

# Contaminated Land Management Act 1997 No 140

[1997-140]



New South Wales

## Status Information

### Currency of version

Historical version for 4 December 2006 to 3 July 2007 (accessed 9 November 2024 at 17:35)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Does not include amendments by**  
[Succession Act 2006 No 80](#) (not commenced)
- **See also**  
[Statute Law \(Miscellaneous Provisions\) Bill 2007](#)

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

File last modified 8 June 2007

# Contaminated Land Management Act 1997 No 140



New South Wales

## Contents

<b>Long title</b> .....	8
<b>Part 1 Preliminary</b> .....	8
1 Name of Act .....	8
2 Commencement .....	8
3 Objects of this Act .....	8
4 Definitions .....	9
5 Contamination .....	11
<b>Part 2 Main functions of EPA under this Act</b> .....	12
6 General duty of EPA .....	12
7 If contamination presents significant risk of harm .....	12
8 If contamination presents no significant risk of harm .....	13
9 Assessment of risk of harm .....	13
10 Need to maintain ecologically sustainable development .....	14
<b>Part 3 Investigation and remediation of contaminated land</b> .....	15
<b>Division 1 Preliminary</b> .....	15
11 Main powers of EPA under Part 3 .....	15
12 Choice of appropriate person to be ordered .....	16
13 Responsibility if contamination indirect or delayed or risk arises from change of use .....	17
14 Concept of notional owner .....	18

<b>Division 2 Investigation</b> .....	19
15 Declaration of land as investigation area .....	19
16 Notice to end declaration and order .....	20
17 Investigation order .....	20
18 Details of investigation order .....	21
19 Voluntary investigation proposals: agreement of EPA .....	22
20 Voluntary investigation proposals: exceptions.....	23
<b>Division 3 Remediation</b> .....	23
21 Declaration of remediation site .....	23
22 Notice to end declaration and order .....	24
23 Remediation order .....	25
24 Details of remediation order .....	26
25 Nature of remediation .....	27
26 Voluntary remediation proposals: agreement of the EPA.....	28
27 Voluntary remediation proposals: exceptions .....	28
28 Maintenance of remediation: notice to owner or occupier.....	29
29 Maintenance of remediation: covenant .....	29
<b>Division 4 Action by public authority</b> .....	29
30 Public authority may step in if person fails to act.....	29
31 Duty of public authority .....	30
<b>Division 5 Entry on land to investigate or remediate that or other land</b> .....	30
32 Refusal of entry on land.....	30
33 Liability for losses .....	30
<b>Division 6 Cost of investigation or remediation</b> .....	31
34 Recovery of EPA’s administrative costs associated with orders.....	31
35 Recovery of public authority’s substantive costs in carrying out order .....	31
36 Recovery of costs of investigation or remediation .....	32
37 Public authority’s priority if owner insolvent .....	33
38 Limit on liability of representative or trustee.....	33
39 Registration of cost notices .....	33

40 Charge on land subject to cost notice .....	34
41 Removal of charge.....	34
42 Repayment of appropriations out of Consolidated Fund .....	35
<b>Division 7 General</b> .....	<b>35</b>
43 Multiple notices and declarations .....	35
44 Revocation or variation.....	35
45 Obstruction of persons .....	36
46 False statements in reports .....	36
<b>Part 4 Audit of investigation or remediation</b> .....	<b>37</b>
47 Definitions .....	37
48 Statutory site audits .....	38
49 Accreditation panel.....	38
50 Application for accreditation as site auditor .....	39
51 Grant of accreditation as site auditor .....	40
52 Renewal of accreditation .....	40
53 Conditions of accreditation.....	41
53A Directions .....	42
53B Site audit reports and site audit statements .....	42
53C Notification to EPA of statutory site audit.....	43
53D Annual returns and other notifications .....	43
54 Site auditor to avoid conflicts of interest.....	44
55 False audits or information .....	45
56 Revocation, suspension or refusal to renew accreditation.....	45
57 Holding out.....	47
<b>Part 5 Information</b> .....	<b>47</b>
58 EPA's record of current declarations and orders.....	47
59 Local authorities to be informed.....	48
60 Duty to report contamination .....	49
<b>Part 6 Appeals</b> .....	<b>50</b>
61 Appeals about orders .....	50
62 Determination of appeals .....	50

**Part 7 Orders against directors or companies to investigate or remediate at own expense**

..... 51

63 Director of body corporate that is wound up ..... 51

64 Director of body corporate that disposed of land ..... 52

65 Holding company of body corporate that is wound up ..... 54

**Part 8 Evidence**..... 55

66 Definitions ..... 55

67 Person responsible for typical contamination ..... 55

68 Evidence relating to owner or occupier of land ..... 55

69 Proof of certain appointments not required ..... 56

70 Documentary evidence generally ..... 56

71 Certificate evidence of certain matters ..... 56

72 Evidence of analysts ..... 57

**Part 9 Authorised officers** ..... 58

**Division 1 Administration** ..... 58

73 Appointment of authorised officers ..... 58

74 Scope of authority ..... 58

75 Identification ..... 58

**Division 2 Powers to require information or records** ..... 58

76 Application of Division ..... 58

77 Requirement to provide information and records (EPA) ..... 58

78 Requirement to provide information and records (authorised officers) ..... 59

79 Manner and time for compliance ..... 59

80 Provisions relating to information and records ..... 59

**Division 3 Powers of entry and search of land** ..... 59

81 Powers to enter land ..... 59

82 Entry into residential premises only with permission or warrant ..... 60

83 Powers to do things on premises ..... 60

84 Search warrants ..... 60

85 Assistance .....	61
86 Care to be taken .....	61
87 Compensation .....	61
<b>Division 4 Powers to question persons</b> .....	<b>61</b>
88 Power of authorised officers to require answers .....	61
<b>Division 5 General</b> .....	<b>62</b>
89 Offences .....	62
90 Provisions relating to requirements to furnish information or answer questions .....	62
<b>Part 10 Offences</b> .....	<b>63</b>
<b>Division 1 Proceedings for offences generally</b> .....	<b>63</b>
91 Proceedings for Part 3, 4 or 5 offences .....	63
92 Proceedings for other offences .....	63
93 Time for commencing proceedings .....	63
<b>Division 2 Who may institute proceedings for offences</b> .....	<b>64</b>
94 EPA may institute proceedings .....	64
95 Other persons may institute proceedings with leave .....	64
<b>Division 3 Restraint of breaches without prosecution for offence</b> .....	<b>65</b>
96 Restraint of breaches .....	65
<b>Division 4 General</b> .....	<b>65</b>
97 Matters to be considered in imposing penalty .....	65
98 Offences by corporations .....	66
99 Onus of proof of reasonable excuse .....	66
100 (Repealed) .....	66
<b>Part 11 Miscellaneous</b> .....	<b>66</b>
101 Act to bind Crown .....	66
102 Disputes between EPA and public authorities .....	67
103 Providing false information or evidence .....	67
104 Publicity about contamination .....	67
105 Guidelines .....	68

106 Reasons for certain decisions .....	69
107 Disclosure of information.....	69
108 Service of notices .....	70
109 Relationship with other Acts .....	71
110 Effect of this Act on other rights, remedies and proceedings .....	71
111 Notes .....	71
112 Regulations.....	71
113 Repeal .....	72
114 (Repealed) .....	72
115 Savings and transitional provisions .....	72
116 Review of Act.....	72
<b>Schedule 1 (Repealed) .....</b>	<b>72</b>
<b>Schedule 2 Savings and transitional provisions .....</b>	<b>73</b>

# Contaminated Land Management Act 1997 No 140



New South Wales

An Act to promote the better management of contaminated land; to amend the *Environmentally Hazardous Chemicals Act 1985*; to amend certain other Acts; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Contaminated Land Management Act 1997*.

### 2 Commencement

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

### 3 Objects of this Act

- (1) The general object of this Act is to establish a process for investigating and (where appropriate) remediating land areas where contamination presents a significant risk of harm to human health or some other aspect of the environment.
- (2) Particular objects of this Act are:
  - (a) to set out accountabilities for managing contamination if a significant risk of harm is identified, and
  - (b) to set out the role of the EPA in the assessment of contamination and the supervision of the investigation, remediation and management of contaminated sites, and
  - (c) to provide for the accreditation of site auditors of contaminated land to ensure appropriate standards of auditing in the management of contaminated land, and
  - (d) to ensure that contaminated land is managed with regard to the principles of ecologically sustainable development.



#### 4 Definitions

In this Act:

**accreditation panel** means the accreditation panel convened by the EPA under Part 4.

**appropriate person** means a person chosen in accordance with section 12 as the person against whom an order is issued under Part 3.

**authorised officer** means an officer appointed under Part 9.

**contaminate** and **contamination** are defined in section 5.

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

**environment** means components of the earth, including:

- (a) land, air and water, and
- (b) any layer of the atmosphere, and
- (c) any organic or inorganic matter and any living organism, and
- (d) human-made or modified structures and areas,

and includes interacting natural ecosystems that include components referred to in paragraphs (a)–(c).

**Note—**

This definition follows that in the [Protection of the Environment Administration Act 1991](#).

**environment protection legislation** has the same meaning as in the [Protection of the Environment Administration Act 1991](#).

**environmental planning instrument** means an environmental planning instrument within the meaning of the [Environmental Planning and Assessment Act 1979](#).

**EPA** means the Environment Protection Authority constituted by the [Protection of the Environment Administration Act 1991](#).

**executor** means a person acting as executor or trustee in the administration of a deceased estate to whom a grant of probate of a will, or administration with the will annexed, is made.

**exercise** a function includes perform a duty.

**function** includes a power, authority or duty.

**guideline** means a guideline made or approved by the EPA under section 105 and for the time being having effect under that section.

**harm** means, in relation to the contamination of land, harm to human health or some other aspect of the environment (including any direct or indirect alteration of the environment that has the effect of degrading the environment), whether in, on or under the land or elsewhere.

**interested person** or **person interested** means, in relation to land, a person referred to in section 12 (2) (a), (b) or (c).

**investigation area** means land declared to be an investigation area under Division 2 of Part 3.

**investigation order** means an order under Division 2 of Part 3.

**land** includes water on or below the surface of land and the bed of such water.

**local authority** means:

- (a) the council, within the meaning of the [Local Government Act 1993](#), in relation to an area within the meaning of that Act, or
- (b) the Lord Howe Island Board in relation to Lord Howe Island, or
- (c) the Western Lands Commissioner for the Western Division, or
- (d) an authority prescribed by the regulations for the purposes of this paragraph for any place not covered above, or
- (e) an authority prescribed instead by the regulations for the purposes of this paragraph for any place wholly or partly covered in paragraphs (a)–(c).

**notional owner** is defined in section 14.

**occupier** of land means the person who has the management or control of the land.

**owner:**

- (a) in relation to Crown land:
  - (i) that is the subject of a perpetual lease within the meaning of the [Crown Lands \(Continued Tenures\) Act 1989](#), means the holder of such a lease, and
  - (ii) that is the subject of a lease in perpetuity within the meaning of the [Western Lands Act 1901](#), means the holder of such a lease, and
  - (iii) that is not referred to in subparagraph (i) or (ii), means the Crown, and
- (b) in relation to other land, does not include a person just because the person has an interest in the land under a lease, licence or permit, and
- (c) in relation to land that is not Crown land and is not subject to the provisions of the

*Real Property Act 1900*, does not include a person merely because the person is a mortgagee.

**public authority** means a public or local authority constituted by or under an Act, and includes:

- (a) a government department, or
- (b) a statutory body representing the Crown (but not a State owned corporation), or
- (c) a member of staff or other person who exercises functions on behalf of a public authority.

**records** includes plans, specifications, maps, reports, books and other documents (whether in writing, in electronic form or otherwise).

**remediation** of contaminated land includes:

- (a) preparing a long-term management plan (if any) for the land, and
- (b) removing, dispersing, destroying, reducing, mitigating or containing the contamination of the land, and
- (c) eliminating or reducing any hazard arising from the contamination of the land (including by preventing the entry of persons or animals on the land).

**remediation order** means an order under Division 3 of Part 3.

**remediation site** means land declared to be a remediation site under Division 3 of Part 3.

**risk** includes a long-term risk.

**State** includes the Government or the Crown.

**substance** includes matter or thing.

**waters** means the whole or any part of:

- (a) any river, stream, lake, lagoon, swamp, wetlands, unconfined surface water, natural or artificial watercourse, dam or tidal waters (including the sea), or
- (b) any underground or artesian water.

## 5 Contamination

- (1) **Contamination** of land, for the purposes of this Act, means the presence in, on or under the land of a substance at a concentration above the concentration at which the substance is normally present in, on or under (respectively) land in the same locality, being a presence that presents a risk of harm to human health or any other aspect of

the environment.

