



New South Wales

# Contaminated Land Management Amendment Act 2008 No 111

## Contents

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	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Contaminated Land Management Act 1997 No 140	2
4 Amendment of instruments	2
5 Repeal of Act	2
Schedule 1 Amendment of Contaminated Land Management Act 1997	3
Schedule 2 Amendment of instruments	46

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New South Wales

# **Contaminated Land Management Amendment Act 2008 No 111**

Act No 111, 2008

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An Act to amend the *Contaminated Land Management Act 1997* to promote the better management of contaminated land and to amend certain other instruments; and for other purposes. [Assented to 10 December 2008]

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**The Legislature of New South Wales enacts:****1 Name of Act**

This Act is the *Contaminated Land Management Amendment Act 2008*.

**2 Commencement**

- (1) This Act commences on a day or days to be appointed by proclamation except as provided by subsection (2).
- (2) Schedule 1 [5], [10], [13], [27], [29]–[31], [34], [36], [37], [40], [42], [44], [45], [48]–[55] and [57]–[61] commence on the date of assent to this Act.

**3 Amendment of Contaminated Land Management Act 1997 No 140**

The *Contaminated Land Management Act 1997* is amended as set out in Schedule 1.

**4 Amendment of instruments**

Each instrument specified in Schedule 2 is amended as set out in that Schedule.

**5 Repeal of Act**

- (1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.
- (2) The repeal of this Act does not, because of the operation of section 30 of the *Interpretation Act 1987*, affect any amendment made by this Act.

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## Schedule 1      Amendment of Contaminated Land Management Act 1997

(Section 3)

**[1] Section 3 Objects of this Act**

Omit “areas where contamination presents a significant risk of harm to human health or some other aspect of the environment” from section 3 (1).

Insert instead “that the EPA considers to be contaminated significantly enough to require regulation under Division 2 of Part 3”.

**[2] Section 3 (2) (a)**

Omit “a significant risk of harm is identified”.

Insert instead “the EPA considers the contamination is significant enough to require regulation under Division 2 of Part 3”.

**[3] Section 3 (2) (b)**

Omit “, remediation”.

**[4] Section 4 Definitions**

Omit the definitions of *appropriate person*, *Director-General*, *interested person* or *person interested*, *investigation area*, *investigation order*, *notional owner*, *remediation order* and *remediation site*.

Insert in alphabetical order:

*appropriate person* means a person specified in accordance with section 13 as a person who is to be the subject of a management order.

*approved use* of land means a use to which the subject land may be put without approval or development consent under Part 3A or 4 of the *Environmental Planning and Assessment Act 1979*.

*approved voluntary management proposal* means a voluntary management proposal that has been approved by the EPA under section 17, as modified by any conditions imposed by the EPA under that section.

*costs* include expenses.

*Department* means the Department of Environment and Climate Change.

*Director-General* means the Director-General of the Department.

*interested person* means, in relation to land, a person referred to in section 13 (2) (a), (b) or (c).

**management** of land or of contamination of land means management in relation to the actual or possible contamination of the land, including investigation into the existence, nature and extent of contamination of the land and remediation of contaminated land.

**management order** means an order under section 14 (1).

**notional owner**—see section 7.

**ongoing maintenance order** means an order under section 28 (2).

**preliminary investigation order** means an order under section 10 (1).

**significant contaminant** and **significant contamination**—see section 11 (3).

**significantly contaminated land** means land described in a notice having effect under section 11.

**site audit** means a review:

- (a) that relates to management (whether under this Act or otherwise) of the actual or possible contamination of land, and
- (b) that is conducted for the purpose of determining any one or more of the following matters:
  - (i) the nature and extent of any contamination of the land,
  - (ii) the nature and extent of any management of actual or possible contamination of the land,
  - (iii) whether the land is suitable for any specified use or range of uses,
  - (iv) what management remains necessary before the land is suitable for any specified use or range of uses,
  - (v) the suitability and appropriateness of a plan of management, long-term management plan or a voluntary management proposal.

**site audit report** means a site audit report prepared by a site auditor in accordance with Part 4.

**site audit statement** means a site audit statement prepared by a site auditor in accordance with Part 4.

**site auditor** means a person for the time being accredited under Part 4 as a site auditor.

**voluntary management proposal**—see section 17 (1).

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**[5] Section 4 (2) and (3)**

Insert at the end of section 4:

- (2) The power of the EPA to order a person to take specified action under Part 3 includes a power to order the person to refrain from taking specified action.
- (3) Notes included in this Act do not form part of this Act.

**[6] Sections 6–9**

Omit Part 2. Insert instead:

**6 Responsibility for contamination of land**

- (1) For the purposes of this Act, a person is responsible for contamination of land (whether or not the contamination is significant contamination) if any one or more of the following is true:
  - (a) the person caused the contamination of the land (whether or not any other person also caused the contamination of the land),
  - (b) the contamination occurred because an act or activity of the person resulted in the conversion of a substance that did not cause contamination of the land into a substance that did cause contamination of the land,
  - (c) the person is the owner or occupier of the land and the person knew or ought reasonably to have known that contamination of the land would occur and the person failed to take reasonable steps to prevent the contamination,
  - (d) the person carried on activities on the land that generate or consume:
    - (i) the same substances as those that caused the contamination, or
    - (ii) substances that may be converted, by reacting with each other or by the action of natural processes on the land, into substances that are the same as those that caused the contamination,unless it is established that the contamination was not caused by the person.
- (2) For the purposes of this Act, a person is also responsible for significant contamination of land if either or both of the following is true:

- (a) the significant contamination occurred because an act or activity of the person resulted in a change in some pre-existing contamination of the land so that the contamination of the land became significant contamination,
  - (b) the significant contamination occurred because an act or activity of the person resulted in a change in the approved use of the land and the consequent increase in the risk of harm caused the EPA to identify the land as significantly contaminated land (even if the contamination itself did not change).
- (3) In determining whether a person is responsible for contamination of land, it is irrelevant that the contamination did not arise contemporaneously with the act, activity or omission of the person that ultimately was responsible for (or is taken to be responsible for) the contamination of the land.
  - (4) An act referred to in subsection (2) (b) includes the making of an application for an approval under Part 3A, or for development consent under Part 4, of the *Environmental Planning and Assessment Act 1979*.
  - (5) A public authority or Minister does not become a person referred to in subsection (2) (b) merely by giving an approval or consent, or concurring in the giving of consent under the *Environmental Planning and Assessment Act 1979*.
  - (6) A person who is responsible for contamination continues to be responsible for that contamination under this Act whether or not the person has entered a contract or other arrangement that provides for some other person to be responsible for the contamination or for any harm caused by the contamination.

## 7 Concept of notional owner

- (1) For the purposes of this Act, a **notional owner** of land is a person who is a mortgagee in possession of the land or who has a vested interest with respect to the land:
  - (a) that carries an entitlement to have a freehold interest in the land vested in the person, or
  - (b) that enables the person to dispose of or otherwise deal with a freehold interest in the land,so that the person is able to benefit from the value of the land, or a substantial portion of it, by such vesting, disposal or dealing.

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- (2) Despite subsection (1), a person is not a notional owner of land:
- (a) if the person, not being a mortgagee in possession of the land, is the owner of the land or is the Crown or a person or body representing the Crown, or
  - (b) merely because the person has a security (such as a mortgage, charge or lien) over the land, or
  - (c) merely because the person is a legal personal representative of a person who was an owner of the land immediately before the person's death or the appointment of the representative took effect, or
  - (d) merely because the person is the Public Trustee and the land is deemed to be vested in the Public Trustee by the operation of section 61 of the *Probate and Administration Act 1898*, or
  - (e) if the person would otherwise be a notional owner of land, but:
    - (i) the person has some security over the land, and
    - (ii) the person (or a financial controller appointed by the person) has entered into a contract to sell the land for the purpose of realising part or all of the value of the land in order to discharge the obligation so secured.
- (3) In subsection (2) (e) (ii), **financial controller** means a receiver, manager or other person who has possession or control of land for the purpose of realising part or all of the value of the land in order to discharge an obligation secured over the land.

