

# Contaminated Land Management Act 1997 No 140

[1997-140]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

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

### Notes—

- **Does not include amendments by**  
[Statute Law \(Miscellaneous Provisions\) Act 2023 No 7](#) (not commenced — to commence on 14.7.2023)

### Authorisation

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# Contaminated Land Management Act 1997 No 140



New South Wales

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# 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 that the EPA considers to be contaminated significantly enough to require regulation under Division 2 of Part 3.
- (2) Particular objects of this Act are—
  - (a) to set out accountabilities for managing contamination if the EPA considers the contamination is significant enough to require regulation under Division 2 of Part 3, and
  - (b) to set out the role of the EPA in the assessment of contamination and the supervision of the investigation 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

(1) In this Act—

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

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

**approved use** of land means—

- (a) a use to which the subject land may be put without planning approval, or
- (b) a use to which the subject land may be put under an existing planning approval and for which no further planning approval is required.

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

**authorised officer** means a person appointed by the EPA under Part 7.2 of the [Protection of the Environment Operations Act 1997](#) as an authorised officer for the purposes of this Act.

**Board of the EPA** means the Board within the meaning of the [Protection of the Environment Administration Act 1991](#).

**CEO of the EPA** means the Chief Executive Officer within the meaning of the [Protection of the Environment Administration Act 1991](#).

**Chairperson of the EPA Board** means the Chairperson within the meaning of the [Protection of the Environment Administration Act 1991](#).

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

**costs** include expenses.

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

**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 EPA in relation to land within the Western Division that is not within an area within the meaning of the *Local Government Act 1993*, 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).

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

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

**monetary benefits** means monetary, financial or economic benefits.

**notional owner**—see section 7.

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

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

**owner**—

(a) in relation to Crown land—

- (i) that is the subject of a perpetual lease under the [Crown Land Management Act 2016](#)—means the holder of such a lease, and
- (ii) in any other case—means the Crown.

(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.

**planning approval** means—

(a) development consent under the [Environmental Planning and Assessment Act 1979](#), Part 4, or

(b) an approval under the [Environmental Planning and Assessment Act 1979](#), Division 5.2, or

(c) an approval under the [Environmental Planning and Assessment Act 1979](#), Part 3A when that Part was in force or continued in operation.

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

**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).

**related body corporate** has the same meaning the *Corporations Act 2001* of the Commonwealth.

**relevant order, restriction or covenant**—see section 42A(1).

**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).

**restorative justice activity**—see section 95B (2).

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

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

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

**site audit** means a review—

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

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

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

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

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

**substance** includes matter or thing.

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

**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.

**Western Division** means that part of the State that is the Western Division within the meaning of the [Crown Land Management Act 2016](#).

**Note—**

The [Interpretation Act 1987](#) contains definitions and other provisions that affect the interpretation and application of this Act.

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

## 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).

## **6 Responsibility for contamination of land**

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

unless it is established that the contamination was not caused by the person.

- (2) For the purposes of this Act, a person is also responsible for significant contamination of land if either or both of the following is true—
- (a) the significant contamination occurred because an act or activity of the person resulted in a change in some pre-existing contamination of the land so that the contamination of the land became significant contamination,
  - (b) the significant contamination occurred because an act or activity of the person resulted in a change in the approved use of the land and the consequent increase in the risk of harm caused the EPA to identify the land as significantly

contaminated land (even if the contamination itself did not change).

- (3) In determining whether a person is responsible for contamination of land, it is irrelevant that the contamination did not arise contemporaneously with the act, activity or omission of the person that ultimately was responsible for (or is taken to be responsible for) the contamination of the land.
- (4) An act referred to in subsection (2) (b) includes the making of an application for planning approval.
- (5) A public authority or Minister does not become a person referred to in subsection (2) (b) merely by giving an approval or consent, or concurring in the giving of consent under the *Environmental Planning and Assessment Act 1979*.
- (6) A person who is responsible for contamination continues to be responsible for that contamination under this Act whether or not the person has entered a contract or other arrangement that provides for some other person to be responsible for the contamination or for any harm caused by the contamination.