- (2) **Contaminate**, for the purposes of this Act, means to cause such contamination.
- (3) However, land is not, for the purposes of this Act, contaminated land:
  - (a) merely because in any surface water standing or running on the land a substance is present in such a concentration, or
  - (b) merely because of the presence of a substance prescribed by the regulations, or
  - (c) in circumstances prescribed by the regulations.
- (4) Land may, for the purposes of this Act, be contaminated land even if it became contaminated partly or entirely by the migration of contaminants into, onto or under the land from other land.

**Note—**

See also sections 9 (Assessment of risk of harm) and 13 (Responsibility if contamination indirect or delayed or risk arises from change of use).

## **Part 2 Main functions of EPA under this Act**

### **6 General duty 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 significant risk of harm that the contamination presents,
  - (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.

### **7 If contamination presents significant risk of harm**

If the EPA has reasonable grounds to believe that land is actually or possibly contaminated in such a way as to present a significant risk of harm, the EPA may do such of the

following as are reasonable in the circumstances:

- (a) make records of the evidence of the contamination, risk and harm or ensure such records are made,
- (b) investigate that evidence and seek information,
- (c) employ community-based strategies to minimise the contamination, risk or harm through education and public awareness,
- (d) declare the land to be an investigation area, and order persons to investigate it, in accordance with Part 3,
- (e) declare the land to be a remediation site, and order persons to remediate it, in accordance with Part 3,
- (f) any other thing that the EPA may lawfully do, whether under this Act or otherwise.

#### **8 If contamination presents no significant risk of harm**

In cases of actual or possible contamination of land where the EPA does not have reasonable grounds to believe that the land is contaminated in such a way as to present a significant risk of harm, the EPA may respond as it sees fit, but does not have the powers set out in Part 3.

#### **9 Assessment of risk of harm**

- (1) To assess whether land is contaminated with one or more substances in such a way as to present a significant risk of harm, the EPA must include a consideration of all of the following matters in its assessment:
  - (a) whether the contamination of the land has 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 (as 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,
  - (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),

- (g) any guidelines made by the EPA on contamination and remediation,
- (h) any guidelines approved by the EPA on contamination and remediation.

**Note—**

The EPA is required under section 105, among other things, to make guidelines available to the public.

- (2) For the purposes of this Act, land may be regarded at any particular time as being contaminated in such a way as to present a significant risk of harm even if the 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.
- (3) However, for land to be so regarded, the circumstances must be reasonably foreseeable, and consistent with the approved use of the land, at that time.
- (4) In this section, **approved use** of land means a use to which the subject land may be put without development consent (or further development consent) under Part 4 of the [Environmental Planning and Assessment Act 1979](#).

**10 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 following definition:

**principles of ecologically sustainable development** means the following statements of principle:

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 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.

## **Part 3 Investigation and remediation of contaminated land**

### **Division 1 Preliminary**

#### **11 Main powers of EPA under Part 3**

- (1) The EPA may, in accordance with this Part, declare investigation areas and remediation sites, and order appropriate persons to investigate land within those areas or remediate land within those sites.
- (2) The EPA must notify the Director-General of the Department of Agriculture that it proposes to make such a declaration or order in respect of any land if the EPA has reason to believe that:
  - (a) the land is contaminated with a substance in such a way as to present a significant risk of harm, and
  - (b) the substance originates from the use of a cattle dip site on the land under a

program implemented in accordance with the recommendations or advice of the Board of Tick Control under Part 2 of the *Stock Diseases Act 1923*.

- (3) The Director-General of the Department of Agriculture must in turn notify the owner of the land that the EPA proposes to make such a declaration or order.

## **12 Choice of appropriate person to be ordered**

- (1) If the EPA makes an investigation or remediation order under this Part in respect of land contaminated with a substance in such a way as to present a significant risk of harm, it must specify an appropriate person (or a public authority that is not an appropriate person) as the subject of the order.
- (2) An appropriate person is to be chosen from among the following interested persons in the following order:
- (a) a person who had principal responsibility for such contamination of the land with the substance (whether or not there were other persons who had responsibility for such contamination of the land with the substance), or, if that is not practicable,
  - (b) an owner of the land (whether or not the person had any responsibility for such contamination of the land with the substance), or, if that is not practicable,
  - (c) a notional owner of the land (whether or not the person had any responsibility for such contamination of the land with the substance).
- (3) Despite subsection (2), in the case where:
- (a) land is contaminated with a substance in such a way as to present a significant risk of harm, and
  - (b) the substance originates from the use of a cattle dip site on the land under a program implemented in accordance with the recommendations or advice of the Board of Tick Control under Part 2 of the *Stock Diseases Act 1923*,
- the appropriate person is:
- (c) except in the case referred to in paragraph (d)—the Director-General of the Department of Agriculture, or
  - (d) if a person had principal responsibility for contamination of the land with the substance in such a way as to present a significant risk of harm (whether or not there were other persons who had responsibility for such contamination of the land with the substance) because of the operation of section 13 (1) (c)—that person.
- (4) If there is more than one person in the category of appropriate person specified in subsection (2) or (3), the EPA may, but is not required to, make more than one person



in the category the subject of the order.

- (5) Any public authority may be specified as the subject of an order whether or not as an appropriate person.

**Note—**

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

- (6) For the purposes of this section, the choice of a person is regarded as not practicable 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 order, become unable to pay the person's debts.

**13 Responsibility if contamination indirect or delayed or risk arises from change of use**

- (1) For the purposes of this Act, a person is responsible (whether or not principally responsible) for the contamination of land in such a way as to present a significant risk of harm even if the land only became contaminated in such a way:
- (a) because an act or activity of the person (whether or not in, on or under that land) resulted in the conversion of a substance in, on or under the land that did not cause contamination of the land in such a way into a substance that did cause contamination of the land in such a way, or
  - (b) because an act or activity of the person (whether or not in, on or under that land) resulted in a change in some pre-existing contamination of the land so that the contamination of the land became contamination in such a way, or
  - (c) because an act or activity of the person (whether or not in, on or under the land) resulted in a change in the approved use of the land (within the meaning of section 9) and a consequent change in the risk or the harm (even if the contamination itself did not change).
- (2) An example of an act referred to in subsection (1) (c) is the making of an application under Part 4 of the *Environmental Planning and Assessment Act 1979* for development consent.
- (3) A public authority does not become a person referred to in subsection (1) (c) just because it gives development consent, or concurs in the giving of it, under Part 4 of the *Environmental Planning and Assessment Act 1979*.

- (4) In determining whether a person is responsible (whether or not principally responsible) for the contamination of land with a substance in such a way as to present a significant risk of harm, it is irrelevant that the contamination or significant risk of harm did not arise contemporaneously with the act or activity of the person that ultimately was responsible for the contamination of the land with the substance in such a way.

#### **14 Concept of notional owner**

- (1) For the purposes of this Act, a **notional owner** of land:
- (a) is a person (not being the owner of the land or the Crown or a person or body representing the Crown) who has a vested interest with respect to the land that carries an entitlement to have a freehold interest in the land vested in the person or 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, and
  - (b) includes a mortgagee in possession of the land.
- (2) For the purposes of this Act:
- (a) a person is not a notional owner of land just because the person has a security (such as a mortgage, charge or lien) over the land, and
  - (b) a person is not a notional owner of land just because the person is a legal personal representative of a person who was an owner of the land immediately before the appointment of the representative took effect or who was an owner of the land immediately before his or her death, and
  - (c) the Public Trustee is not a notional owner of land just because the land is deemed to be vested in the Public Trustee by the operation of section 61 of the [Wills, Probate and Administration Act 1898](#), and
  - (d) a person that would otherwise be a notional owner of land is not a notional owner of land if:
    - (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) (d) (ii), **financial controller** means a receiver, manager or other person that 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.

## Division 2 Investigation

### 15 Declaration of land as investigation area

- (1) The EPA may declare land to be an investigation area if it has reasonable grounds to believe that the land is contaminated with a substance in such a way as to present a significant risk of harm.

**Note—**

While a declaration is in force, that fact is noted in the register of the EPA to which the public has access. See Part 5.

- (2) Once land has been declared an investigation area, the EPA must with reasonable expedition carry out an investigation of the land or order an investigation of the land under this Division.
- (3) The declaration must be made by notice that is published in the Gazette and that:
  - (a) describes with reasonable particularity the land that is the investigation area, and
  - (b) states the reasons for the declaration, and
  - (c) advises that the making of the declaration does not prevent the carrying out of a voluntary investigation of the area by any person, and
  - (d) advises the public that it may, within a period specified in the notice, make submissions to the EPA on whether the EPA should issue an investigation order in relation to the area or on any other matter concerning the area.
- (4) The EPA must, at least 7 days before the declaration is made, serve copies of the proposed declaration 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 contaminated the land with the relevant substance in such a way as to present a significant risk of harm, and
  - (c) the occupier of the land.
- (5) The EPA must also have a copy of the declaration published in a daily newspaper circulating generally in New South Wales and, if the land to which the declaration relates is outside the Sydney Metropolitan area, in a newspaper circulating in the locality in which the land is situated. This publication must be on the same day as, or as soon as practicable after, the publication of the notice in the Gazette.
- (6) A declaration under this section is not invalid merely because of a failure to comply

with subsection (4) or (5) or merely because the declaration differs (otherwise than in a matter of substance) from the proposed declaration referred to in subsection (4) or the copy referred to in subsection (4).

## **16 Notice to end declaration and order**

- (1) When the EPA is satisfied that it no longer has reasonable grounds to believe that land declared to be an investigation area is contaminated in such a way as to present a significant risk of harm, the EPA must publish notice of that fact in the Gazette. Any declaration under this Division and any investigation order, relating to the land cease to be in force on the day when that notice is so published.
- (2) The EPA must serve copies of that notice on the persons on whom it was required to serve copies of the declaration and have a copy of the notice published as soon as practicable in a daily newspaper circulating generally in New South Wales and, if the land to which the declaration relates is outside the Sydney Metropolitan area, in a newspaper circulating in the locality in which the land is situated.

## **17 Investigation order**

- (1) The EPA may, by notice in writing served on a person who is an appropriate person or a public authority, order the person to investigate land declared to be an investigation area and to report on the following matters:
  - (a) the nature and extent of the contamination of the land,
  - (b) the nature and extent of the harm caused by the contamination,
  - (c) the risk that the contamination will cause such harm,
  - (d) the most appropriate means for undertaking remediation of the land.

### **Note—**

While an order is in force, that fact is noted in the register of the EPA to which the public has access. See Part 5.

- (2) The EPA must not make an order under this section unless it has considered any submissions made by the public under this Division on whether the order should be made.
- (3) The EPA must also serve a copy of the order on such of the following persons as are not subject to the order under subsection (1):
  - (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 contaminated the land with the relevant substance in such a way as to present a significant risk of harm.

- (4) A person (other than a public authority that is not a person interested in the relevant land) who, without reasonable excuse, fails to comply with an investigation order to which the person is subject is guilty of an offence.

Maximum penalty:

- 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
- 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.

- (5) For the purposes of subsection (4), an example of a reasonable excuse is that the person was unable to enter land because of the refusal of access to the land by its occupier, but entry to that land was essential for the person to avoid committing the relevant act or omission.

## **18 Details of investigation order**

- (1) An investigation order must specify the following matters:

- (a) the land to which it applies,
- (b) the name and address of every person served or to be served by the EPA with a copy of the order,
- (c) the nature of the contamination (and risk of harm) that the EPA has reasonable grounds to believe affect the land,
- (d) the action that the person subject to the order must take in investigating and reporting,
- (e) a reasonable period for taking that action,
- (f) any other matter prescribed by the regulations.

- (2) The period must exceed by a reasonable amount the period for lodging an appeal against the order.

### **Note—**

Part 6 provides for appeals.

- (3) The following are examples of the kinds of action that may be required by an investigation order in addition to the requirement that an investigation be carried out:
- (a) that the person subject to the order serve notice of the order on those persons

who occupy land access to which is necessary for the person to carry out the investigation,

- (b) that the person make progress reports to the EPA on the investigation,
  - (c) that, if the person finds that groundwater within the investigation area is contaminated, the person report that fact to the Minister administering the *Water Management Act 2000*,
  - (d) that the person make available for inspection by any person free of charge a report of the outcome of the investigation and provide a copy of such a report to any person for a reasonable fee,
  - (e) that the person advertise and conduct meetings for the public to receive progress reports, and to make comments, on the investigation.
- (4) An investigation 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 order, without the consent of the occupier of the land.