## 8 General functions of EPA

- (1) It is the duty of the EPA to do the following in a manner and to an extent reasonable in the circumstances:
- (a) examine, and respond to, information that it receives of actual or possible contamination of land,
  - (b) address any contamination that the EPA considers to be significant enough to require regulation under Division 2 of Part 3,
  - (c) record what it has done under paragraphs (a) and (b) and the reasons for it.
- (2) It is the duty of the EPA to respond to a person (other than the EPA or an authorised officer) who has furnished information referred to in subsection (1). The response must:
- (a) be made in a reasonable time, and

- (b) state what the EPA has done in relation to the information and the reasons for doing it, and
  - (c) be in writing if the information was in writing.
- (3) In addition to any functions the EPA has under this or any other Act, the EPA may take such reasonable steps as it considers necessary in relation to investigating or managing contamination of land (including significantly contaminated land) or the threat of harm from any such contamination.

**9 Need to maintain ecologically sustainable development**

- (1) The EPA is to have regard to the principles of ecologically sustainable development in the exercise of its functions under this Act and is to seek the implementation of those principles in the management by other persons of contaminated land.
- (2) In this section, *ecologically sustainable development* and the *principles and programs* that relate to it are to be construed according to their meanings in the statements of principle set out in subsection (3) (the *principles of ecologically sustainable development*).
- (3) Ecologically sustainable development requires the effective integration of economic and environmental considerations in decision-making processes. Ecologically sustainable development can be achieved through the implementation of the following principles and programs:
  - (a) the precautionary principle—namely, that if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation. In the application of the precautionary principle, public and private decisions should be guided by:
    - (i) careful evaluation to avoid, wherever practicable, serious or irreversible damage to the environment, and
    - (ii) an assessment of the risk-weighted consequences of various options,
  - (b) inter-generational equity—namely, that the present generation should ensure that the health, diversity and productivity of the environment are maintained or enhanced for the benefit of future generations,
  - (c) conservation of biological diversity and ecological integrity—namely, that conservation of biological

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diversity and ecological integrity should be a fundamental consideration,

- (d) improved valuation, pricing and incentive mechanisms—namely, that environmental factors should be included in the valuation of assets and services, such as:
- (i) polluter pays—that is, those who generate pollution and waste should bear the cost of containment, avoidance or abatement,
  - (ii) the users of goods and services should pay prices based on the full life cycle of costs of providing goods and services, including the use of natural resources and assets and the ultimate disposal of any waste,
  - (iii) environmental goals, having been established, should be pursued in the most cost effective way, by establishing incentive structures, including market mechanisms, that enable those best placed to maximise benefits or minimise costs to develop their own solutions and responses to environmental problems.

**[7] Part 3, heading**

Omit the heading. Insert instead:

**Part 3 Management of contaminated land**

**[8] Part 3, Divisions 1 and 2**

Omit the Divisions. Insert instead:

**Division 1 Preliminary investigation of land**

**10 Preliminary investigation orders**

- (1) The EPA may, by order in writing served on a person, direct the person to conduct a preliminary investigation of land specified in the order (the *specified land*) within the time specified in the order to:
- (a) investigate whether the land is contaminated with the substances specified in the order (the *specified substances*) being the substances that the EPA reasonably suspects contaminate the specified land, and
  - (b) investigate the nature and extent of any such contamination, and

- (c) provide to the EPA such information with respect to the investigation as it may require.
- (2) A substance may be specified in a preliminary investigation order by reference to a chemical group of related substances if the EPA reasonably suspects that the specified land is contaminated with one or more of the substances in that group. In such a case each substance in that group is taken to be a specified substance for the purposes of this section.
- (3) A preliminary investigation order may be served on any one or more of the following persons:
  - (a) a person who the EPA reasonably suspects may have been responsible for contamination of the land with the specified substance,
  - (b) an owner of the specified land,
  - (c) a notional owner of the specified land,
  - (d) a person who carried on activities on the specified land, but only if the activities are of the sort that:
    - (i) generate or consume the same substance as a specified substance, or
    - (ii) generate or consume substances that may be converted by reacting with each other or by the action of natural processes on the land into the same substance as any of the specified substances,
  - (e) a public authority.
- (4) In the application of Divisions 5–7 to a preliminary investigation order, any reference in those Divisions:
  - (a) to significantly contaminated land is taken to be a reference to the specified land, and
  - (b) to an appropriate person is taken to be a reference to a person on whom a preliminary investigation order may be served.
- (5) A person (other than a public authority that is not a person referred to in subsection (3) (a)–(d)) must not, without reasonable excuse, fail to comply with a preliminary investigation order.

Maximum penalty:

  - (a) in the case of a corporation—625 penalty units and, in the case of a continuing offence, a further penalty of 300 penalty units for each day the offence continues, or

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- (b) in the case of an individual—300 penalty units and, in the case of a continuing offence, a further penalty of 150 penalty units for each day the offence continues.
  - (6) Without limiting subsection (5), a person has a reasonable excuse if the person was unable to enter land because of the refusal of access to the land by its occupier in circumstances where entry to that land was essential to enable the person to comply with the relevant part of the preliminary investigation order.

## **Division 2      Regulation of significantly contaminated land**

### **11    Declaring land to be significantly contaminated land**

- (1) If the EPA has reason to believe that land is contaminated and that the contamination is significant enough to warrant regulation under this Division, the EPA may declare the land to be significantly contaminated land.
- (2) The declaration is to be made by notice published in the Gazette that:
  - (a) describes with reasonable particularity the land that is to be significantly contaminated land, and
  - (b) specifies the substances that the EPA has reason to believe contaminate the land in such a way as to warrant regulation under this Division, and
  - (c) states the harm that the EPA has reason to believe has been, or may be, caused by the substances, and
  - (d) advises that declaring the land to be significantly contaminated land does not prevent the carrying out of voluntary management of the land by any person, and
  - (e) advises that any person may, within a period (not being less than 21 days) specified in the notice, make submissions to the EPA on whether the EPA should serve a management order in relation to the land or on any other matter concerning the land.
- (3) Each substance that is specified in the notice under this section is a ***significant contaminant*** and the actual or possible contamination of the land by the significant contaminant is ***significant contamination***.
- (4) The EPA is to serve a copy of the notice on:
  - (a) the owner of the land (or, if the EPA does not know the identity or address of the owner, the notional owner of the

land, if any, whose identity and address are known to the EPA), and

- (b) those persons (whose identities and addresses are known to the EPA) who the EPA has reason to believe are responsible for significant contamination of the land, and
  - (c) the occupier of the land, and
  - (d) the local authority in relation to the land, and
  - (e) if the EPA has reason to believe that a significant contaminant of land originates from the use of a cattle dip site on the land in relation to a treatment ordered under the *Stock Diseases Act 1923*—the Director-General of the Department of Primary Industries.
- (5) The EPA is to publish a policy on the Department's website on the Internet setting out how it intends to notify the public about:
- (a) land that it has declared to be significantly contaminated land, and
  - (b) land that has ceased to be significantly contaminated land, and it is to notify the public in accordance with that policy. However, failure to comply with this subsection does not invalidate any notice under this section.

**12 Matters to be considered before declaring land to be significantly contaminated land**

- (1) Before declaring land to be significantly contaminated land under section 11, the EPA is to take into account any relevant guidelines and each of the following matters with respect to the substances that the EPA believes cause the land to be contaminated:
- (a) whether the substances have already caused harm (for example in the form of toxic effects on plant or animal life),
  - (b) whether the substances are toxic, persistent or bioaccumulative or are present in large quantities or high concentrations or occur in combinations,
  - (c) whether there are exposure pathways available to the substances (that is, the routes whereby the substances may proceed from the source of the contamination to human beings or other aspects of the environment),
  - (d) whether the uses to which the land and land adjoining it are currently being put are such as to increase the risk of harm

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from the substances (for example, use for child care, dwellings or domestic food production),

- (e) whether the approved uses of the land and land adjoining it are such as to increase the risk of harm from the substances,
  - (f) whether the substances have migrated or are likely to migrate from the land (whether because of the nature of the substances or because of the nature of the land).
- (2) The EPA may declare land to be significantly contaminated land under section 11 even if the possible harm could come into existence only in certain circumstances of occupation or use of the land and those circumstances do not exist at that time. However, the circumstances must be reasonably foreseeable, and consistent with the approved use of the land, at that time.

