Act 2016 and the management objectives for the Coastal Environment Area”.

Object 2 is to ‘*promote* the coordination’ of public authorities in exercising their functions in relation to the marine estate. A key concern of councils in relation to the Act is the lack of coordination and delivery of actions under the Marine Estate Management Strategy (MEMS), and a lack of commitment to consult and engage councils. This is particularly pertinent when councils have sought progress and outcomes from MEMS actions to assist in the development of Coastal Management Programs.

The Act defines public authorities, which includes government departments and “(d) the trustee or trustees of land reserved or dedicated for any public use or purpose”: the latter would include councils where they are managers of Crown Land or other public reserves. However, councils are responsible for preparing and coordinating delivery of Coastal Management Programs (CMPs) which outline measures to manage the coast which are broader than just management of public reserves. CMPs can include actions to stabilise foreshore areas, reduce erosion and sediment into estuaries and coastal waters, or invasive species control. Many, if not all, these actions can impact on the health and function of the marine environment.

Recommendation 2: Strengthen Object 2 to “facilitate and build capacity of public authorities to coordinate their functions in relation to the marine estate, and to encourage greater collaboration with councils”.

Object 3 refers to declaration of a “comprehensive system” of marine parks and reserves. Australia is signatory under the International Convention of Biodiversity and therefore has committed to implementing CAR principles – comprehensive, adequate, representative - in reserve management. Object 3 should reflect that commitment.

Recommendation 3: Expand Object 3 to refer to a ‘comprehensive, adequate and representative system...’.

Terms of the Act

Governance

The MEM Act is the responsibility of Minister for Agriculture and Western NSW and the Minister for Energy and Environment, while the CM Act is currently the responsibility of the Minister for Local Government. It would be helpful if all the coastal and marine legislation were with one Minister so there is a clear line of Ministerial responsibility.

Recommendation 4: Identify a single lead Minister for the Marine Estate Management Act.

Marine Estate Management Authority

The Act provides for the establishment and operation of the Marine Estate Management Authority, which was originally intended to be a multi-agency oversight body to deliver a shared vision for the marine estate, and to promote collaboration and co-ordination between public authorities. However machinery of government changes have meant the various agencies have been combined, resulting in a perceived lack in prioritising the work of MEMA amongst the new departments.

Strong coordination across agencies would assist with delivery, and a lead contact for MEMA could drive communication and engagement between agencies and with external stakeholders.

Recommendation 5: Establish a lead contact for MEMA to drive communication and engagement, and to also encourage greater transparency with regards to MEMS outcomes.

Marine Estate Management Strategy

Part 3 of the Act provides for the development and implementation of a Marine Estate Management Strategy (MEMS). A ten year strategy was endorsed in 2018, and an implementation plan developed to deliver Stage 1 actions in the Strategy.

The Implementation Plan (September 2019) stated that Stage 1 actions would be delivered by 30 June 2020. As at end April 2020, the Stage 1 status update report for local government (initiatives 1-3) indicated that less than 25% of actions for the Sydney region were complete. More [recent reporting](#) (to 30 June 2020) presents a more positive picture across NSW, however the earlier delays have had consequences for councils in their role of contributing to

marine estate management through the preparation and implementation of Coastal Management Programs (CMP).

The *Coastal Management Act 2016* outlines that the purpose of a CMP is to set the long term strategy for the coordinated management of land within the coastal zone with a focus on achieving the objects of that Act, which include:

- ensuring co-ordination of the policies and activities of government and public authorities relating to the coastal zone and to facilitate the proper integration of their management activities (3j).
- supporting the objects of the *Marine Estate Management Act 2014* (3m).

Clearly there is an intention for CMPs and the MEMS to align and support one another to deliver improved outcomes for the coastal and marine environments. CMPs can regionally deliver on the majority of the nine initiatives identified in the MEM Strategy including improving water quality, planning for climate change and delivering effective governance. In addition, the MEM Act aims to drive coastal science and other social, cultural, and economic research by state agencies. Unfortunately, integration with work being undertaken by councils through coastal management planning and related projects is not being used to inform MEMA efforts, nor are the outcomes of MEMA investment being adequately used to inform local Councils either in the implementation of best practice or in coastal planning directions.

The delays in delivery of Marine Estate Management Strategy Stage 1 actions have also meant certain information and policy settings have not been available for councils as they prepare CMPs, and councils have also raised concerns whether these delays will affect timely certification of their CMPs.

Recommendation 6: Greater collaboration and transparency between councils and MEMA is needed to ensure that the Marine Estate Management Strategy and CMPs align and work at local, catchment and statewide scales to collectively reduce priority threats to the marine environment.

Recommendation 7: Creation of a Local Government and MEMA Communications and Engagement Plan, developed in consultation with councils and other catchment groups, would set an appropriate framework to enhance future collaborations.

Threat and Risk Assessment

Part 4 of the Act relates to the Threat and Risk Assessment (TARA), and clauses in this section include a review of the TARA not more than ten years after the initial one was prepared. As part of this review, there is value in referring to the risk assessment processes required for CMPs, as detailed in the Coastal Management Manual, such that the scale of the statewide TARA and local government risk assessment complement each other. For councils to implement the MEM Strategy in their CMPs they need to be involved in TARA and MEM Strategy processes.

Recommendation 8: The Threat and Risk Assessment review include complementary risk assessment processes to catchment management programs, acknowledging that they are operating at different scales.

Management Plans

Section 48 outlines the content of marine park/reserve management plans. It is critical that these management plans talk to relevant NPWS management plans and relevant CMP.

<p>Recommendation 9: That s48(f) (any other matters) note the important links to CMPs and related terrestrial Plans of Management (National Park, or Crown Land).</p>
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Conclusion

Local Government NSW welcomes the opportunity to provide input to the review of the Marine Estate Management Act, particularly given the review process was confined to targeted stakeholders. As outlined in our submission, the Act remains largely valid however there are elements which could be improved on. This review offers an excellent opportunity to link provisions in the Coastal Management Act with those in the MEM Act. They should complement each other in unambiguous ways to ensure all public authorities are able to apply provisions in a consistent way.

Steps could also be taken to improve the operational efficiency of MEMA decision-making, information gathering and sharing, to assist local councils with their responsibilities in managing parts of the Marine Estate. We would strongly encourage MEMA and corresponding government agencies to consult with councils on the implementation of the Marine Estate Management Strategy and strengthen links with Coastal Management Programs.

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