#### **19 Voluntary investigation proposals: agreement of EPA**

- (1) This section applies where one or more persons furnish the EPA with a proposal to investigate land, being land that is contaminated with a substance in such a way as to present a significant risk of harm.
- (2) The EPA may agree with one or more of the parties to such a voluntary investigation proposal that the EPA will not issue an investigation order against them if an investigation is carried out in accordance with the proposal and the EPA is satisfied that:
  - (a) the terms of the proposal are appropriate (including any plan of investigation, provision for giving notice and terms setting out a timetable for the investigation or requiring progress reports on the investigation), and
  - (b) the parties have taken all reasonable steps to identify and find every owner and notional owner of the land and every person responsible for contamination of the land (in such a way as to present a significant risk of harm) with the substance referred to in subsection (1), and
  - (c) the parties have given the persons identified and found a reasonable opportunity to participate in the formulation and carrying out of the proposal on reasonable terms.
- (3) The EPA may agree as referred to in subsection (2) even if it is not satisfied as to the matters set out in subsection (2) (b) and (c), but only if the parties have undertaken not to recover contributions under Division 6 in respect of the investigation.

- (4) The EPA's agreement must be in writing and copies of the agreement must be served on the parties with whom the agreement is made.
- (5) If the EPA is satisfied that the terms of a proposal that has been the subject of the EPA's agreement under this section have been carried out and the EPA serves notice in writing on the parties that it is so satisfied, the parties may (except in the case referred to in subsection (3)) recover contributions in accordance with Division 6 as if the parties had carried out the investigation under an investigation order.

## **20 Voluntary investigation proposals: exceptions**

- (1) The EPA is not prevented by its agreement under section 19 from making an investigation order against persons (including public authorities) with whom it has made no such agreement (whether or not they are parties to the proposal referred to in that section).
- (2) The EPA is not prevented by such an agreement from making an investigation order against a party to the agreement who is an appropriate person if, in the opinion of the EPA, the terms of the proposal are not carried out.

### **Note—**

Cost contributions among parties to voluntary investigation proposals are affected by section 36.

## **Division 3 Remediation**

### **21 Declaration of remediation site**

- (1) The EPA may declare land to be a remediation site if the land has, whether or not as a result of an investigation under Division 2, been found to be contaminated in such a way as to present a significant risk of harm.

### **Note—**

While a declaration is in force, that fact is noted in the register of the EPA to which the public has access. See Part 5.

- (2) The declaration must be made by notice that is published in the Gazette and that:
  - (a) describes with reasonable particularity the land that is the remediation site and any land access to which may be required for the purposes of remediating the site, and
  - (b) states the nature of the contamination that affects the land and the nature of the harm that the substances with which the land is contaminated may cause, and
  - (c) advises that the making of the declaration does not prevent the carrying out of a voluntary remediation of the site by any person, and
  - (d) advises the public that it may, within a period specified in the notice, make

submissions to the EPA on whether the EPA should issue a remediation order in relation to the site or on any other matter concerning the site.

- (3) The EPA must, before the declaration is made, serve copies of the proposed declaration 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 contaminated the land with the relevant substance in such a way as to present a significant risk of harm, and
  - (c) the occupier of the land, if the occupier is not served under paragraph (a) or (b) with a copy of the declaration.
- (4) That service must be effected not later than a reasonable period before the declaration is made (so that an opportunity is given to the person served to make a submission to the EPA on whether the declaration should be made).
- (5) The EPA must also have a copy of the declaration published in a daily newspaper circulating generally in New South Wales and, if the land to which the declaration relates is outside the Sydney metropolitan area, in a newspaper circulating in the locality in which the land is situated. This publication must be on the same day as, or as soon as practicable after, the publication of the notice in the Gazette.
- (6) A declaration under this section is not invalid merely because of a failure to comply with subsection (3), (4) or (5) in relation to the declaration or merely because the declaration differs (otherwise than in a matter of substance) from the proposed declaration referred to in subsection (3) or the copy referred to in subsection (5).
- (7) If the EPA considers that the risk of harm presented by the contamination of land is so significant (or the harm itself is so serious) that, in the public interest, it must make a remediation order at the same time as it makes a declaration under this Division, the EPA is not required:
  - (a) to comply with subsection (2) (d) or (3), or
  - (b) to allow a reasonable opportunity for the making of submissions on the making of the declaration or order.

## **22 Notice to end declaration and order**

- (1) When the EPA is satisfied that it no longer has reasonable grounds to believe that land declared to be a remediation site is contaminated in such a way as to present a significant risk of harm, the EPA must publish notice of that fact in the Gazette. Any declaration under this Division, and any remediation order relating to the land, cease



to be in force on the day when that notice is so published.

- (2) The EPA must serve copies of that notice on the persons on whom it was required to serve copies of the declaration and have a copy of the notice published as soon as practicable in a daily newspaper circulating generally in New South Wales and, if the land to which the declaration relates is outside the Sydney metropolitan area, in a newspaper circulating in the locality in which the land is situated.

### **23 Remediation order**

- (1) The EPA may, by notice in writing served on a person who is an appropriate person or a public authority, order the person to do one or both of the following within such reasonable time as is specified in the order in respect of land declared to be a remediation site:
  - (a) carry out such remediation and other action as may be specified in the order in accordance with this Division,
  - (b) submit for the EPA's approval a plan of remediation.

#### **Note—**

While an order is in force, that fact is noted in the register of the EPA to which the public has access. See Part 5.

- (2) An order under subsection (1) (a) may adopt, with or without modification, a plan submitted in accordance with a previous order under subsection (1) (b) or, at the discretion of the EPA, a plan recommended by the EPA or submitted by a site auditor accredited under Part 4.
- (3) The EPA must not make an order under this section unless it has considered any submissions made by the public under this Division on whether the order should be made. This subsection does not, however, apply in a case where, in accordance with this Division, the EPA makes a remediation order at the same time as it makes a declaration under this Division.
- (4) The EPA must also serve copies of the order on such of the following persons as are not the appropriate person:
  - (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 contaminated the land with the relevant substance in such a way as to present a significant risk of harm.
- (5) Declaration of land as an investigation area and the making of an investigation order

in respect of the land are not prerequisites to the making of an order under this section.

- (6) A person (other than a public authority that is not a person interested in the relevant land) who, without reasonable excuse, fails to comply with a remediation order to which the person is subject is guilty of an offence.

Maximum penalty:

- 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
- 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) For the purposes of subsection (6), an example of a reasonable excuse is that the person was unable to enter land because of the refusal of access to the land by its occupier, but entry to that land was essential for the person to avoid committing the relevant act or omission.

## **24 Details of remediation order**

- (1) A remediation order must specify the following matters:

- (a) the land to which it applies,
- (b) the name and address of every person served or to be served by the EPA with a copy of the order,
- (c) the nature of the contamination (and risk of harm) that affect the land,
- (d) that the remediation concerned must be audited by a site auditor under Part 4,
- (e) a reasonable period for compliance with the notice,
- (f) any other matter prescribed by the regulations.

- (2) The period must exceed by a reasonable amount the period for lodging an appeal against the order, except if the EPA considers that the risk of harm presented by the contamination is so significant (or the harm itself 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) The following are examples of the kinds of action that may be required by a remediation order, in addition to the requirement that remediation be carried out:
- (a) that the person enter any specified land (which may, but need not be, within a

remediation site) in order to carry out the remediation, or prepare the plan required by the order,

- (b) that the person subject to the order serve notice of the order on those persons who occupy land access to which is necessary for the person to carry out the remediation, or prepare the plan required by the order,
  - (c) that the person make progress reports to the EPA on the remediation, or the preparation of the plan of remediation,
  - (d) that the person make available for inspection by any person free of charge a report on the remediation, or the plan of remediation, and provide a copy of such a report or plan to any person for a reasonable fee,
  - (e) that the person advertise and conduct meetings for the public to receive progress reports, and to make comments, on the remediation or the plan of remediation.
- (4) A remediation 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 order, without the consent of the occupier of the land.

## **25 Nature of remediation**

The following are examples of action that may be required to be taken under a remediation order:

- (a) erecting on the land any fence in any specified place,
- (b) erecting on, in or under the land, any wall, bund or other barrier in any specified place,
- (c) treating, storing or containing on the land, or removing from the land and treating or disposing of, any soil, sand, rock, water or other solid or liquid material of whatever kind,
- (d) vacating, or ceasing to carry on any activity upon, the land or any part of it,
- (e) erecting or displaying on the land any sign or notice containing directions to persons not to enter the land or not to use the land in a specified manner or for a specified purpose or containing other directions of that kind or any other kind,
- (f) refraining from disturbance or further disturbance of the land in a specified manner or below a specified depth,
- (g) monitoring the effectiveness of remediation or the risk of harm presented by the contamination of the land,
- (h) informing the EPA of any change in the ownership or occupancy of the land, to the

extent that the person subject to the requirement is aware of the change.

## **26 Voluntary remediation proposals: agreement of the EPA**

- (1) This section applies where one or more persons furnish the EPA with a proposal to remediate land, being land that is contaminated with a substance in such a way as to present a significant risk of harm.
- (2) The EPA may agree with one or more of the parties to such a voluntary remediation proposal that the EPA will not issue a remediation order against them if remediation is carried out in accordance with the proposal and the EPA is satisfied that:
  - (a) the terms of the proposal are appropriate (including any plan of remediation, provision for giving notice and terms setting out a timetable for the remediation or requiring progress reports on the remediation), and
  - (b) the parties have taken all reasonable steps to identify and find every owner and notional owner of the land and every person responsible for contamination of the land (in such a way as to present a significant risk of harm) with the substance referred to in subsection (1), and
  - (c) the parties have given the persons identified and found a reasonable opportunity to participate in the formulation and carrying out of the proposal on reasonable terms.
- (3) The EPA may agree as referred to in subsection (2) even if it is not satisfied as to the matters set out in subsection (2) (b) and (c), but only if the parties have undertaken not to recover contributions under Division 6 in respect of the remediation.
- (4) The EPA's agreement must be in writing and copies of the agreement must be served on the parties with whom the agreement is made.
- (5) If the EPA is satisfied that the terms of a proposal that has been the subject of the EPA's agreement under this section have been carried out and the EPA serves notice in writing on the parties that it is so satisfied, the parties may (except in the case referred to in subsection (3)) recover contributions in accordance with Division 6 as if the parties had carried out remediation work under a remediation order.

## **27 Voluntary remediation proposals: exceptions**

- (1) The EPA is not prevented by its agreement under section 26 from making a remediation order against persons (including public authorities) with whom it has made no such agreement (whether or not they are parties to the proposal referred to in that section).
- (2) The EPA is not prevented by such an agreement from making a remediation order against a party to the agreement who is an appropriate person if, in the opinion of the EPA, the terms of the proposal are not carried out.

**Note—**

Cost contributions among parties to voluntary remediation proposals are affected by section 36.

**28 Maintenance of remediation: notice to owner or occupier**

- (1) The EPA may by notice in writing served on a person who is an owner, or occupier, of land require the person to maintain remediation action in relation to the land, commencing within such reasonable time as is specified in the notice.
- (2) The action is to be such action as may be specified in the notice and the notice may require its continuation for a specified period, until a specified event or while the person served with the notice is the owner or occupier (as the case requires) of the land.
- (3) This section applies only to land that was the subject of remediation under this Part or remediation that was the subject of an EPA agreement under section 26.
- (4) A person who fails to comply with a notice under this section is guilty of an offence.

Maximum penalty:

- in the case of a corporation—600 penalty units, or
- in the case of an individual—300 penalty units.

**29 Maintenance of remediation: covenant**

- (1) The EPA may under section 88E of the *Conveyancing Act 1919* impose on land a public positive covenant that requires any owner (for the time being) of the land to maintain remediation in relation to the land.
- (2) Despite that section, the memorandum or deed by which the covenant is imposed need be executed only by the EPA and does not need to be executed by any other person and does not require the agreement of any other person.
- (3) This section applies only to land that was the subject of remediation under this Part or remediation that was the subject of an EPA agreement under section 26.

**Division 4 Action by public authority**

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

- (1) If a person fails to comply with an investigation order, the EPA may carry out the requirements of the order or, by notice in writing, order another public authority to carry out those requirements.
- (2) If a person fails to comply with a remediation order, the EPA may, by notice in writing, order another public authority to carry out the requirements of the order.

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

- (1) A public authority that is ordered 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 investigation or remediation order) to make an investigation, or to take remediation action, is authorised and required to take that action.
- (2) A public authority may take such action by itself or its employees or by agents or contractors.

## **Division 5 Entry on land to investigate or remediate that or other land**

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

- (1) An order under this Part does not confer on the person subject to the order 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 to which the person referred to in subsection (1) is subject 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 a remediation order, the occupier is then entitled in the same way as the appropriate person would have been to recover the costs of the remediation in accordance with Division 6.

### **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 investigation or remediation order, 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 investigation or remediation order, 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 Cost of investigation or remediation**

### **34 Recovery of EPA's administrative costs associated with orders**

The EPA may, by notice in writing, require a person to pay (according to the amounts or rates prescribed by the regulations) all or any costs incurred by the EPA in connection with:

- (a) preparing and serving an investigation or remediation order in respect of the person, and
- (b) monitoring action under the order, and
- (c) seeking compliance with the order by the person, and
- (d) any other associated matters.