**13 Choice of appropriate person to be made subject to management order**

- (1) If the EPA makes a management order in respect of significantly contaminated land, the order must specify one or more appropriate persons (or public authorities that are not appropriate persons) as the subject of the management order.
- (2) The EPA is to choose the appropriate persons from among the following persons:
  - (a) a person who is responsible for significant contamination of the land (whether or not there may be other persons who are also responsible),
  - (b) an owner of the land (whether or not the person is responsible for contamination of the land),
  - (c) a notional owner of the land (whether or not the person is responsible for contamination of the land).
- (3) In determining the appropriate persons, the EPA is, as far as practicable, to specify a person referred to in subsection (2) (a) over a person referred to in subsection (2) (b) or (c) and to specify a person referred to in subsection (2) (b) over a person referred to in subsection (2) (c).
- (4) For the purposes of this section, it is not practicable to specify a person if:
  - (a) there is no such person, or
  - (b) the EPA cannot, after reasonable inquiry, find out the identity or location of the person, or

- (c) the person, in the opinion of the EPA, is unable to pay the person's debts or would, if the person took steps to comply with the management order, become unable to pay the person's debts.
- (5) Despite subsection (2), in the case where a significant contaminant of the land originates from the use of a cattle dip site on the land in relation to a treatment ordered under the *Stock Diseases Act 1923*, the appropriate person is:
  - (a) except in the case referred to in paragraph (b)—the Director-General of the Department of Primary Industries, or
  - (b) if a person is responsible for significant contamination of the land (whether or not there are other persons who are responsible for such contamination of the land) because of the operation of section 6 (2) (b)—that person.
- (6) Any public authority may be specified as the subject of a management order whether or not as an appropriate person.

**Note.** A person (including a public authority) who takes action concerning land may have rights of recovery against any relevant contaminator of the land—see Division 6.

#### 14 Management orders

- (1) The EPA may, by order in writing served on a person who is an appropriate person or a public authority, direct the person to do one or both of the following in relation to significantly contaminated land, within such reasonable time as is specified in the order:
  - (a) carry out any action in relation to the management of the land that may be specified in the order in accordance with this Division,
  - (b) submit for the EPA's approval a plan of management of the land (a *plan of management*).
- (2) The EPA must serve a copy of the management order on each of the following persons in addition to any person on whom the management order has been served under subsection (1):
  - (a) the owner of the land (or, if the EPA does not know the identity or address of the owner, any notional owner of the land whose identity and address are known to the EPA), and
  - (b) those persons (whose identities and addresses are known to the EPA) who the EPA has reason to believe may be responsible for the significant contamination of the land.

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- (3) A management order may adopt, with or without modification, a plan of management submitted in accordance with a previous management order or, at the discretion of the EPA, a plan recommended by the EPA or submitted by a site auditor.
  - (4) The EPA must not serve a management order on a person unless it has considered any submissions it has received in accordance with section 11 (2) (e) as to whether the management order should be made.
  - (5) Despite subsection (4), the EPA may serve a management order on a person at any time if it considers that it is in the public interest to do so.
  - (6) A person (other than a public authority that is not an interested person with respect to the relevant land) served with a management order must not, without reasonable excuse, fail to comply with the order.  
Maximum penalty:
    - (a) in the case of a corporation—1,250 penalty units and, in the case of a continuing offence, a further penalty of 600 penalty units for each day the offence continues, or
    - (b) in the case of an individual—600 penalty units and, in the case of a continuing offence, a further penalty of 300 penalty units for each day the offence continues.
  - (7) Without limiting subsection (6), a person has a reasonable excuse if the person was unable to enter land because of the refusal of access to the land by its occupier in circumstances where entry to that land was essential to enable the person to comply with the relevant part of the management order.
  - (8) If land ceases to be significantly contaminated land, all management orders in force in relation to the land cease to have effect.

**15 Details of management order**

- (1) A management order must specify the following matters:
  - (a) the significantly contaminated land to which it applies,
  - (b) the nature of the significant contamination (and the nature of any harm that has been or may be caused) that the EPA believes may affect the land,
  - (c) the action that the person subject to the management order must take,

- (d) a reasonable period for taking that action,
  - (e) any other matter prescribed by the regulations.
- (2) The period for taking action must exceed by a reasonable amount the period for lodging an appeal against the management order, except if the EPA considers that the nature of the harm or possible harm presented by the contamination is so serious that, in the public interest, action during the period for lodging an appeal is necessary.
- Note.** Part 6 provides for appeals.
- (3) A management order does not confer power on the person subject to it to enter or do anything on land, for the purposes of giving effect to the management order, without the consent of the occupier of the land.

#### **16 Actions that may be required by management order**

Without limiting section 14 or 15, a management order may require a person who is subject to the order to do any one or more of the following:

- (a) to investigate the existence, nature and extent of any significant contamination of the significantly contaminated land to which the order relates,
- (b) to investigate the nature and extent of any harm that has been or may be caused by the significant contamination of the land,
- (c) to investigate the most appropriate means for undertaking remediation of the land,
- (d) to carry out remediation of the land,
- (e) to monitor the effectiveness of any remediation or the risk of harm presented by the significant contamination of the land,
- (f) to erect a fence, wall, bund or other barrier in a specified place on the land,
- (g) to treat, store or contain on the land, or remove from the land and treat or dispose of, any solid or liquid materials including any soil, sand, rock or water,
- (h) to vacate, or cease to carry on any activity on, the land or any part of it,
- (i) to display on the land any specified sign or notice,
- (j) to refrain from disturbing or further disturbing the land in a specified manner or below a specified depth,

- (k) to enter any specified land (which may, but need not, be the significantly contaminated land) in order to carry out the management order,
- (l) to serve notice of the management order on those persons who occupy land, access to which is necessary for the person to carry out the management order,
- (m) to have specified actions audited by a site auditor under Part 4,
- (n) to make progress reports to the EPA,
- (o) if the person finds that groundwater is contaminated, to report that fact to the Minister administering the *Water Management Act 2000*,
- (p) to make available for inspection by any person, free of charge, a report on the action taken under the management order, or the plan of management, and provide a copy of such a report or plan to any person for a reasonable fee,
- (q) to advertise and conduct meetings for the public to receive progress reports, and to make comments, on the action taken under the management order or on the plan of management,
- (r) to inform the EPA of any change in the ownership or occupancy of the land, to the extent that the person is aware of the change.

#### **17 Voluntary management proposals**

- (1) This section applies where one or more persons furnish the EPA with a proposal for the management of significantly contaminated land (a ***voluntary management proposal***).
- (2) The EPA may approve a voluntary management proposal in respect of one or more of the parties to the proposal (an ***approved party***).
- (3) The EPA may approve a voluntary management proposal unconditionally or subject to conditions by notice in writing served on each approved party.
- (4) The EPA must not approve a voluntary management proposal unless it is satisfied that:
  - (a) the terms of the voluntary management proposal, as modified by any conditions to be imposed by the EPA, are appropriate (including any plan of management, provision for giving notice and terms setting out a timetable or requiring progress reports), and

- (b) the parties to the proposal have taken all reasonable steps to identify and find every owner and notional owner of the land and every person responsible for significant contamination of the land, and
  - (c) the parties to the proposal have given those persons identified and found a reasonable opportunity to participate in the formulation and carrying out of the proposal on reasonable terms.
- (5) Despite subsection (4), the EPA may approve a voluntary management proposal even if it is not satisfied as to the matters set out in subsection (4) (b) and (c), but only if the EPA makes it a condition of its approval that the parties to the proposal cannot recover contributions under Division 6.
- (6) The EPA may serve a management order in relation to significantly contaminated land that is the subject of an approved voluntary management proposal but only on:
  - (a) an appropriate person or public authority who is not an approved party to the proposal, or
  - (b) an appropriate person or public authority who is an approved party to the proposal, if in the opinion of the EPA:
    - (i) the terms of the approved proposal are not carried out, or
    - (ii) the management order relates to a matter that is not adequately addressed by the proposal, or
    - (iii) its approval to the proposal was given on the basis of false or misleading information.
- (7) A proposal ceases to be an approved voluntary management proposal:
  - (a) if the EPA by notice in writing served on each approved party:
    - (i) specifies that it is satisfied that the terms of the voluntary management proposal have all been carried out, or
    - (ii) withdraws at any time its approval of the voluntary management proposal, and
  - (b) at the time specified in the notice, or if no time is specified, at the time the notice is served on each approved party.
- (8) If a proposal (other than a proposal referred to in subsection (5)) ceases to be an approved voluntary management proposal, the approved parties may recover contributions for carrying out

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requirements under the approved voluntary management proposal in accordance with Division 6 as if the requirements had been carried out under a management order.