### **35 Recovery of public authority's substantive 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 investigation or remediation 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 investigation or remediation order made in respect of the land (whether or not it 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 costs of investigation or remediation

- (1) **Investigator or remediator is not contaminator** If a person who, in relation to the contamination of land with a substance in such a way as to present a significant risk of harm, carries out the requirements of an investigation or remediation order had no responsibility for the contamination, the person may recover a portion of the person's costs in carrying out those requirements from each person who did have such responsibility in a court of competent jurisdiction.
- (2) **Investigator or remediator is contaminator** If a person who, in relation to the contamination of land with a substance in such a way as to present a significant risk of harm, carries out the requirements of an investigation or remediation order had some responsibility for the contamination, the person may recover in a court of competent jurisdiction from each other person who also had responsibility for the contamination a portion of the first person's costs in carrying out those requirements.
- (3) **Issuer, investigator or remediator is public authority** A public authority may recover any unpaid amounts specified in a notice issued by it under section 34 or 35 as a debt in a court of competent jurisdiction.
- (4) **Recovery by owner** If:
  - (a) an owner (or notional owner) of land pays any costs and expenses specified in a notice under section 34 or 35, and
  - (b) the owner (or notional owner) did not have any or sole responsibility for the contamination concerned,the owner (or notional owner) may recover a portion of the amount paid as a debt in a court of competent jurisdiction from each person who had responsibility for the 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 contamination,
  - (b) the reasonable cost of the remediation (if any) carried out by each person in respect of the contamination.
- (6) **Reference to person** In this section, a reference to a person includes a reference to a public authority.
- (7) **Voluntary remediators may agree section not to apply** If the parties to a voluntary remediation 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.



**Note—**

Voluntary remediation proposals are also referred to in sections 26 and 27.

- (8) **Costs** For the purposes of this section, the costs of a person in carrying out the requirements of an investigation or remediation order include any amount for which the person is liable, or reasonable cost or expense that the person has a duty to meet, under section 33 or 34.

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

If a public authority carries out (otherwise than as an appropriate person) the requirements of an investigation or remediation order 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 land that is within an investigation area or a remediation site 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 investigation or remediation order 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 *Wills, Probate and Administration Act 1898*.

**39 Registration of cost notices**

- (1) If a cost notice under section 35 (2) has been issued under this Division by a public authority to a person, the authority 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 investigation or remediation 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** There is created by force of this section, on the registration of a notice under section 39, a charge 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, or
  - (b) the completion of the sale or other disposition of the land with the consent of the public authority, or
  - (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 investigation or remediation order are partly or fully met out of money appropriated by Parliament specifically for the investigation or remediation 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 portion of the amount recovered by it into the Consolidated Fund or as otherwise directed by the Treasurer.
- (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 notices and declarations**

- (1) More than one order or notice may be served under a provision of this Part on the same person.
- (2) More than one declaration may be made under a provision of this Part.

#### **44 Revocation or variation**

- (1) A declaration, order or notice under this Part may be revoked or varied by one or more subsequent declarations, orders or notices made under the same section as the declaration, order or notice so revoked or varied.
- (2) If a declaration, order or notice is varied, the declaration, order or notice continues in force according to its original terms (as so varied) and subject to this Act. Such a variation may take the form of a modification of, or an addition to, the terms and specifications of the declaration, order or notice.
- (3) A declaration or order that revokes a declaration or order may only be made on the ground that the EPA does not have reasonable grounds to believe that land is contaminated in such a way as to present a significant risk of harm.
- (4) A declaration or order that revokes or varies a declaration or order must state the reasons for the revocation or variation.
- (5) Section 15 (2) and (3) (c) do not apply to a declaration that revokes or varies a declaration of land as an investigation area.

- (6) Section 21 (2) (c) does not apply to a declaration that revokes or varies a declaration of land as a remediation site.
- (7) An order that revokes or varies an investigation or remediation order must be served on the person subject to the order so revoked or varied.
- (8) Sections 17 (1), (3) and (4) and 18 do not apply to an order that revokes or varies an investigation order.
- (9) Sections 23 (1), (2), (5) and (6) and 24 do not apply to an order that revokes or varies a remediation order.
- (10) Nothing in this section enables the variation of a declaration or order so that, as so varied, it would not have been in accordance with this Act originally to make it.

#### **45 Obstruction of persons**

- (1) A person is guilty of an offence if the person wilfully delays or obstructs a person (including a public authority) who is carrying out any action in compliance with an order or notice under this Part.

Maximum penalty:

- 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
  - 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 False statements in reports**

A person who in a report required under this Part and lodged with the EPA makes a statement that the person knows is false or misleading in a material particular is guilty of an offence.

Maximum penalty:

- in the case of a corporation—1,250 penalty units, or
- in the case of an individual—600 penalty units.

## Part 4 Audit of investigation or remediation

### 47 Definitions

(1) In this Part:

**site audit** means an independent review:

- (a) that relates to investigation, or remediation, carried out (whether under this Act or otherwise) in respect 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 the investigation or remediation,
  - (iia) whether the land is suitable for any specified use or range of uses,
  - (iii) what investigation or remediation remains necessary before the land is suitable for any specified use or range of uses,
  - (iv) the suitability and appropriateness of a plan of remediation, a long-term management plan, a voluntary investigation proposal or a remediation proposal.

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

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

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

(2) 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:

- (a) a requirement under this Act, or
  - (a1) a voluntary investigation proposal that has been the subject of the EPA's agreement under section 19 or a voluntary remediation proposal that has been the subject of the EPA's agreement under section 26, or
- (b) 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 given under that Act, or

(c) 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.

#### **48 Statutory site audits**

(1) An individual must not:

(a) carry out a statutory site audit, or

(b) make any representation, or cause or allow any representation to be made, to the effect that he or she is prepared to carry out a statutory site audit,

if the individual is not accredited under this Part or while his or her accreditation is under suspension.

Maximum penalty: 600 penalty units.

(2) A body corporate must not:

(a) purport to carry out a statutory site audit, or

(b) make any representation, or cause or allow any representation to be made, to the effect that it is capable of doing so.

Maximum penalty: 1,250 penalty units.

#### **49 Accreditation panel**

(1) The EPA is to convene an accreditation panel.

(2) The accreditation panel is to consist of 4 or more members appointed by the EPA, each having appropriate technical expertise, of whom at least:

(a) one is to be an officer of the EPA who is to be appointed by the EPA as the Chairperson, and

(b) one is to be a representative of community environmental groups appointed on the nomination of the Nature Conservation Council of NSW Incorporated, and

(c) one is to be a representative of industry, and

(d) one is to have tertiary qualifications in a discipline relevant to the contamination of land.

(3) The functions of the accreditation panel are:

(a) to make recommendations to the EPA regarding the suitability of an applicant for accreditation, and

- (b) to provide such other advice to the EPA as the EPA may request.
- (4) The procedure of the accreditation panel is to be determined by the EPA or (subject to any determination of the EPA) by the accreditation panel.
- (5) A member of the accreditation panel holds office for such period (not exceeding 5 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.
- (6) The EPA may remove a member from the accreditation panel at any time by giving the member notice in writing.
- (7) A member of the accreditation panel is entitled to such allowances in connection with the work of the panel as the EPA approves in respect of the member.
- (8) Anything done or omitted to be done by a member of the accreditation panel in exercising the functions conferred or imposed on the panel or member by or under this or any other Act does not, if the thing was done or omitted to be done in good faith, subject the member personally to any action, liability, claim or demand.

#### **50 Application for accreditation as site auditor**

- (1) An individual may apply to the EPA for accreditation as a site auditor.
- (2) An application for accreditation as a site auditor must:
  - (a) be made in the manner and form approved by the EPA, and
  - (b) be supported by any information required by the EPA, and
  - (c) be accompanied by the application fee (if any) prescribed by the regulations.
- (3) Each application for accreditation is to be referred by the EPA to the accreditation panel.
- (4) If the EPA considers it necessary in order to determine the suitability of an applicant for accreditation, the EPA may require the applicant to do one or more of the following:
  - (a) to furnish to the EPA, within a specified time, any further particulars that the EPA considers necessary,
  - (b) to appear before the accreditation panel for an interview,
  - (c) to undergo an examination as to his or her knowledge.
- (5) The accreditation panel is to make a recommendation to the EPA regarding the suitability of an applicant for accreditation.
- (6) The EPA may accept or reject the recommendation of the accreditation panel.

## **51 Grant of accreditation as site auditor**

- (1) The EPA is to determine an application for accreditation as a site auditor by granting or refusing the application.
- (2) The EPA may refuse to grant the application:
  - (a) if the applicant fails to comply with section 50 or a requirement made under that section, or
  - (b) if, in the opinion of the EPA, the applicant fails to satisfy the requirements of the guidelines in relation to eligibility for accreditation as a site auditor, or
  - (c) if, within the period of 2 years before the date the application was made, the EPA revoked or refused to renew the applicant's accreditation as a site auditor, or
  - (d) for any other reason that the EPA considers sufficient.
- (3) The EPA must give notice in writing of the determination of the application to the applicant, including:
  - (a) if the application is granted, notice of the period for which accreditation is granted and any conditions to which the accreditation is subject, and
  - (b) if the application is refused, the reasons for the refusal.
- (4) An accreditation remains in force for the period specified by the EPA (not exceeding 3 years), subject to any revocation or suspension of the accreditation under this Act.
- (5) The regulations may require an accreditation fee to be paid to the EPA, in respect of a grant of accreditation, within the time determined by the EPA.
- (6) The accreditation fee is to be calculated on the basis of the period for which accreditation is granted.

## **52 Renewal of accreditation**

- (1) An application for renewal of accreditation as a site auditor must:
  - (a) be made in the manner and form approved by the EPA, and
  - (b) be supported by any information required by the EPA, and
  - (c) be made within the time (if any) prescribed by the regulations.
- (2) The EPA may require an applicant to furnish to the EPA, within a specified time, any further particulars that the EPA considers necessary to determine the suitability of the applicant for renewal of accreditation.
- (3) The EPA is to determine an application for renewal of accreditation as a site auditor by



granting or refusing the application.

- (4) The EPA may refuse to grant renewal of accreditation as a site auditor on any of the grounds referred to in section 56 (1) or if the applicant fails to comply with this section or a requirement made under this section.
- (5) The EPA must give notice in writing of the determination of the application to the applicant, including:
  - (a) if the application is granted, notice of the period for which the renewal of accreditation is granted and any conditions to which the accreditation is subject, and
  - (b) if the application is refused, the reasons for the refusal.
- (6) If an application for renewal of an accreditation that is in force is made to the EPA within the time (if any) prescribed by the regulations, the accreditation remains in force until notice in writing of the determination of the application is given to the applicant.
- (7) If the application is granted, the applicant's accreditation remains in force for the period specified by the EPA (not exceeding 3 years), subject to any revocation or suspension of the accreditation under this Act.
- (8) If the application is refused, the applicant's accreditation expires when notice in writing of the determination of the application is given to the applicant.
- (9) The regulations may require an accreditation fee to be paid to the EPA, in respect of a grant of a renewal of accreditation, within the time determined by the EPA.
- (10) The accreditation fee is to be calculated on the basis of the period for which accreditation is granted.

### **53 Conditions of accreditation**

- (1) The EPA may grant accreditation or a renewal of accreditation unconditionally or subject to conditions.
- (2) In addition, at any time while the accreditation is in force or suspended, the EPA may by notice in writing given to the site auditor:
  - (a) impose conditions or further conditions on the accreditation, or
  - (b) vary or revoke any of the conditions to which the accreditation is subject.
- (3) A condition imposed by the EPA, or the variation or revocation of a condition, takes effect on the date specified in the notice or on the date on which it is given to the site auditor, whichever is the later.

- (4) The regulations may impose a condition on an accreditation or class of accreditation.
- (5) Subject to the regulations, a condition imposed by the regulations cannot be varied or revoked by the EPA and prevails to the extent of any inconsistency over a condition or direction imposed or given by the EPA under this Part.
- (6) A condition imposed by the EPA may also be varied by a direction given under section 53A.

**Note—**

Contravention of a condition is not an offence but is grounds for non-renewal, revocation or suspension of accreditation.

**53A Directions**

- (1) The EPA may, by notice in writing given to a site auditor, direct the site auditor:
  - (a) to take specified action, or refrain from taking specified action, relating to the conduct of a site audit or class of site audits, or the making of site audit reports and site audit statements, or
  - (b) to refrain from conducting a particular site audit or class of site audits for a specified period or until further notice by the EPA.
- (2) A direction takes effect on the date specified in the notice or on the date on which it is given to the site auditor, whichever is the later.

**Note—**

Contravention of a direction is not an offence but is grounds for non-renewal, revocation or suspension of accreditation.