**[9] Part 3, Divisions 3–7**

Omit the Divisions. Insert instead:

**Division 3 Ongoing maintenance of management action**

**28 Ongoing maintenance orders**

- (1) This section applies to land that has been the subject of a management order or an approved voluntary management proposal (whether or not the land is significantly contaminated land).
- (2) The EPA may, by order in writing served on a person who is an owner or occupier of land to which this section applies, direct the person to do one or more of the following in relation to the land, commencing within such reasonable time as may be specified in the order:
  - (a) to carry out any ongoing management of the land that is specified in the order,
  - (b) to provide reports to the EPA or any other specified person at specified periods or on the occurrence of any specified event,
  - (c) to inform the EPA of any change in the ownership or occupancy of the land, to the extent that the person is aware of the change,
  - (d) to not carry out specified activities on the land and to not permit other persons to carry out any such activities on the land,
  - (e) to not use the land for specified purposes and to not permit other persons to use the land for those purposes,
  - (f) to carry out any other requirement in relation to the ongoing monitoring and maintenance of the land that is prescribed by the regulations.
- (3) An ongoing maintenance order is to specify when it ceases to have effect by reference to:
  - (a) the end of a specified period, or
  - (b) the occurrence of a specified event or set of circumstances, or

- (c) such time as the person served with the order ceases to be the owner or occupier (as the case requires) of the land.
- (4) A person must comply with an ongoing maintenance order that is served on the person.  
Maximum penalty:
  - (a) in the case of a corporation—600 penalty units, or
  - (b) in the case of an individual—300 penalty units.

**29 Ongoing maintenance—restrictions and covenants**

- (1) This section applies to land that is not vested in the EPA and that has been the subject of a management order or an approved voluntary management proposal.
- (2) The EPA may, under section 88E of the *Conveyancing Act 1919*, impose restrictions on the use of, or impose public positive covenants on, any land to which this section applies for the purpose of the ongoing management of the land and may release or vary any such restriction or covenant.
- (3) A public positive covenant or restriction imposed under this section may require any owner (for the time being) of the land to do one or more of the following in relation to the land:
  - (a) to carry out any ongoing management of the land that is specified,
  - (b) to provide reports to the EPA or any other specified person at specified periods or on the occurrence of any specified event,
  - (c) to inform the EPA of any change in the ownership or occupancy of the land, to the extent that the person is aware of the change,
  - (d) to not carry out specified activities on the land and to not permit other persons to carry out any such activities on the land,
  - (e) to not use the land for specified purposes and to not permit other persons to use the land for those purposes,
  - (f) to carry out any other requirement in relation to the ongoing monitoring and maintenance of the land that is prescribed by the regulations.
- (4) Despite section 88E of the *Conveyancing Act 1919*:
  - (a) the memorandum or deed by which the restriction or covenant referred to in subsection (2) is imposed, released or varied:

- (i) need be executed only by the EPA and not by any other person, and
- (ii) does not require the agreement of any other person, and
- (b) where a restriction or public positive covenant referred to in subsection (2) takes effect, the EPA may enforce it against any person.

#### **Division 4 Action by public authority**

##### **30 Public authority may step in if person fails to act**

If a person fails to comply with any requirement of an order under this Part, the EPA may carry out the requirement or may, by notice in writing, order another public authority to carry out that requirement.

##### **31 Duty of public authority**

- (1) A public authority that is subject to an order under this Part (whether or not as an appropriate person and whether or not because of the failure of a person to comply with an order under this Part) must comply with that order.
- (2) A public authority may carry out any requirement of an order under this Part by itself or its employees or by agents or contractors.

#### **Division 5 Entry on land**

##### **32 Refusal of entry on land**

- (1) An order under this Part does not confer any power to enter land, remain on land or do anything on land, without the permission of the occupier of the land.
- (2) However, if the occupier withholds or withdraws that permission, the EPA may revoke or suspend the order and instead make an order to which the occupier is subject as if the occupier were the appropriate person.
- (3) If the occupier carries out the requirements of an order, the occupier may recover costs in accordance with Division 6 as if the occupier was the appropriate person.

##### **33 Liability for losses**

- (1) A person who (with the permission of the occupier) enters any land, or does anything else on land, as required by an order under

this Part, is liable (except as prescribed by the regulations) to the occupier of the land for any loss suffered by the occupier as a result of the entry or other actions (including any loss suffered by the occupier because of the interruption of the occupier's business on that land by that entry or those actions).

- (2) A person (other than the owner of land) who (with the permission of the occupier) enters the land, or does anything else on the land, as required by an order under this Part, is liable (except as prescribed by the regulations) to the owner of the land for any loss suffered by the owner as a result of that entry or those actions or for any injury to the land caused by that person.
- (3) In addition to any liability that a person who enters land as referred to in this section may have, the person has a duty to meet the reasonable costs and expenses of the owner and the occupier of the land in providing access to that land as referred to in this section.
- (4) A person has a duty to:
  - (a) take reasonable steps to minimise the loss and injury referred to in this section caused by the person's actions, and
  - (b) take reasonable steps towards restitution in respect of that loss or injury (except as prescribed by the regulations), and
  - (c) compensate the party that suffered the loss or injury for which the person is liable to the extent that restitution is not practicable (except as prescribed by the regulations).

## **Division 6 Costs**

### **33A Recovery of money under this Division**

An amount that is required to be paid or entitled to be recovered under this Division may be recovered as a debt in a court of competent jurisdiction.

### **34 Recovery of EPA's costs**

The EPA may, by notice in writing, require a person to pay (at the prescribed rate or amount, or if no such rate or amount is prescribed, at a reasonable rate or amount) all or any costs incurred by the EPA in connection with any one or more of the following:

- (a) preparing and serving an order under this Part to which the person is subject or in assessing and settling the terms of

any voluntary management proposal to which the person is a party,

- (b) monitoring action under such an order or under an approved voluntary management proposal to which the person is an approved party within the meaning of section 17,
- (c) seeking the compliance of the person with any such order or approved voluntary management proposal,
- (d) any other matter associated with, or incidental to, the matters set out in paragraphs (a)–(c),
- (e) any other matter prescribed by the regulations.

**35 Recovery of public authority's costs in carrying out order**

- (1) A public authority may, by notice in writing, require a person to pay all or any costs reasonably incurred by the public authority in connection with the public authority's carrying out, under section 30, of the requirements of an order made in respect of the person.
- (2) A public authority may, by notice in writing, require an owner of land to pay all or any costs reasonably incurred (and not recovered under subsection (1)) by the public authority in connection with the public authority's carrying out (otherwise than as an appropriate person) of the requirements of an order made in respect of the land (whether or not the order was made in respect of the owner).
- (3) A public authority may enter into an arrangement with the owner of land for the payment of any cost under subsection (2), including an arrangement for the periodic, partial or deferred payment of such a cost, or for the compromise of any debt to which the arrangement relates.

**36 Recovery of other costs**

**(1) Person subject to order is not contaminator**

A person:

- (a) who carries out the requirements of a management order in relation to the significant contamination of land, and
- (b) who is not responsible for the significant contamination, may recover the person's costs in carrying out those requirements as a portion from each person who is responsible for the significant contamination.

- (2) A person:
- (a) who carries out the requirements of a preliminary investigation order in relation to specific land, and
  - (b) who is not responsible for any significant contamination of that land,
- may recover the person's costs in carrying out those requirements as a portion from each person who is responsible for significant contamination to that land.
- (3) **Person subject to order is contaminator**
- A person:
- (a) who carries out the requirements of a management order in relation to the significant contamination of land, and
  - (b) who is responsible for the significant contamination,
- may recover a portion of the person's costs in carrying out those requirements from each other person who is responsible for the significant contamination.
- (4) **Recovery by owner**
- If:
- (a) an owner (or notional owner) of land pays any costs specified in a notice under section 34 or 35 with respect to a management order, and
  - (b) the owner (or notional owner) is not responsible for the significant contamination concerned,
- the owner (or notional owner) may recover a portion of the amount paid from each person who is responsible for the significant contamination.
- (5) **Portion**
- The portion referred to in this section must reflect what is reasonable and just in the circumstances, including the following circumstances:
- (a) the proportion of responsibility of each person for the significant contamination,
  - (b) the reasonable cost of any steps taken by each person in respect of managing the significant contamination.
- (6) **Reference to person**
- In this section, a reference to a person includes a reference to a public authority.

(7) **Persons entering voluntary management proposal may agree section not to apply**

If the parties to a voluntary management proposal have agreed that this section is not to apply as among themselves, this section does not apply to allow the recovery of any costs by one party from a second party unless the second party has failed to comply with the terms of the proposal.

(8) **Costs**

For the purposes of this section, the costs of a person in carrying out the requirements of a management order include any amount for which the person is liable, or reasonable cost that the person has a duty to meet, under section 34 or 35.

**37 Public authority's priority if owner insolvent**

If a public authority carries out (otherwise than as an appropriate person) the requirements of an order under this Part in respect of land disclaimed (by a liquidator or trustee in bankruptcy) as onerous property in the course of proceedings for winding up or bankruptcy, the public authority may recover the cost of carrying out the order together with a reasonable commercial rate of interest and all associated administrative or other costs and expenses so incurred in priority to any holder of a security over the land.

**38 Limit on liability of representative or trustee**

- (1) The financial liability under this Division of a legal personal representative in respect of an estate (or of a trustee of property), that is or includes or is part of significantly contaminated land, is limited respectively to such value of the assets of the estate (or such value of the property) as the representative or trustee may lawfully realise to meet a liability under this Division.
- (2) A person is not, in such a capacity, personally liable for any costs under this Act that relate to an order under this Part that relates to the land and is not required to carry out such an order to a greater extent than may be paid for by the person's lawfully realising the assets of the estate or the property to meet those costs or that payment.
- (3) A reference in this section to a trustee of property includes the Public Trustee to the extent that the property is deemed to be vested in it under section 61 of the *Probate and Administration Act 1898*.

**39 Registration of cost notices**

- (1) A public authority that issues a notice to an owner of land under section 35 (2) may apply to the Registrar-General for registration of the notice in relation to any land that is owned by the person and was the subject of the management order to which the notice relates.
- (2) An application under this section must specify the land to which it relates.
- (3) The Registrar-General must, on application under this section and lodgment of a copy of the notice, register the notice in relation to the land in such manner as the Registrar-General thinks fit.

**40 Charge on land subject to cost notice**

(1) **Creation of charge**

On the registration of a notice under section 39, a charge is created on the land in relation to which the notice is registered to secure the payment to the public authority specified in the notice.

(2) **When charge ceases to have effect**

Such a charge ceases to have effect in relation to the land when the first of the following occurs:

- (a) the payment by the person to the public authority of the amount concerned,
- (b) the completion of the sale or other disposition of the land with the consent of the public authority,
- (c) the completion of the sale of the land to a purchaser, in good faith for value, who, at the time of the sale, has no notice of the charge.

(3) **Charge is not subject to existing charges and encumbrances**

Such a charge has priority over every charge or encumbrance to which the land was subject immediately before the notice was registered and, in the case of land under the provisions of the *Real Property Act 1900*, has priority over every mortgage, lease or other interest recorded in the Register kept under that Act.

(4) **Charge not affected by change of ownership**

Such a charge is not affected by any change of ownership of the land, except as provided by subsection (2).

**(5) Registration of charge is notice**

If:

- (a) such a charge is created on land of a particular kind and the provisions of any law of the State provide for the registration of title to, or charges over, land of that kind, and
- (b) the charge is so registered, a person who purchases or otherwise acquires the land after the registration of the charge is, for the purposes of subsection (2), taken to have notice of the charge.

**(6) Charge on Torrens land not effective until registered**

If such a charge relates to land under the provisions of the *Real Property Act 1900*, the charge has no effect until it is registered under that Act.

**41 Removal of charge**

- (1) When a charge under this Division ceases to have effect, the relevant public authority must apply to the Registrar-General for the cancellation or removal of the relevant notice registered under section 39.
- (2) The regulations may make provision for or with respect to the removal of a charge under this Division.

**42 Repayment of appropriations out of Consolidated Fund**

- (1) This section applies if the costs of a public authority in carrying out the requirements of an order under this Part are partly or fully met out of money appropriated by Parliament specifically for the management of contaminated land.
- (2) If a public authority recovers, under this Division, part or all of the cost of carrying out the requirements of the order, the authority must repay, into the Consolidated Fund or such other fund as may be directed by the Treasurer, a portion of the amount recovered.
- (3) The portion referred to in subsection (2) must reflect the proportion that the money provided by Parliament bore to the total costs incurred by the authority in carrying out the requirements of the order.

## **Division 7      General**

### **43    Multiple orders and notices**

More than one order or notice may be served under a provision of this Part on the same person or in respect of the same land, or both.

### **44    Amendment or repeal of orders and notices**

- (1) An order or notice under this Part (the *original instrument*) may be amended or repealed by one or more subsequent orders or notices (the *amending instrument*).
- (2) An amending instrument:
  - (a) must state the reasons for the amendment or repeal, and
  - (b) must, as far as is reasonably practicable, be served on the persons on whom the original instrument was required to be served, and
  - (c) must not declare land that is not significantly contaminated land to be significantly contaminated land unless the amending instrument is made in accordance with sections 11 and 12, and
  - (d) is taken to be made under the same provisions of this Act as the original instrument, and
  - (e) is not otherwise required to comply with the provisions of this Part with respect to the making of an original instrument.
- (3) Nothing in this section enables the amendment of an original instrument so that, as amended, it would not have been in accordance with this Act originally to make it.

### **45    Obstruction of persons**

- (1) A person must not wilfully delay or obstruct a person (including a public authority) who is carrying out any action in compliance with an order or notice under this Part.

Maximum penalty:

  - (a) in the case of a corporation—1,250 penalty units and, in the case of a continuing offence, a further penalty of 600 penalty units for each day the offence continues, or
  - (b) in the case of an individual—600 penalty units and, in the case of a continuing offence, a further penalty of 300 penalty units for each day the offence continues.

- (2) It is a defence to a prosecution for an offence under this section if the defendant establishes that the delay or obstruction to the person occurred in a situation in which the person was present on the land without the permission of the occupier or contrary to the terms of the occupier's permission.

**46 EPA may issue clean-up and prevention notices**

The EPA may issue a notice or direction in accordance with Part 4.2 or 4.3 of the *Protection of the Environment Operations Act 1997* in relation to significantly contaminated land:

- (a) as if it were the appropriate regulatory authority within the meaning of that Act, and
- (b) despite any order or approved voluntary management proposal relating to the land,

and any such notice or direction is taken to have been issued under that Act.

**[10] Part 4, heading**

Omit the heading. Insert instead:

**Part 4 Site audits**

**[11] Section 47**

Omit the section. Insert instead:

**47 Definition**

In this Part, a reference to a *statutory site audit* is a reference to a site audit carried out in order to secure compliance with one or more of the following:

- (a) a requirement under this Act,
- (b) an approved voluntary management proposal,
- (c) a requirement imposed by *State Environmental Planning Policy No 55—Remediation of Land* or by any other environmental planning instrument made under the *Environmental Planning and Assessment Act 1979* or by any development consent or approval given under that Act,
- (d) any other requirement imposed by or under an Act,

unless it is carried out only in order to secure compliance with a legal obligation arising from an agreement or arising in such other circumstances as the regulations may prescribe.

**[12] Section 53D Annual returns and other notifications**

Omit “investigation, remediation or” from section 53D (5) (c) (ii).

**[13] Section 55 False audits or information**

Omit the section.