**53B Site audit reports and site audit statements**

- (1) A site auditor must make a site audit report in writing whenever he or she carries out a site audit and furnish that report to the person who commissioned the site audit.
- (2) The site audit report must contain a critical review of the information collected in relation to the site audit and must clearly set out the reasons for the findings proposed to be contained in the relevant site audit statement.
- (3) After completing the site audit report, the site auditor must make a site audit statement in a form approved by the EPA and must:
  - (a) furnish that statement to the person who commissioned the site audit, and
  - (b) if the site audit is a statutory site audit, at the same time furnish a copy of the statement to the EPA and the local authority for the area in which any land the subject of the site audit is situated.

- (4) The site audit statement must contain the site auditor's findings in relation to the site audit and must be consistent with the reasons set out in the site auditor's site audit report.
- (5) A site auditor must promptly furnish the EPA with any further information, in support of or otherwise relating to a site audit report or a site audit statement, or concerning any site audit carried out by the site auditor, as the EPA may, by notice in writing to the site auditor, require.
- (6) A site audit is to be carried out, and a site audit report and site audit statement are to be prepared and furnished, by a site auditor:
  - (a) in compliance with the provisions of this Act and the regulations, and
  - (b) in accordance with the guidelines, and
  - (c) having regard to the provisions of any environmental planning instruments applying to the site.

### **53C Notification to EPA of statutory site audit**

A site auditor must, within 7 days of being commissioned to carry out a statutory site audit by any person other than the EPA, give to the EPA a notice in writing specifying the name of the person commissioning the site audit and the location of the land to which the site audit relates.

### **53D Annual returns and other notifications**

- (1) A site auditor who is accredited for the whole or part of a return period must furnish the EPA with a return showing site audits commenced or completed during that period.
- (2) The return must be furnished not later than the 31 July next following the end of the return period.
- (3) The return must include particulars of a kind (if any) prescribed by the regulations in respect of each site audit mentioned in the return.
- (4) A site auditor must, within 14 days of any material change in the circumstances of his or her employment or of any other change that may affect the site auditor's accreditation or work as an accredited site auditor, give the EPA notice in writing containing details of the change.
- (5) Without limiting subsection (4), a site auditor must, within 14 days of any of the following matters occurring, give the EPA notice in writing of the details of the matter:
  - (a) any change to the site auditor's team,
  - (b) any change to the site auditor's professional indemnity insurance,

- (c) the commencement of any legal or disciplinary action against the site auditor:
  - (i) in his or her professional capacity as a site auditor, or
  - (ii) in relation to the site auditor's work in relation to the investigation, remediation or management of actual or possible contamination of land, or
  - (iii) in relation to the site auditor's accreditation in another jurisdiction (including a condition or restriction placed on the accreditation),
- (d) any other matter prescribed by the regulations.

(6) In this section:

**accreditation in another jurisdiction** includes the appointment, registration, licensing, approval, admission, certification (including by way of practising certificates), or any other form of authorisation, of a person required by or under legislation of another jurisdiction for the carrying out of audits relating to the actual or possible contamination of land.

**return period** means a year commencing on 1 July and ending on 30 June.

**site auditor's team** means those persons that the site auditor has identified, in his or her application for accreditation or renewal of accreditation or in a notice in writing given to the EPA, as providing expertise or technical resources to the site auditor.

#### **54 Site auditor to avoid conflicts of interest**

- (1) A site auditor must not carry out a site audit of land:
  - (a) if he or she is or is related to a person by whom any part of the land is owned or occupied, or
  - (b) if he or she has a pecuniary interest in any part of the land or any activity carried out on any part of the land, or
  - (c) if it involves the site auditor reviewing any aspect of work carried out by, or a report written by, the site auditor or a person to whom the site auditor is related.
- (2) A site auditor has a pecuniary interest for the purposes of this section if there is a reasonable likelihood or expectation of appreciable financial gain or loss to the site auditor, or to a person to whom he or she is related, from the relevant part or activity, but does not have such an interest if the interest is so remote or insignificant that it could not reasonably be regarded as likely to influence any decision that the site auditor might make in relation to a site audit of the land.
- (3) A site auditor is related to a person for the purposes of this section if the site auditor:
  - (a) is an employer, partner or employee of the person, or

- (b) is a spouse, de facto partner, sibling, parent or child of the person, or
- (c) has a contractual arrangement with the person that might reasonably be seen to give rise to a conflict between the site auditor's duties as a site auditor and the site auditor's interests under the arrangement, or
- (d) is employed by the same employer as the person.

### **55 False audits or information**

A person must not, in or in connection with a site audit, a site audit report or a site audit statement, make any statement that the person knows to be 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 or imprisonment for 2 years, or both.

### **56 Revocation, suspension or refusal to renew accreditation**

- (1) The EPA may, by notice in writing given to a site auditor, suspend, revoke or refuse to renew the site auditor's accreditation if it is of the opinion that one or more of the following grounds exist:
  - (a) the site auditor no longer satisfies the requirements of the guidelines in relation to eligibility for accreditation as a site auditor,
  - (b) the site auditor has contravened:
    - (i) any of the provisions of this Part, or
    - (ii) any of the provisions of the regulations, or
    - (iii) a condition to which the accreditation is subject, or
    - (iv) a direction given to the site auditor by the EPA under this Part,
  - (c) the site auditor is not carrying out sufficient bona fide site audits to justify continued accreditation,
  - (d) the site auditor's accreditation in another jurisdiction has been changed because of conduct that would (if it occurred in New South Wales) authorise revocation or suspension of the person's accreditation under this Act,

**Note—**

Section 33 of the [Mutual Recognition Act 1992](#) of the Commonwealth states that if a person's registration in an occupation in a State is cancelled, suspended or subject to a condition in relation to criminal, civil or disciplinary proceedings, then the person's registration in the equivalent occupation in another State is affected in the same way. See also section 32 of the [Trans-Tasman Mutual Recognition](#)

*Act 1997* of the Commonwealth which has a similar provision in relation to disciplinary proceedings occurring in New Zealand.

- (e) the site auditor provided false or misleading information in connection with an application for accreditation or renewal of accreditation,
  - (f) the site auditor fails to pay an accreditation fee within the time determined by the EPA, or such further time as the EPA may allow,
  - (g) any other ground prescribed by the regulations,
  - (h) the action is justified having regard to:
    - (i) the quality of the site auditor's work in relation to site audits in recent accreditation periods, or
    - (ii) any formal or informal disciplinary action taken against the site auditor under this Act, or
    - (iii) any other matter that the EPA considers to be relevant to the site auditor's suitability for accreditation.
- (2) A suspension of accreditation may be for a specified period, until completion of specified conditions, or until further notice by the EPA.
- (3) If a site auditor's accreditation is suspended until the fulfilment of specified conditions, the EPA must give the site auditor notice in writing that the accreditation is reinstated as soon as practicable after it is satisfied that the specified conditions have been fulfilled.
- (4) A suspension of accreditation has effect:
  - (a) for the period specified in the notice effecting the suspension, or
  - (b) if no period is specified in the notice, or if accreditation is suspended until the fulfilment of specified conditions, for the period:
    - (i) commencing on the date specified in the notice or on the date on which it is given to the site auditor, whichever is the later, and
    - (ii) finishing on the date the EPA gives the site auditor notice in writing that the site auditor's accreditation is reinstated or revoked.
- (5) An accreditation is taken not to be in force during the period in which a suspension has effect.
- (6) A revocation of accreditation takes effect on the date specified in the notice given by the EPA or on the date on which it is given to the site auditor, whichever is the later.
- (7) The EPA may revoke an accreditation that is suspended.

- (8) The EPA must not suspend, revoke or refuse to renew accreditation on a ground specified in this section unless before doing so:
- (a) it has given notice in writing to the site auditor that it intends to do so, and
  - (b) it has specified in that notice the reasons for its intention to do so, and
  - (c) it has given the site auditor a reasonable opportunity to make submissions in relation to the proposed revocation, suspension or refusal to renew, and
  - (d) it has taken into consideration any submissions made by the site auditor.

- (9) In this section:

**accreditation in another jurisdiction** includes the appointment, registration, licensing, approval, admission, certification (including by way of practising certificates), or any other form of authorisation, of a person required by or under legislation of another jurisdiction for the carrying out of audits relating to the actual or possible contamination of land.

## 57 Holding out

- (1) An individual must not make any representation, or cause or allow any representation to be made, to the effect that the individual is accredited under this Part if he or she is not so accredited or while his or her accreditation is under suspension.

Maximum penalty: 600 penalty units.

- (1A) An individual must not make any representation, or cause or allow any representation to be made, to the effect that the individual is authorised by his or her accreditation to carry out a statutory site audit, or class of statutory site audits, if the individual is prohibited from carrying out that site audit or class of site audits by a condition of his or her accreditation.

Maximum penalty: 600 penalty units.

- (2) A body corporate must not, at any time, make any representation, or cause or allow any representation to be made, to the effect that it is accredited under this Part.

Maximum penalty: 1,250 penalty units.

## Part 5 Information

### 58 EPA's record of current declarations and orders

- (1) The EPA is to maintain a record that consists of the following:
- (a) a copy of any declaration under Part 3, while the declaration is in force,
  - (b) a copy of any investigation or remediation order, while it is in force,

- (c) a copy of any site audit statement furnished to the EPA under section 53B and relating to land that is the subject of such a declaration, or such an order, while the declaration or order is in force,
  - (d) a note of the existence of a voluntary remediation proposal in response to which the EPA has agreed not to issue a remediation order, while the proposal has not been fully carried out,
  - (e) a note of the existence of a voluntary investigation proposal in response to which the EPA has agreed not to issue an investigation order, while the proposal has not been fully carried out,
  - (f) anything prescribed by the regulations,
  - (g) a separate part containing all such copies and notes as were formerly required, but are no longer required, under paragraphs (a)-(f) to be included in the record.
- (2) A copy of the record is to be available for public inspection (by electronic or such other means as the EPA thinks fit) at the principal office of the EPA and at such other places as the EPA thinks fit.
- (3) The EPA must, on application by any person, provide a copy of parts of the record.
- (4) The record may be inspected and copies of parts may be obtained during ordinary office hours and on payment of fees determined by the EPA (or during such hours, and on payment of such fees, as are prescribed instead by the regulations).
- (5) The regulations may prescribe any or all of the following:
- (a) the hours when the record may be inspected and when copies of parts of it may be obtained,
  - (b) fees for the inspection of the record,
  - (c) fees for copies of parts of the record.

#### **59 Local authorities to be informed**

- (1) The EPA must, as soon as practicable, inform the local authority for the area in which land is situated of the following matters under Part 3 that relate to the land:
- (a) that a declaration or order has been made,
  - (b) that a voluntary investigation proposal has been the subject of the EPA's agreement under section 19,
  - (c) that a voluntary remediation proposal has been the subject of the EPA's agreement under section 26,



- (d) that a declaration or order has ceased to be in force,
- (e) the completion of the carrying out of a voluntary investigation proposal that has been the subject of the EPA's agreement under section 19,
- (f) the completion of the carrying out of a voluntary remediation proposal that has been the subject of the EPA's agreement under section 26.

**Note—**

Section 53B requires site auditors to furnish local authorities with copies of site audit statements relating to statutory site audits.

- (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 regulation under that section, to be specified in a certificate under that section:
  - (a) that the land to which the certificate relates is within an investigation area or remediation site—if it is within such an area or site at the date when the certificate is issued,
  - (b) that the land to which the certificate relates is subject to an investigation or remediation order—if it is subject to such an order at that date,
  - (c) that the land to which the certificate relates is the subject of a voluntary investigation proposal (or voluntary remediation proposal) that is the subject of the EPA's agreement under section 19 (or 26)—if it is the subject of such a proposal, and the proposal has not been fully carried out, at the date when the certificate is issued,
  - (d) 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.

**60 Duty to report contamination**

- (1) A person who becomes aware that the person's activities in, on or under land have contaminated the land in such a way as to present a significant risk of harm must, as soon as practicable after becoming so aware, notify the EPA in writing that the land has been so contaminated.

Maximum penalty:

- in the case of a corporation—1,250 penalty units, or
  - in the case of an individual—600 penalty units.
- (2) An owner of land who becomes aware that the land has been contaminated (whether before or during the owner's ownership of the land) in such a way as to present a

significant risk of harm must, as soon as practicable after becoming so aware, notify the EPA in writing that the land has been so contaminated.

Maximum penalty:

- in the case of a corporation—1,250 penalty units, or
- in the case of an individual—600 penalty units.

- (3) A notice under this section must 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,
  - (e) any other matter prescribed by the regulations.
- (4) 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. However, the fact that a person notifies the EPA in accordance with this section does not prevent the EPA declaring the land to be an investigation area or remediation site or from making an investigation or remediation order in respect of that or any other person.

## **Part 6 Appeals**

### **61 Appeals about orders**

- (1) A person that is the subject of an investigation or remediation order may appeal to the Land and Environment Court against the order within 21 days (or such other period as is prescribed instead by the regulations) after the date of the service of the order on the person.
- (2) An appeal may be made in accordance with the limitations set out in this section against an order even if the order required action to be started (or completed) before the period referred to in this section ran out.