**[14] Section 58 Record to be maintained by the EPA**

Omit section 58 (1) and (2). Insert instead:

- (1) The EPA is to maintain a record that consists of the following:
  - (a) a copy of the relevant notice under section 11 that relates to land that is significantly contaminated land,
  - (b) a copy of any preliminary investigation order,
  - (c) a copy of any other order under Part 3 that has not been revoked or ceased to have effect,
  - (d) a copy of any site audit statement furnished to the EPA under section 53B that relates to land that is significantly contaminated land,
  - (e) a copy of any approved voluntary management proposal that has not been fully carried out and where the EPA’s approval has not been revoked,
  - (f) as far as reasonably practicable, a copy of anything that was formerly required to be included as part of the record (marked in such a way as to show that it no longer has effect),
  - (g) anything prescribed by the regulations.
- (2) A copy of the record (whether in electronic or other form) is to be available for public inspection:
  - (a) at the principal office of the EPA, and
  - (b) on the Department’s internet website, and
  - (c) at such other places as the EPA thinks fit.

**[15] Sections 59 and 60**

Omit the sections. Insert instead:

**59 Local authorities to be informed**

- (1) The EPA must, as soon as practicable after the occurrence of any of the following in relation to land, inform the local authority for the area in which land is situated of that matter:

- 
- (a) the land being declared to be significantly contaminated land or ceasing to be significantly contaminated land,
  - (b) a management order in relation to the land being served on a person or being revoked,
  - (c) the EPA giving its approval or withdrawing its approval for a voluntary management proposal in relation to the land or a voluntary management proposal in relation to the land being completed to the satisfaction of the EPA,
  - (d) an ongoing maintenance order in relation to the land being served on a person or being revoked.
- (2) For the purposes of section 149 of the *Environmental Planning and Assessment Act 1979*, the following matters are prescribed in addition to any other matters, prescribed by the regulations under that section, to be specified in a certificate under that section:
- (a) that the land to which the certificate relates is significantly contaminated land—if the land (or part of the land) is significantly contaminated land at the date when the certificate is issued,
  - (b) that the land to which the certificate relates is subject to a management order—if it is subject to such an order at the date when the certificate is issued,
  - (c) that the land to which the certificate relates is the subject of an approved voluntary management proposal—if it is the subject of such an approved proposal at the date when the certificate is issued,
  - (d) that the land to which the certificate relates is subject to an ongoing maintenance order—if it is subject to such an order at the date when the certificate is issued,
  - (e) that the land to which the certificate relates is the subject of a site audit statement—if a copy of such a statement has been provided at any time to the local authority issuing the certificate.
- Note.** Section 53B requires site auditors to furnish local authorities with copies of site audit statements relating to site audits for the purposes of statutory requirements.
- (3) If a local authority, under section 149 (5) of the *Environmental Planning and Assessment Act 1979*, includes advice in a certificate in relation to a matter set out in subsection (2) (a)–(e) that no longer applies to the land, the authority is to make this clear on the certificate.

**60 Duty to report contamination**

- (1) A person whose activities have contaminated land must notify the EPA in writing in accordance with this section that the land has been so contaminated.

Maximum penalty:

- (a) in the case of a corporation—1,500 penalty units, and in the case of a continuing offence, a further penalty of 700 penalty units for each day the offence continues, or
- (b) in the case of an individual—700 penalty units, and in the case of a continuing offence, a further penalty of 300 penalty units for each day the offence continues.

- (2) An owner of land that has been contaminated (whether before or during the owner's ownership of the land) must notify the EPA in writing in accordance with this section that the land has been so contaminated.

Maximum penalty:

- (a) in the case of a corporation—1,500 penalty units, and in the case of a continuing offence, a further penalty of 700 penalty units for each day the offence continues, or
- (b) in the case of an individual—700 penalty units, and in the case of a continuing offence, a further penalty of 300 penalty units for each day the offence continues.

- (3) A person is required to notify the EPA under subsection (1) or (2) only if:

- (a) each of the following is true:

- (i) the substance contaminating the land (the **contaminant**) or any by-product of the contaminant has entered or will foreseeably enter neighbouring land, the atmosphere, groundwater or surface water,
- (ii) the regulations prescribe for the purposes of this subparagraph, or the guidelines specify, a level of the contaminant or by-product in the neighbouring land, atmosphere, groundwater or surface water,
- (iii) the level of the contaminant or by-product after that entry is, or will foreseeably be, above the level prescribed or specified and will foreseeably continue to remain above that level, or

- (b) a guideline specifies a level of the contaminant in soils with respect to a current or approved use of the land and the level of the contaminant on or in any part of the soil on that land is equal to or above that specified in the guideline

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- and a person has been, or foreseeably will be, exposed to the contaminant or any by-product of the contaminant, or
- (c) the contamination meets any other criteria that may be prescribed by the regulations for the purposes of this subsection.
- (4) A person is required to notify the EPA under this section as soon as practicable after the person becomes aware of the contamination.
- (5) A person is taken to be aware of contamination for the purposes of this section if the person ought reasonably to have been aware of the contamination.
- (6) A notice under this section is to be in a form approved by the EPA and is to specify the following matters to the extent that they are within the knowledge of the person required to give the notice:
- (a) the location of the land,
  - (b) the activities that have contaminated the land,
  - (c) the nature of the contamination,
  - (d) the nature of the risk posed by the contamination,
  - (e) any other matter prescribed by the regulations.
- (7) Information provided by a person for the purpose of complying with this section is not admissible as evidence in any proceedings against that person for an offence under the environment protection legislation (except in proceedings for an offence under this section).
- (8) The EPA may identify land as significantly contaminated land or make an order under Part 3 in respect of any person, whether or not the person has notified the EPA in accordance with this section.
- (9) The following are to be taken into account in determining when a person should reasonably have become aware of contamination:
- (a) the person's abilities, including his or her experience, qualifications and training,
  - (b) whether the person could reasonably have sought advice that would have made the person aware of the contamination,
  - (c) the circumstances of the contamination.

- (10) The regulations may exempt, or provide for the exemption of:
- (a) any person or class of persons, or
  - (b) any premises or class of premises, or
  - (c) any area or class of areas, or
  - (d) any activity or class of activities, or
  - (e) any other matter or thing or class of matters or things,
- from any specified provision or provisions of this section in such circumstances (if any) and subject to such conditions (if any) as may be specified or referred to in the regulations.
- (11) In this section, a reference to the *level* of a contaminant or by-product of a contaminant includes a reference to the concentration of the contaminant or by-product.

**[16] Section 61**

Omit the section. Insert instead:

**61 Appeals about management orders**

- (1) A person who is the subject of a management order may appeal to the Land and Environment Court against the order within 21 days (or such other period as may be prescribed) after the date of the service of the order on the person.
- (2) An appeal may be made under subsection (1) even if the management order required action to be started (or completed) during the period within which any such appeal may be made.

**[17] Part 7, heading**

Omit “investigate or remediate”. Insert instead “manage contamination”.

**[18] Sections 63 (1) and (7), 64 (1) and (3) (b) and 65 (1) and (7)**

Omit “an investigation or remediation order” wherever occurring.

Insert instead “a management order”.

**[19] Sections 63 (1) (b), (3) (a) and (b) and (7), 64 (2) and (3) (a) and 65 (1) (b), (2), (3) (a) and (b) and (7)**

Omit “the investigation or remediation order” wherever occurring.

Insert instead “the management order”.

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- [20] **Section 63 (2)**  
Omit “original investigation or remediation order”.  
Insert instead “original management order”.
- [21] **Sections 63 (6) and 65 (6)**  
Omit “relevant investigation or remediation order” wherever occurring.  
Insert instead “relevant management order”.
- [22] **Section 64 (1) (a)**  
Insert “, to which the management order related,” after “land”.
- [23] **Section 64 (1) (b)**  
Omit the paragraph. Insert instead:  
    (b) the person to whom the land was transferred (the *transferee*) has failed to comply with the management order.
- [24] **Section 64 (2)**  
Omit “The person”.  
Insert instead “A person who is subject to an order of the Court under this section”.
- [25] **Section 64 (3) (b)**  
Omit “investigation or remediation of”. Insert instead “management of”.
- [26] **Section 64 (4) (c)**  
Omit “to remediate”.  
Insert instead “with respect to the management of contamination of”.
- [27] **Section 66 Definitions**  
Omit the definition of *designated officer*.
- [28] **Sections 67 and 68**  
Omit the sections.

**[29] Section 69 Proof of certain matters not required**

Insert at the end of section 69 (b):

, or

- (c) the fact that a person is, or at any relevant time was, the owner or occupier of any land to which the proceedings relate.