### **62 Determination of appeals**

- (1) The Land and Environment Court may hear and determine an appeal under this Act.
- (2) In determining such an appeal, the Court:
- (a) may confirm an order, or

- (b) (Repealed)
  - (c) may revoke an order and make no further order, or
  - (d) may revoke the order and make any other order that the EPA might make under Part 3.
- (3) An order made by the Court under subsection (2):
- (a) takes effect on and from a date specified by the Court, and
  - (b) otherwise operates as if it were made by the EPA under Part 3.
- (4) The decision of the Court in an appeal under this Act is final and binding on the appellant and the EPA.

## **Part 7 Orders against directors or companies to investigate or remediate at own expense**

### **63 Director of body corporate that is wound up**

- (1) The Land and Environment Court may order a person to comply with an investigation or remediation order at the person's own expense if the person was a director of, or a person concerned in the management of, a body corporate that:
- (a) has been wound up within the 2 years before the Court's order is made, and
  - (b) has failed to comply with the investigation or remediation order.
- (2) Once the Court has made its order under this section, the original investigation or remediation order is taken to have been made against the person under Part 3, subject to any modification by the Court. Part 3, and the other provisions of this Act relating to orders under that Part, then apply to the order and the person accordingly.
- (3) The Court may make an order under this section only if it is satisfied, on an application by the EPA, that:
- (a) the person was a director of, or a person concerned in the management of, the body corporate at the time when the investigation or remediation order was made, and
  - (b) there is reason to believe that the body corporate was wound up as part of a scheme to avoid compliance with the investigation or remediation order.
- (4) There is reason for such a belief if:
- (a) the body corporate carried out one or more transactions:
    - (i) that were voidable because of section 588FE of the *Corporations Act 2001* of the Commonwealth, or

- (ii) that were such that the liquidator of the body corporate had a right to recovery of cash under section 567 of the *Corporations Act 2001* of the Commonwealth, or
  - (iii) by which the body corporate incurred a debt in relation to which a person contravened section 588G of the *Corporations Act 2001* of the Commonwealth, and
- (b) there was (at the time or times when the body corporate entered those transactions or a substantial portion of them) reason to believe that the land was contaminated, and
- (c) in a case to which regulations made for the purposes of this section apply, the conditions prescribed by those regulations are satisfied.
- (5) The Court must not make an order under this section if the person against whom the order would be made satisfies the Court that:
- (a) the person had no knowledge, actual, imputed or constructive, of the scheme or any element of the scheme, or
  - (b) the person was not in a position to influence the conduct of the body corporate in relation to that scheme, or
  - (c) the person, if in such a position, used all due diligence to prevent the pursuit of the scheme by the body corporate.
- (6) The mere fact that the relevant investigation or remediation order was partially complied with by the body corporate does not exclude the possibility that there is reason to form the belief referred to in subsection (3).
- (7) For the purposes of this section, the fact that steps are taken to wind up a body corporate before the EPA makes an investigation or remediation order in respect of the body corporate does not preclude the Land and Environment Court from finding that there is reason to believe that the body corporate was wound up as part of a scheme to avoid compliance with the investigation or remediation order.

#### **64 Director of body corporate that disposed of land**

- (1) The Land and Environment Court may order a person to comply with an investigation or remediation order at the person's own expense if:
- (a) the person was a director of, or a person concerned in the management of, a body corporate that transferred land within the 2 years before the Court's order is made, and
  - (b) the transferee has failed to comply with the investigation or remediation order in respect of the land.

- (2) The person must comply with the investigation or remediation order, subject to any modification by the Court.
- (3) The Court may make an order under this section only if it is satisfied, on an application by the EPA that:
  - (a) the person was a director of, or person concerned in the management of, the body corporate at the time of the transfer of the land or at the time when the investigation or remediation order was made in respect of the transferee, and
  - (b) there is reason to believe that the body corporate transferred the land as part of a scheme to avoid having itself to carry out investigation or remediation of the land (whether or not an investigation or remediation order had been made in respect of the body corporate).
- (4) There is reason for such a belief if, at the time or times when the body corporate entered into one or more transactions, or a substantial portion of the transactions, for the transfer of the land:
  - (a) there was reason to believe that the land was contaminated, and
  - (b) the transferee was another body corporate that was related to the first body corporate (within the meaning of the *Corporations Act 2001* of the Commonwealth), and
  - (c) the first body corporate had reason to believe that the transferee was unable to pay its debts or would, if it took steps to remediate the land (to the extent that a reasonable person would have expected, at the time or times, would be necessary), become unable to pay its debts.
- (5) The Court must not make an order under this section if the person against whom the order would be made satisfies the Court that:
  - (a) the person had no knowledge, actual, imputed or constructive, of the scheme or any element of the scheme, or
  - (b) the person was not in a position to influence the conduct of the first body corporate in relation to that scheme, or
  - (c) the person, if in such a position, used all due diligence to prevent the pursuit of the scheme by the first body corporate.
- (6) The mere fact that the relevant order was partially complied with by the transferee does not exclude the possibility that there is reason to form the belief referred to in subsection (3).

**65 Holding company of body corporate that is wound up**

- (1) The Land and Environment Court may order a corporation to comply with an investigation or remediation order at the corporation's own expense if the corporation was the holding company of a company that:
  - (a) has been wound up within the 2 years before the Court's order is made, and
  - (b) has failed to comply with the investigation or remediation order.
- (2) The corporation must comply with the investigation or remediation order, subject to any modification by the Court.
- (3) The Court may make an order under this section only if it is satisfied, on an application by the EPA, that:
  - (a) the corporation was the holding company of the other company at the time when the investigation or remediation order was made, and
  - (b) there is reason to believe that the other company was wound up as part of a scheme to avoid compliance with the investigation or remediation order.
- (4) There is reason for such a belief if:
  - (a) the corporation contravened section 588V of the *Corporations Act 2001* of the Commonwealth in relation to the other company, and
  - (b) there was (at the time or times when the contravention occurred) reason to believe that the land was contaminated, and
  - (c) in a case to which regulations made for the purposes of this section apply, the conditions prescribed by those regulations are satisfied.
- (5) There is reason for such a belief also if:
  - (a) the other company carried out one or more transactions:
    - (i) that were voidable because of section 588FE of the *Corporations Act 2001* of the Commonwealth, or
    - (ii) that were such that the liquidator of the other company had a right to recovery of cash under section 567 of the *Corporations Act 2001* of the Commonwealth, or
    - (iii) by which the other company incurred a debt in relation to which a person contravened section 588G of the *Corporations Act 2001* of the Commonwealth, and
  - (b) there was (at the time or times when the other company entered those transactions or a substantial portion of them) reason to believe that the land was

contaminated.

- (6) The mere fact that the relevant investigation or remediation order was partially complied with by the other company does not exclude the possibility that there is reason to form the belief referred to in subsection (3).
- (7) For the purposes of this section, the fact that steps are taken to wind up a company before the EPA makes an investigation or remediation order in respect of the company does not preclude the Land and Environment Court from finding that there is reason to believe that the company was wound up as part of a scheme to avoid compliance with the investigation or remediation order.

## Part 8 Evidence

### 66 Definitions

In this Part:

**designated officer** means an officer of the EPA designated in writing by the Director-General for the purposes of this Part.

**information relating to an offence** includes an application referred to in section 41 of the [Land and Environment Court Act 1979](#).

**instrument** includes a notice, order or written direction.

### 67 Person responsible for typical contamination

In any proceedings under this Act to recover from a person the cost of carrying out an investigation or remediation order in relation to any land, the person is taken to have responsibility for contamination on that land if:

- (a) the person carried on activities on the land, and
- (b) activities of that sort generate or consume the same substances as those that caused the contamination or generate or consume 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.

### 68 Evidence relating to owner or occupier of land

In any proceedings under this Act, no proof is required (until evidence is given to the contrary) of the fact that a person is, or at any relevant time was, the owner or occupier of any land to which the proceedings relate.

## **69 Proof of certain appointments not required**

In any proceedings under this Act no proof is required (until evidence is given to the contrary) of:

- (a) the appointment of the Director-General of the EPA or any member of the staff of the EPA, or
- (b) the appointment of an authorised officer.

## **70 Documentary evidence generally**

Any instrument purporting:

- (a) to be an instrument issued, made or given for the purposes of this Act, and
- (b) to have been signed by the person authorised to issue, make or give the instrument, or by another person acting as delegate or on behalf of the person,

is admissible in any proceedings under this Act and (until evidence is given to the contrary) is to be taken to be such an instrument and to have been so signed.

## **71 Certificate evidence of certain matters**

- (1) A document signed by the Director-General or a designated officer and certifying any one or more of the matters specified in subsection (2) is admissible in any proceedings under this Act and is prima facie evidence of the matters so certified.
- (2) The matters referred to in subsection (1) are as follows:
  - (a) that an instrument, a copy of which is set out in or annexed to the document, being an instrument purporting:
    - (i) to be issued, made or given for the purposes of this Act, and
    - (ii) to have been signed by the person authorised to issue, make or give the instrument, or by another person acting as delegate or on behalf of the person,was issued, made or given on a specified day,
  - (b) that a person was or was not, at a specified time or during a specified period, accredited as a site auditor,
  - (c) that a person was or was not, at a specified time or during a specified period, an authorised officer,
  - (d) that the authorisation of an authorised officer was, at a specified time or during a specified period, a general authorisation or subject to specified conditions, limitations or restrictions, or for specified purposes,



- (e) that a person was or was not, at a specified time or during a specified period, an officer or employee of the EPA or a public authority,
- (f) that an exemption was or was not given under this Act or a regulation under this Act in relation to any specified matter,
- (g) that any such exemption was or was not, at a specified time or during a specified period, in force or subject to specified conditions,
- (h) that any exemption was or was not, or that any such conditions were or were not, varied or revoked at a specified time,
- (i) that any consent necessary for bringing proceedings for an offence arising under this Act or a regulation under this Act has been duly given,
- (j) that a notice of a declaration or order, a copy of which is set out in or annexed to the certificate, was for the purposes of Part 3 published in a specified manner and on a specified day,
- (k) that land is, or is within, land to which a declaration or order under Part 3 applies, a copy of which declaration or order is set out in or annexed to the certificate,
- (l) that any guidelines made or approved by the EPA under this Act, a copy of which is set out in or annexed to the certificate, were for the purpose of the Act published or approved in a specified manner and on a specified day.

## **72 Evidence of analysts**

- (1) The EPA may, by instrument in writing, appoint appropriately qualified persons to be analysts for the purposes of this Act.
- (2) A certificate of such an analyst stating the result of an analysis or examination is admissible in evidence in any proceedings under this Act as evidence of the facts stated in the certificate and the correctness of the result of the analysis or examination.
- (3) A certificate of such an analyst that a container containing a sample was received at a specified laboratory and that the container was sealed and signed by an authorised officer is admissible in evidence in any proceedings under this Act as evidence of the facts stated in the certificate and that the sample has not been tampered with since the authorised person signed and sealed the container.
- (4) For the purposes of this section, a document purporting to be a certificate under this section is, unless the contrary is proved, to be taken to be such a certificate.

## **Part 9 Authorised officers**

### **Division 1 Administration**

#### **73 Appointment of authorised officers**

The EPA may appoint any person (including a class of persons) as an authorised officer for the purposes of this Act.

#### **74 Scope of authority**

- (1) An authorisation of a person as an authorised officer can be given generally, or subject to conditions, limitations or restrictions or only for limited purposes.
- (2) If such authorisation is given subject to conditions, limitations or restrictions or only for limited purposes, nothing in this Act authorises or requires the authorised officer to act in contravention of the conditions, limitations or restrictions or for other purposes.

#### **75 Identification**

- (1) Every authorised officer is to be provided with an identification card as an authorised officer.
- (2) In the course of exercising the functions of an authorised officer under this Act, the officer must, if requested to do so by any person affected by the exercise of any such function, produce the officer's identification card to the person.

### **Division 2 Powers to require information or records**

#### **76 Application of Division**

This Division applies whether or not a power of entry under Division 3 is being or has been exercised.

#### **77 Requirement to provide information and records (EPA)**

- (1) The EPA may, by notice in writing served on a person, require the person to furnish to it such information or records (or both) as it requires by the notice in connection with any matter relating to its responsibilities or functions under this Act.
- (2) For example, the EPA may require a person interested in any land within an investigation area (or any person that the EPA has reason to believe carries on or carried on activities on the land) to furnish to the EPA, within a reasonable time specified in the notice, such particulars within the knowledge of the person of any activities presently or formerly carried out on the site as the EPA may reasonably require for the purposes of its investigation of the site.

### **78 Requirement to provide information and records (authorised officers)**

An authorised officer may, by notice in writing served on a person, require the person to furnish to the officer such information or records (or both) as the officer requires by the notice in connection with any matter under this Act.

### **79 Manner and time for compliance**

A notice under this Division must specify the manner in which information or records are required to be furnished and a reasonable time by or at which the information or records are required to be furnished.

### **80 Provisions relating to information and records**

- (1) A notice under this Division may only require a person to furnish:
  - (a) information within the knowledge of the person, or
  - (b) records that are in the person's possession or that are within the person's power to obtain lawfully.
- (2) The person to whom any record is furnished under this Division may take copies of it.
- (3) If any record required to be furnished under this Division is in electronic, mechanical or other form, the notice requires the record to be furnished in written form, unless the notice otherwise provides.

## **Division 3 Powers of entry and search of land**

### **81 Powers to enter land**

- (1) An authorised officer may enter:
  - (a) any land on which the authorised officer reasonably suspects that any activity that may cause contamination is being carried on—at any time during which the activity is being carried on there, and
  - (b) any land at or from which the authorised officer reasonably suspects contamination has been, is being or is likely to be caused—at any time, and
  - (c) any land that is an investigation area or remediation site—at any time, and
  - (d) any other premises—at any reasonable time.
- (2) A power to enter land conferred by this Act authorises entry by foot or by means of a motor vehicle or other vehicle, or in any other manner.
- (3) Entry may be effected under this Act by an authorised officer with the aid of such authorised officers or police officers as the authorised officer considers necessary and with the use of reasonable force.

## 82 Entry into residential premises only with permission or warrant

This Division does not empower an authorised officer to enter any part of premises used only for residential purposes without the permission of the occupier or the authority of a search warrant under this Division.

## 83 Powers to do things on premises

- (1) An authorised officer may, at any premises lawfully entered, do anything that in the opinion of the authorised officer is necessary to be done for the purposes of this Part, including (but not limited to) the things specified in subsection (2).
- (2) An authorised officer may do any or all of the following:
  - (a) examine and inspect any apparatus, equipment, works, vehicle or plant,
  - (b) take and remove samples,
  - (c) make such examinations, inquiries and tests as the authorised officer considers necessary,
  - (d) take such photographs, films, audio, video and other recordings as the authorised officer considers necessary,
  - (e) require records to be produced for inspection,
  - (f) examine, inspect and copy any records,
  - (g) seize anything connected with an offence against this Act or the regulations,
  - (h) do any other thing the authorised officer is empowered to do under this Part.

## 84 Search warrants

- (1) **Application for search warrant** An authorised officer under this Act may apply to an authorised officer within the meaning of the *Law Enforcement (Powers and Responsibilities) Act 2002* for the issue of a search warrant if the authorised officer under this Act believes on reasonable grounds that a provision of this Act or the regulations is being or has been contravened at any premises.
- (2) **Issue of search warrant** An authorised officer within the meaning of the *Law Enforcement (Powers and Responsibilities) Act 2002* to whom such an application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an authorised officer under this Act named in the warrant:
  - (a) to enter the premises, and
  - (b) to exercise any function of an authorised officer under this Act under this Part.
- (3) **Application of *Law Enforcement (Powers and Responsibilities) Act 2002*** Division 4 of Part

5 of the *Law Enforcement (Powers and Responsibilities) Act 2002* applies to a search warrant issued under this section.

(4) (Repealed)

#### **85 Assistance**

- (1) This section applies for the purpose of enabling an authorised officer to exercise any of the powers of an authorised officer under this Division in connection with any premises.
- (2) The EPA may, by notice in writing served on the occupier of the premises, require the person to provide such reasonable assistance and facilities as are specified in the notice within a specified time and in a specified manner.
- (3) Assistance and facilities can be required under this section, whether they are of the same kind as, or a different kind from, any prescribed by the regulations for the purposes of this section.

#### **86 Care to be taken**

In the exercise of a power of entering or searching premises under this Division, an authorised officer must do as little damage as possible.

#### **87 Compensation**

The EPA must compensate all interested parties for any damage caused by an authorised officer in exercising a power of entering the premises (but not any damage caused by the exercise of any other power), unless the damage was unavoidable because the occupier of the premises obstructed or hindered the authorised officer in the exercise of the power of entry.

### **Division 4 Powers to question persons**

#### **88 Power of authorised officers to require answers**

- (1) An authorised officer may require a person whom the authorised officer suspects on reasonable grounds to have knowledge of matters in respect of which information is reasonably required for the purposes of this Part to answer questions in relation to those matters.
- (2) The EPA may, by notice in writing, require a body corporate to nominate, in writing within the time specified in the notice, a director or officer of the body corporate to be the body corporate's representative for the purpose of answering questions under this section.
- (3) Answers given by a person nominated under subsection (2) bind the body corporate.

## Division 5 General

### 89 Offences

- (1) A person who, without reasonable excuse, neglects or fails to comply with a requirement made of the person under this Part is guilty of an offence.
- (2) A person who furnishes any information or does any other thing in purported compliance with a requirement made under this Part, knowing that it is false or misleading in a material respect is guilty of an offence.
- (3) A person who wilfully delays or obstructs an authorised officer in the exercise of the authorised officer's powers under this Part is guilty of an offence.
- (4) A person who impersonates an authorised officer is guilty of an offence.

Maximum penalty:

- 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
- 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.

### 90 Provisions relating to requirements to furnish information or answer questions

- (1) **Warning to be given on each occasion** A person is not guilty of an offence of failing to comply with a requirement under this Part to furnish information or to answer a question unless the person was warned on that occasion that a failure to comply is an offence.
- (2) **Self-incrimination not an excuse** A natural person is not excused from a requirement under this Part to furnish information or to answer a question on the ground that the information or answer might incriminate the person or make the person liable to a penalty.
- (3) **Information not admissible if objection made** However, any information furnished or answer given by a natural person in compliance with a requirement under this Part is not admissible in evidence against the person in criminal proceedings (except proceedings for an offence under this Part) if:
  - (a) the person objected at the time of furnishing the information or answering on the ground that the information or answer might incriminate the person, or
  - (b) the person was not warned on that occasion that a failure to furnish the information or answer the question would be an offence and advised that the person might object on the ground that the information or answer might incriminate the person.

- (4) **Further information** Further information obtained as a result of information furnished or of an answer given in compliance with a requirement under this Part is not inadmissible on the ground:
- (a) that the information had to be furnished or the answer had to be given, or
  - (b) that the information furnished or answer given might incriminate the person.

## **Part 10 Offences**

### **Division 1 Proceedings for offences generally**

#### **91 Proceedings for Part 3, 4 or 5 offences**

Proceedings for an offence arising under Part 3, 4 or 5 may be dealt with summarily before the Land and Environment Court in its summary jurisdiction.

#### **92 Proceedings for other offences**

- (1) Proceedings for an offence arising under this Act or the regulations (other than under Part 3, 4 or 5) may be dealt with:
- (a) summarily before a Local Court, or
  - (b) summarily before the Land and Environment Court in its summary jurisdiction.
- (2) If any such proceedings are brought in a Local Court, the maximum monetary penalty that the Court may impose for the offence is 100 penalty units, despite any other provision of this Act.

#### **93 Time for commencing proceedings**

- (1) Proceedings for an offence under this Act or the regulations may be commenced:
- (a) in the case of a prescribed offence—within but not later than 3 years after the date on which the offence is alleged to have been committed, or
  - (b) in any other case—within but not later than 12 months after that date.
- (2) Proceedings for an offence under this Act or the regulations may also be commenced:
- (a) in the case of a prescribed offence—within but not later than 3 years after the date on which evidence of the alleged offence first came to the attention of an authorised officer, or
  - (b) in any other case—within but not later than 12 months after that date.
- (3) If subsection (2) is relied on for the purpose of commencing proceedings for an offence, the court attendance notice must contain particulars of the date on which evidence of the offence first came to the attention of an authorised officer and need

not contain particulars of the date on which the offence was committed. The date on which evidence first came to the attention of an authorised officer is the date specified in the court attendance notice, unless the contrary is established.

- (4) This section applies despite anything in the *Criminal Procedure Act 1986* or any other Act.
- (5) In this section:

**authorised officer** means any person who is an authorised officer for the purposes of this Act, whether or not the person has the functions of an authorised officer in connection with the offence concerned.

**evidence of an offence** means evidence of any act or omission constituting the offence.

**prescribed offence** means:

- (a) an offence under section 46, 55, 60 or 103, or
- (b) an offence against this Act that is declared by the regulations to be a prescribed offence for the purposes of this section.

## **Division 2 Who may institute proceedings for offences**

### **94 EPA may institute proceedings**

- (1) Proceedings for an offence against this Act or the regulations may be instituted by the EPA.
- (2) Any such proceedings may also be instituted by an officer or employee of the EPA with the written consent of the EPA or with the written consent of such member, officer or employee of the EPA as may be authorised by the EPA for the purposes of this Division.

### **95 Other persons may institute proceedings with leave**

- (1) Any person may institute proceedings in the Land and Environment Court for an offence against this Act or the regulations if the Court grants the person leave to bring the proceedings.
- (2) The Court is not to grant leave unless satisfied that:
- (a) the EPA has decided not to take any relevant action (as defined in subsection (3)) in respect of the act or omission constituting the alleged offence or has not made a decision on whether to take such action within 90 days after the person requested the EPA to institute the proceedings, and
- (b) the EPA has been notified of the proceedings, and



- (c) the proceedings are not an abuse of the process of the Court, and
  - (d) the particulars of the offence disclose, without any hearing of the evidence, a prima facie case of the commission of the offence.
- (3) Relevant action for the purposes of subsection (2) is not limited to the institution of criminal proceedings, but includes action under this Act to require the defendant to comply with an investigation or remediation order.

## **Division 3 Restraint of breaches without prosecution for offence**

### **96 Restraint of breaches**

- (1) Any person may bring proceedings in the Land and Environment Court for an order to remedy or restrain a breach (or a threatened or apprehended breach) of this Act or the regulations, whether or not any right of that person has been or may be infringed by or as a consequence of that breach.
- (2) Proceedings under this section may be brought by a person on the person's own behalf or on behalf of the person and other persons (with their consent), or a body corporate or unincorporated (with the consent of its committee or other controlling or governing body), having like or common interests in those proceedings.
- (3) Any person on whose behalf proceedings are brought is entitled to contribute to or provide for the payment of the legal costs and expenses incurred by the person bringing the proceedings.
- (4) If the Court is satisfied that a breach of this Act has been committed or that a breach of this Act will, unless restrained by order of the Court, be committed, it may make such order as it thinks fit to remedy or restrain the breach.

## **Division 4 General**

### **97 Matters to be considered in imposing penalty**

- (1) In imposing a penalty for an offence against this Act or the regulations, a court is to take into consideration the following (so far as they are relevant):
  - (a) the extent of the harm already caused or likely to be caused by the commission of the offence,
  - (b) the degree of risk that harm will be caused by the commission of the offence,
  - (c) the practical measures that may be taken to prevent, control, abate or mitigate that harm,
  - (d) the extent to which the person who committed the offence could reasonably have foreseen the harm caused or likely to be caused by the commission of the offence,

- (e) the extent to which the person who committed the offence had control over the causes that gave rise to the offence,
- (f) whether, in committing the offence, the person was complying with orders from an employer or supervising employee.

(2) The court may take into consideration other matters that it considers relevant.

### **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 corporation contravened the provision without the knowledge actual, imputed or constructive of the person, or
  - (b) the person was not in a position to influence the conduct of the corporation in relation to its contravention of the provision, or
  - (c) 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 intention, is evidence that the corporation had that intention.

### **99 Onus of proof of reasonable excuse**

The onus of proving that a person had reasonable excuse (as referred to in any provision of this Act or the regulations) lies with the defendant.

### **100 (Repealed)**

## **Part 11 Miscellaneous**

### **101 Act to bind Crown**

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of Parliament permits, the Crown in all its other capacities.

### **102 Disputes between EPA and public authorities**

- (1) If a dispute arises between the EPA and another public authority with respect to a decision of the EPA against which an appeal lies under this Act, the EPA or the public authority may refer the dispute to the Premier for settlement in accordance with this section.
- (2) On the referral of a dispute to the Premier, the Premier may (but need not) appoint a person to hold an inquiry and make a report to the Premier with respect to the dispute.
- (3) The Premier may make such decision with respect to the dispute as the Premier thinks fit.
- (4) Any such decision may include an order for the payment of any costs or expenses of or incidental to the holding of an inquiry under this section.
- (5) The EPA or other public authority to which any such order is given must comply with the order.
- (6) A decision of the Premier under this section is final and (except in respect of any order under subsection (4)) is taken to be the decision of the EPA.
- (7) If a dispute is referred to the Premier under this section, the public authority (other than the EPA) does not have a right of appeal to a court under this Act in respect of the dispute, unless the Premier declines to deal with the dispute.