**[30] Section 71 Certificate evidence of certain matters**

Omit “or a designated officer” from section 71 (1).

Insert instead “(or an officer of the EPA designated in writing by the Director-General for the purposes of this section)”.

**[31] Section 71 (2) (a)**

Insert “or was published in a specified manner on a specified day” after “specified day”.

**[32] Section 71 (2) (j) and (k)**

Omit the paragraphs. Insert instead:

- (j) that land was or was not, at a specified time or during a specified period, significantly contaminated land,
- (k) that land was or was not, at a specified time or during a specified period, subject to an order under Part 3 set out in, or annexed to, the certificate,

**[33] Section 77 Requirement to provide information and records (EPA)**

Omit “a person interested in any land within an investigation area” from section 77 (2).

Insert instead “an interested person with respect to any significantly contaminated land”.

**[34] Section 77 (2)**

Omit “site” wherever occurring. Insert instead “land”.

**[35] Section 81 Powers to enter land**

Omit section 81 (1) (c). Insert instead:

- (c) any significantly contaminated land—at any time, and

**[36] Section 89 Offences**

Omit the penalty provision. Insert instead:

Maximum penalty:

- (a) in the case of a corporation—1,250 penalty units, and in the case of a continuing offence, a further penalty of 600 penalty units for each day the offence continues, or
- (b) in the case of an individual—600 penalty units, and in the case of a continuing offence, a further penalty of 300 penalty units for each day the offence continues.

**[37] Section 92A Penalty notices**

Insert after section 92A (5):

- (5A) Despite subsection (4), an authorised officer, whether or not the officer by whom the penalty notice has been served:
  - (a) may withdraw the notice within 28 days after the date on which the notice was served, and
  - (b) must withdraw the notice immediately if directed to do so by the EPA.
- (5B) The following provisions have effect in relation to an alleged offence if a penalty notice for the alleged offence is withdrawn in accordance with subsection (5A):
  - (a) the amount that was payable under the notice ceases to be payable,
  - (b) any amount that has been paid under the notice is repayable to the person by whom it was paid,
  - (c) further proceedings in respect of the alleged offence may be taken against any person (including the person on whom the notice was served) as if the notice had never been served.

**[38] Section 93 Time for commencing proceedings**

Omit “46, 55,” from paragraph (a) of the definition of *prescribed offence* in section 93 (5).

**[39] Section 95 Other persons may institute proceedings with leave**

Omit “an investigation or remediation order” from section 95 (3).

Insert instead “an order under Part 3”.

**[40] Section 98**

Omit the section. Insert instead:

**98 Offences by corporations**

- (1) If a corporation contravenes, whether by act or omission, any provision of this Act or the regulations, each person who is a director of the corporation or who is concerned in the management of the corporation is taken to have contravened the same provision, unless the person satisfies the court that:
  - (a) the person was not in a position to influence the conduct of the corporation in relation to its contravention of the provision, or
  - (b) the person, if in such a position, used all due diligence to prevent the contravention by the corporation.
- (2) A person may be proceeded against and convicted under a provision pursuant to this section whether or not the corporation has been proceeded against or been convicted under that provision.
- (3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation against this Act or the regulations.
- (4) Without limiting any other law or practice regarding the admissibility of evidence, evidence that an officer, employee or agent of a corporation (while acting in his or her capacity as such) had, at any particular time, a particular state of mind, is evidence that the corporation had that state of mind.
- (5) In this section, the *state of mind* of a person includes:
  - (a) the knowledge, intention, opinion, belief or purpose of the person, and
  - (b) the person's reasons for the intention, opinion, belief or purpose.

**[41] Section 102 Disputes between EPA and public authorities**

Insert "or a decision to issue an order under section 30" after "this Act" in section 102 (1).

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**[42] Section 103**

Omit the section. Insert instead:

**103 False or misleading information**

- (1) A person must not, in compliance or purported compliance with a requirement under this Act, give information to the EPA or another person knowing that, or reckless as to whether, the information is false or misleading in a material particular.

Maximum penalty:

- (a) in the case of a corporation—1,250 penalty units, or  
(b) in the case of an individual—600 penalty units.
- (2) For the purposes of this section, information given in connection with a site audit, a site audit report or a site audit statement is taken to be given in compliance with this Act.
- (3) In this section:  
*give information* includes make a statement, give evidence or produce a document.

**[43] Section 104 Publicity about contamination**

Omit “The EPA may do these things as a response referred to in section 7 (c) or otherwise.”.

**[44] Section 105 Guidelines**

Omit section 105 (4). Insert instead:

- (4) The EPA may from time to time vary the terms of its approval of a guideline under this section, or revoke that approval.
- (4A) A guideline may amend or revoke another guideline. If an amendment to a guideline is a minor amendment, the EPA is not required to comply with subsection (2) (a) or (b).

**[45] Section 105 (7)**

Insert after section 105 (6):

- (7) In this section:  
*minor amendment* includes the following:
- (a) the correction of a typographical or grammatical error,  
(b) the updating of a cross-reference or contact or address details,

- (c) any other amendment that is declared by the regulations to be a minor amendment.

**[46] Section 106 Reasons for certain decisions**

Omit section 106 (1). Insert instead:

- (1) If, in the exercise of any function under this Act, the EPA makes a decision on the basis that it does not have reason to believe that land is contaminated in such a way as to warrant regulation under Division 2 of Part 3, the EPA must provide a written statement of the reasons for its decision to any person who makes written request for those reasons in relation to that land.

**[47] Section 106 (3)**

Omit “section 6”. Insert instead “section 8”.

**[48] Section 107 Disclosure of information**

Insert after section 107 (2) (before the note):

- (3) Despite subsection (1), the EPA or a local authority may disclose to any person a site audit report or site audit statement if the report or statement relates to a statutory site audit within the meaning of Part 4.

**[49] Section 108 Service of notices**

Omit “the Internet” from section 108 (1) (e). Insert instead “by email”.

**[50] Section 109 Relationship with other Acts**

Insert after section 109 (3):

- (4) Nothing in this section prevents the EPA from issuing a clean-up notice or direction in accordance with Part 4.2 of the *Protection of the Environment Operations Act 1997* or a prevention notice in accordance with Part 4.3 of that Act.

**[51] Section 111 Notes**

Omit the section.

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**[52] Section 111A**

Insert before section 112:

**111A Offset arrangements**

- (1) The Minister may, if he or she considers it to be in the public interest to do so, enter into offset arrangements with a person responsible for the contamination of land under which the person provides assistance (other than direct monetary assistance) to communities affected by the contamination.

**Note.** Assistance may, amongst other things, include the provision of community facilities or community services or the establishment and operation of environmental or resource projects.

- (2) Despite subsection (1), the Minister is not to enter into offset arrangements with a person who is or has been an approved party to a voluntary management proposal in respect of land that has been the subject of that proposal if:
- (a) the person has not complied with the approved voluntary management proposal or a condition to which the proposal is subject, or
  - (b) the voluntary management proposal was approved on the basis of false or misleading information provided by the person.
- (3) Offset arrangements may be entered only if the Minister reasonably considers that it would not be practicable to remediate the contamination within a reasonable time.
- (4) Offset arrangements are to be in writing and may specify the circumstances and manner in which functions under this Act are to be exercised if the assistance is duly provided and any such function is to be exercised accordingly.

**[53] Section 112 Regulations**

Insert after section 112 (2) (b):

- (b1) the circumstances in which any or all of the costs recoverable under section 34 may be waived or refunded by the EPA,
- (b2) the circumstances in which the EPA may disclose any information obtained in connection with the administration or execution of this Act or the regulations (including personal information within the meaning of the *Privacy and Personal Information Protection Act 1998*) other than information that may not be disclosed under section 107 (1),

**[54] Schedule 2 Savings and transitional provisions**

Insert before clause 1:

**Part 1 General**

**[55] Schedule 2, clause 1**

Insert at the end of clause 1 (1):

*Contaminated Land Management Amendment Act 2008*

**[56] Schedule 2, clause 2**

Omit “section 13” from clause 2 (c). Insert instead “section 6”.