### **103 Providing false information or evidence**

A person who:

- (a) furnishes any information pursuant to an order under this Act, or knowing that it is to be used in a response to an order, knowing that it is false or misleading in a material particular, or
- (b) gives any evidence pursuant to a requirement under this Act knowing that it is false or misleading in a material particular,

is guilty of an offence.

Maximum penalty: 50 penalty units.

### **104 Publicity about contamination**

The EPA may undertake education programs, public awareness campaigns and other measures for the information of the public concerning particular types of contamination, sources of contamination, the environmental and health implications of contamination and how contamination may be reduced or minimised. The EPA may do these things as a response referred to in section 7 (c) or otherwise.

## 105 Guidelines

- (1) For any purpose connected with the objects of this Act, the EPA may make guidelines (not inconsistent with this Act or the regulations) for its own use or for the use of landowners, developers, site auditors, any other section of the public or the general public.
- (2) The EPA is under a duty to do the following in relation to such guidelines:
  - (a) to allow the public an opportunity to comment on the guidelines before they are made,
  - (b) to consider the comments of the public before making the guidelines,
  - (c) to publish the guidelines in the Gazette once they have been made,
  - (d) to make the guidelines available for inspection by the public free of charge,
  - (e) to enable the public to obtain copies of the guidelines at a reasonable cost,
  - (f) to take the guidelines into consideration whenever they are relevant,
  - (g) to depart from the guidelines in individual cases when any law requires that departure or the interests of the public, justice or the administration of this Act make it necessary to do so.
- (3) The EPA is under a duty to comply with subsection (2) (d)–(g) in relation to any guidelines approved by the EPA for the purposes of this Act (but made by another person or body) as if they were guidelines made by the EPA.

A guideline so approved by the EPA has effect for the purposes of this Act subject to the terms of that approval, and the approval is taken to be part of the guideline.
- (4) The EPA may from time to time amend or revoke a guideline made by it under this section by making another such guideline in accordance with this section. The EPA may from time to time vary the terms of its approval of a guideline under this section, or revoke that approval.
- (5) The EPA is to give each site auditor accredited under Part 4 notice in writing of the following:
  - (a) the making or approval of a guideline under this section,
  - (b) the amendment or revocation of any such guideline or approval.
- (6) Without limiting subsection (1), the guidelines may make provision for or with respect to eligibility for accreditation as a site auditor under Part 4, including in relation to the following matters:

- (a) relevant experience and expertise in contaminated site work,
- (b) proven high standards of integrity and objectivity,
- (c) understanding of the impact of contaminated sites on the environment, public health and safety,
- (d) understanding of relevant legislation and associated policies,
- (e) understanding of the methods for assessing and managing contaminated sites,
- (f) access to relevant areas of expertise and resources,
- (g) knowledge of relevant scientific literature,
- (h) insurance,
- (i) any other matter prescribed by the regulations.

#### **106 Reasons for certain decisions**

- (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 present a significant risk of harm, the EPA must provide a written statement of the reasons for its determination that that basis exists to any person that makes written request for those reasons in relation to that land.
- (2) The regulations may make provision with respect to any such statement of reasons, including:
  - (a) the time within which a request for reasons must be made or within which the statement of reasons must be provided, and
  - (b) the matters to be set out in a statement of reasons.
- (3) A statement of reasons is not required to be provided to a person if the person has already been notified of the reasons under section 6 or by any declaration, order or notice under Part 3.

#### **107 Disclosure of information**

- (1) A person is guilty of an offence if the person discloses any information that relates to any manufacturing or other industrial or commercial secrets or working processes and that is obtained in connection with the administration or execution of this Act or the regulations, unless the disclosure:
  - (a) is made with the consent of:
    - (i) the person from whom the information was obtained, or

- (ii) if the information relates to land—the occupier of the land, or
- (iii) if the information relates to an activity—the person carrying on or proposing to carry on the activity, or
- (b) is required by this Act, or
- (c) is made in connection with the administration or execution of this Act or the regulations, or
- (d) is made with the prior permission of the Minister, or
- (e) is ordered by a court, or by any other body or person authorised by law to examine witnesses, in the course of, and for the purpose of, the hearing or determination by that court, body or person of any matter, or
- (f) is made by an officer of the EPA or other public authority to an officer or authority engaged in administering or executing a law of the Commonwealth or of another State or Territory relating to the protection of the environment, or
- (g) is made by an officer of the EPA or other public authority to any person and its disclosure to that person is reasonably related to the elimination or reduction of a risk of harm to human health or some other aspect of the environment, or
- (h) is otherwise made with reasonable excuse.

Maximum penalty: 100 penalty units.

- (2) The Minister is not to grant the permission referred to in subsection (1) (d) unless satisfied that to do so would be in the public interest.

**Note—**

Part 3 requires certain information to be made available. Part 5 requires information to be available on a record for public inspection.

**108 Service of notices**

- (1) Any notice, order or other instrument issued, made, served or given for the purposes of this Act may be served on a person:
- (a) by delivering it personally to the person, or
  - (b) by delivering it to the place of residence or business of the person and by leaving it there for the person with some other person, or
  - (c) by posting it duly stamped and addressed to the person at the place last shown in the records of the EPA or public authority that posted it as the person's place of residence or business, or

- (d) by posting it duly stamped and addressed to the person at the place indicated by the person as an address to which correspondence may be posted (including for example a post office box), or
- (e) by sending it by facsimile or other electronic transmission (including for example the Internet) to the person in accordance with arrangements indicated by the person as appropriate for transmitting documents to the person, or
- (f) by leaving it addressed to the person at a document exchange or other place (in accordance with usual arrangements for the exchange or other place) indicated by the person as an exchange or place through which correspondence may be forwarded to the person.

(2) This section does not affect any other mode of issuing, making or giving a notice or instrument under any other law.

#### **109 Relationship with other Acts**

- (1) Nothing in this Act affects the exercise of any function by the EPA (or another public authority) under any other Act.
- (2) However, the exercise of any such function must not be inconsistent with the functions of the EPA (or of the other public authority) under this Act.
- (3) If the EPA or another public authority may act under this Act and another Act in relation to the same circumstances, it is not required to act under both Acts.

#### **110 Effect of this Act on other rights, remedies and proceedings**

- (1) This Act does not limit or affect any right, remedy or proceeding under any other Act or law.
- (2) No proceedings taken under this Act interfere with or lessen any right or remedy under any other Act or law, but no person is, by virtue of this subsection, liable to be punished twice for the same offence.
- (3) A reference in this section to a right includes, for example, a right to restrict or prevent, or obtain damages in respect of, contamination.

#### **111 Notes**

Notes included in this Act do not form part of this Act.

#### **112 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

- (2) In particular, the regulations may make provision for or with respect to the following matters:
  - (a) guidelines under this Act,
  - (b) the circumstances in which a fee, or part of a fee, payable under Part 4 may be waived or refunded by the EPA,
  - (c) the manner and form of any notice, order or declaration under this Act.
- (3) The regulations may create offences punishable by a penalty not exceeding:
  - (a) 200 penalty units in the case of a corporation, or
  - (b) 100 penalty units in the case of an individual.
- (4) The regulations may adopt any document (including for example a code of practice) as in force from time to time.
- (5) Section 12 of the *Food Act 2003* does not apply to regulations or other instruments made under this Act.

### **113 Repeal**

The *Environmentally Hazardous Chemicals Amendment Act 1996* is repealed.

### **114 (Repealed)**

### **115 Savings and transitional provisions**

Schedule 2 has effect.

### **116 Review of Act**

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

## **Schedule 1 (Repealed)**



## Schedule 2 Savings and transitional provisions

(Section 115)

### 1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

this Act

*Environment Protection Legislation Amendment Act 2002* (but only to the extent that it amends this Act)

*Contaminated Land Management Amendment Act 2003*

- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

### 2 Pre-existing contamination

Nothing in this Act prevents the application of a provision of this Act to contaminated land just because:

- (a) the land was contaminated land before the commencement of the provision, or
- (b) the risk presented by the contamination was present before that commencement, or
- (c) an act or activity referred to in section 13 took place before that commencement or an existing use referred to in that section arose before that commencement.

### 3 Restoration of premises

- (1) Part 5 of the *Environmentally Hazardous Chemicals Act 1985*, as in force immediately before its repeal by this Act, continues in force in respect of:
- (a) any condition, or undertaking, in force under section 34 of that Act immediately before the repeal, and

- (b) any security held under section 34 of that Act immediately before the repeal, and
  - (c) any direction in force under section 35 of that Act immediately before the repeal, and
  - (d) any prescribed remedial action commenced under section 36 of that Act before that repeal,
- as if the Part had not been repealed.
- (2) Any prescribed remedial action commenced under section 36 of that Act before that repeal may be completed, and costs and expenses recovered in respect of it, in accordance with that section as if the section had not been repealed.
  - (3) Despite subclause (1), land that is premises in respect of which a direction was given under section 35, or prescribed remedial action was commenced under section 36, of the *Environmentally Hazardous Chemicals Act 1985* before the repeal of Part 5 of that Act by this Act is, for the purposes only of sections 28 (Maintenance of remediation: notice to owner or occupier) and 29 (Maintenance of remediation: covenant) of this Act, taken to be land the subject of remediation under Part 3 of this Act.
  - (4) Despite subclause (1), 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 is, for the purposes only of sections 58 (EPA's record of current declarations and orders) and 59 (Local authorities to be informed) of this Act, taken to be:
    - (a) if the direction relates only to the investigation of the land (for instance, to determine the nature and extent of the contamination of the land, the nature and extent of the harm caused by the contamination or the risk that the contamination will cause such harm) and not to the remediation of the land—an investigation order, or
    - (b) in any other case—a remediation order.
  - (5) Despite subclause (1), any agreement to take prescribed remedial action entered into under section 36 (2) (a) of the *Environmentally Hazardous Chemicals Act 1985*, or any direction to take such action given under section 36 (2) (b) of that Act, before the repeal of Part 5 of that Act by this Act is, for the purposes only of sections 58 (EPA's record of current declarations and orders) and 59 (Local authorities to be informed) of this Act, taken to be:
    - (a) if the prescribed remedial action in relation to which the agreement was entered into or the direction was given relates only to the investigation of the land (for instance, to determine the nature and extent of the contamination of the land, the nature and extent of the harm caused by the contamination or the risk that the contamination will cause such harm) and not to the remediation of the land—an investigation order, or

(b) in any other case—a remediation order.

#### **4 (Repealed)**

#### **5 Present guidelines continue in force**

The following guidelines made by the EPA are taken to be in force for the purposes of this Act as if they had been made under this Act in accordance with section 105 (1) and (2) (a)–(c):

- (a) *Contaminated Sites. Guidelines for Assessing Service Station Sites*, December 1994,
- (b) *Contaminated Sites. Guidelines for the Vertical Mixing of Soil on Former Broad-Acre Agricultural Land*, January 1995,
- (c) (Repealed)
- (d) *Contaminated Sites. Sampling Design Guidelines*, September 1995,
- (e) *Contaminated Sites. Guidelines for Assessing Banana Plantation Sites*, October 1997.

#### **6 Accreditation of site auditors**

The accreditation of a site auditor in force immediately before the amendment of section 50 (1) by the *Environment Protection Legislation Amendment Act 2002* expires (if not revoked under this Act) on the date on which it would have expired if the amendment had not been made and may be renewed in accordance with that section as so amended.

#### **7 Recovery of costs**

Section 36, as amended by the *Contaminated Land Management Amendment Act 2003*, extends to costs incurred before the amendment of that section by that Act if those costs were incurred on or after 1 September 1998.

#### **8 Existing accreditation as a site auditor and suspension**

- (1) An accreditation (including any conditions to which the accreditation is subject) in force immediately before the commencement of Schedule 1 [10] to the *Contaminated Land Management Amendment Act 2003* (the **amending Act**), continues in force for the balance of the term for which it was granted.
- (2) An accreditation referred to in subclause (1) is taken to have been validly granted or renewed, and any condition to which the accreditation is subject is taken to have been validly imposed, under Part 4 of this Act as amended by the amending Act.
- (3) A suspension in effect immediately before the commencement of Schedule 1 [10] to the amending Act, continues to have effect until further notice by the EPA. The suspension is taken to have effect under Part 4 of this Act as amended by the amending Act and section 56 applies accordingly.

## **9 Revocation, suspension or refusal to renew accreditation**

Section 56, as substituted by the *Contaminated Land Management Amendment Act 2003*, extends to acts or omissions occurring before the substitution of that section by that Act.

## **10 Members of accreditation panel**

A member of the accreditation panel holding office immediately before the commencement of section 49 (as substituted by the *Contaminated Land Management Amendment Act 2003*), is taken, on that commencement, to be appointed under section 49 as substituted and this Act applies accordingly.

## **11 Annual returns and other notifications**

Despite the definition of **return period** in section 53D (6), the return period for the year ending 30 June 2007 is, for the purposes of section 53D, to commence on 1 March 2006 rather than 1 July 2006.