**[57] Schedule 2**

Insert before clause 3:

**Part 2 Provisions consequent on enactment of this Act**

**[58] Schedule 2, clause 3**

Insert after clause 3 (5):

- (6) A direction given under section 35 of the *Environmentally Hazardous Chemicals Act 1985* before the repeal of Part 5 of that Act by this Act, may be revoked by the EPA at any time by notice in writing that is, where reasonably practicable, served on the person to whom the direction was given.

**[59] Schedule 2**

Insert after clause 5:

**Part 3 Provisions consequent on enactment of the Environment Protection Legislation Amendment Act 2002**

**[60] Schedule 2**

Insert after clause 6:

**Part 4 Provisions consequent on enactment of the Contaminated Land Management Amendment Act 2003**

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[61] **Schedule 2**

Insert after clause 11:

**Part 5 Provisions consequent on enactment of  
the Contaminated Land Management  
Amendment Act 2008**

**12 Definition**

In this Part:

*the amending Act* means the *Contaminated Land Management Amendment Act 2008*.

**13 Orders, declarations and voluntary proposals**

- (1) Land that is an investigation area or a remediation site immediately before the substitution of Division 2 of Part 3 by the amending Act is, on the substitution of that Division, taken to be significantly contaminated land.
- (2) An investigation order or remediation order that is in force immediately before the substitution of Division 2 of Part 3 by the amending Act is, on the substitution of that Division, taken to be a management order that is in force on the same terms as the investigation order or remediation order.
- (3) A voluntary investigation proposal or voluntary remediation proposal that has been agreed to by the EPA and that has not been fully carried out immediately before the substitution of Division 2 of Part 3 by the amending Act is, on the substitution of that Division, taken to be an approved voluntary management proposal in force on the same terms as the voluntary investigation proposal or voluntary remediation proposal.
- (4) In relation to any investigation area, remediation site, investigation order, remediation order, voluntary investigation proposal or voluntary remediation proposal to which this clause applies the following references (whether in the order or proposal or elsewhere) are, on and from the substitution of Division 2 of Part 3 by the amending Act, to be read as follows:
  - (a) a reference to an investigation area or a remediation site is taken to be a reference to significantly contaminated land,
  - (b) a reference to an investigation order or remediation order is taken to be a reference to a management order,
  - (c) a reference to a voluntary investigation proposal or voluntary remediation proposal that has been agreed to by

the EPA is taken to be a reference to an approved voluntary management proposal and a reference to a party to such a voluntary investigation proposal or voluntary remediation proposal is taken to be a reference to an approved party,

- (d) a reference to land being contaminated in such a way as to present a significant risk of harm is taken to be a reference to contamination that the EPA considers to be significant enough to warrant regulation under Division 2 of Part 3 of this Act.

- (5) Subclause (4) (d) does not apply to a reference in a guideline.

**14 Public consultation**

For the purposes of section 14 (4), the EPA is taken to have considered submissions under section 11 (2) (e) if, in respect of the land to which the proposed management order is to apply, the EPA has, before the substitution of Division 2 of Part 3 by the amending Act, considered submissions under section 17 (2) or 23 (3).

**15 Voluntary management proposals**

Section 17 (6) does not apply to a voluntary investigation proposal or voluntary remediation proposal that is taken, because of clause 13, to be an approved voluntary management proposal and section 20 or 27 (as the case may be) as in force immediately before the substitution of Division 2 of Part 3 by the amending Act continues to apply in respect of those proposals.

**16 Maintenance of remediation**

- (1) A notice issued under section 28 and in force immediately before the substitution of that section by the amending Act continues in force and is taken to have been issued under section 28 as substituted.
- (2) A reference in section 28 (1) or 29 (1) to land that has been the subject of a management order or an approved voluntary management proposal includes land that was, before the substitution of Division 2 of Part 3 by the amending Act:
  - (a) the subject of an investigation order or a remediation order, or
  - (b) the subject of a voluntary investigation proposal or voluntary remediation proposal that has been agreed to by the EPA under section 19 or 26.

- (3) A covenant imposed by the EPA under section 29 before the substitution of that section by the amending Act may be released or varied under section 29 (2) as substituted by the amending Act.
- (4) Land that is taken to be land the subject of remediation under Part 3 because of the operation of clause 3 (3) is, on the substitution of section 28 by the amending Act, taken to be land the subject of a management order.

**17 Cost recovery**

Sections 34 and 35 as substituted by the amending Act apply only in respect of an order made under Part 3, or a voluntary management proposal furnished to the EPA, after that substitution and in any other case those sections apply as they were immediately before that substitution.

**18 Penalty notices**

Section 92A (5A) and (5B), as inserted by the amending Act, extend to a penalty notice served before the commencement of those subsections.

**19 Disclosure of information**

Section 107 (3), as inserted by the amending Act, extends to information obtained by the EPA before the commencement of that subsection.

**20 Records**

A reference in clause 3 to section 58 or 59 includes a reference to those sections as substituted by the amending Act.

## Schedule 2 Amendment of instruments

(Section 4)

### 2.1 Environmental Planning and Assessment Regulation 2000

#### [1] Schedule 4 Planning certificates

Omit clause 10.

#### [2] Schedule 4

Insert at the end of the Schedule:

**Note.** The following matters are prescribed by section 59 (2) of the *Contaminated Land Management Act 1997* as additional matters to be specified in a planning certificate:

- (a) that the land to which the certificate relates is significantly contaminated land within the meaning of that Act—if the land (or part of the land) is significantly contaminated land at the date when the certificate is issued,
- (b) that the land to which the certificate relates is subject to a management order within the meaning of that Act—if it is subject to such an order at the date when the certificate is issued,
- (c) that the land to which the certificate relates is the subject of an approved voluntary management proposal within the meaning of that Act—if it is the subject of such an approved proposal at the date when the certificate is issued,
- (d) that the land to which the certificate relates is subject to an ongoing maintenance order within the meaning of that Act—if it is subject to such an order at the date when the certificate is issued,
- (e) that the land to which the certificate relates is the subject of a site audit statement within the meaning of that Act—if a copy of such a statement has been provided at any time to the local authority issuing the certificate.

### 2.2 Local Government (General) Regulation 2005

#### Clause 97

Omit the clause. Insert instead:

#### 97 Copies of certain orders to be provided to EPA

- (1) If a council gives Order No 11, 12, 18, 21, 22 or 25 in respect of land or premises and the land or the land on which the premises are situated is subject to statutory contaminated land management, the council must provide the EPA with a copy of the Order and of any modification or revocation of it.

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(2) Failure to provide the EPA with a copy does not invalidate an Order, modification or revocation.

(3) In this clause:

**EPA** means the Environment Protection Authority constituted by the *Protection of the Environment Administration Act 1991*.

**statutory contaminated land management** means that one or more of the following matters under the *Contaminated Land Management Act 1997* apply in relation to the land:

- (a) the land is significantly contaminated land within the meaning of that Act and the council has been notified under section 59 of that Act that the land is significantly contaminated land,
- (b) a management order is in force under Part 3 of that Act and the council has been notified under section 59 of that Act that the order is in force,
- (c) an approved voluntary management proposal applies to the land under section 17 of that Act and the council has been notified under section 59 of that Act that the proposal has been approved,
- (d) an ongoing maintenance order has effect under section 28 of that Act and the council has been notified under section 59 of that Act that the order has effect,
- (e) a restriction on the use of the land or a public positive covenant has been imposed by the EPA on the land under section 29 of that Act.

**Note.** Section 7 (2) of the *Protection of the Environment Operations Act 1997* provides for that Act to prevail over any other Act or statutory rule to the extent of any inconsistency and for a regulation under that Act to prevail over any other statutory rule to the extent of any inconsistency.

Section 109 of the *Contaminated Land Management Act 1997* provides that the exercise of functions under other Acts must not be inconsistent with the functions of the EPA or other public authority under that Act.

## **2.3 Water Sharing Plan for the Alstonville Plateau Groundwater Sources 2003**

### **Schedule 4 Contamination sources**

Omit paragraph (d) of the Schedule. Insert instead:

- (d) any significantly contaminated land within the meaning of the *Contaminated Land Management Act 1997*.

[Agreement in principle speech made in Legislative Assembly on 26 June 2008  
Second reading speech made in Legislative Council on 2 December 2008]

BY AUTHORITY