## 7 Concept of notional owner

- (1) For the purposes of this Act, a **notional owner** of land is a person who is a mortgagee in possession of the land or who has a vested interest with respect to the land—
  - (a) that carries an entitlement to have a freehold interest in the land vested in the person, or
  - (b) that enables the person to dispose of or otherwise deal with a freehold interest in the land,so that the person is able to benefit from the value of the land, or a substantial portion of it, by such vesting, disposal or dealing.
- (2) Despite subsection (1), a person is not a notional owner of land—
  - (a) if the person, not being a mortgagee in possession of the land, is the owner of the land or is the Crown or a person or body representing the Crown, or
  - (b) merely because the person has a security (such as a mortgage, charge or lien) over the land, or
  - (c) merely because the person is a legal personal representative of a person who was an owner of the land immediately before the person's death or the appointment of the representative took effect, or
  - (d) merely because the person is the NSW Trustee and Guardian and the land is deemed to be vested in the NSW Trustee and Guardian by the operation of section

61 of the *Probate and Administration Act 1898*, or

- (e) if the person would otherwise be a notional owner of land, but—
  - (i) the person has some security over the land, and
  - (ii) the person (or a financial controller appointed by the person) has entered into a contract to sell the land for the purpose of realising part or all of the value of the land in order to discharge the obligation so secured.
- (3) In subsection (2) (e) (ii), **financial controller** means a receiver, manager or other person who has possession or control of land for the purpose of realising part or all of the value of the land in order to discharge an obligation secured over the land.

## **8 General functions of EPA**

- (1) It is the duty of the EPA to do the following in a manner and to an extent reasonable in the circumstances—
  - (a) examine, and respond to, information that it receives of actual or possible contamination of land,
  - (b) address any contamination that the EPA considers to be significant enough to require regulation under Division 2 of Part 3,
  - (c) record what it has done under paragraphs (a) and (b) and the reasons for it.
- (2) It is the duty of the EPA to respond to a person (other than the EPA or an authorised officer) who has furnished information referred to in subsection (1). The response must—
  - (a) be made in a reasonable time, and
  - (b) state what the EPA has done in relation to the information and the reasons for doing it, and
  - (c) be in writing if the information was in writing.
- (3) In addition to any functions the EPA has under this or any other Act, the EPA may take such reasonable steps as it considers necessary in relation to investigating or managing contamination of land (including significantly contaminated land) or the threat of harm from any such contamination.

## **9 Need to maintain ecologically sustainable development**

- (1) The EPA is to have regard to the principles of ecologically sustainable development in the exercise of its functions under this Act and is to seek the implementation of those principles in the management by other persons of contaminated land.



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

**(Repealed)**

## Part 3 Management of contaminated land

### Division 1 Preliminary investigation of land

#### 10 Preliminary investigation orders

- (1) The EPA may, by order in writing served on a person, direct the person to conduct a preliminary investigation of land specified in the order (the **specified land**) within the time specified in the order to—
  - (a) investigate whether the land is contaminated with the substances specified in the order (the **specified substances**) being the substances that the EPA reasonably suspects contaminate the specified land, and
  - (b) investigate the nature and extent of any such contamination, and
  - (c) provide to the EPA such information with respect to the investigation as it may require.
- (2) A substance may be specified in a preliminary investigation order by reference to a chemical group of related substances if the EPA reasonably suspects that the specified land is contaminated with one or more of the substances in that group. In such a case each substance in that group is taken to be a specified substance for the purposes of this section.
- (3) A preliminary investigation order may be served on any one or more of the following persons—
  - (a) a person who the EPA reasonably suspects may have been responsible for contamination of the land with the specified substance,
  - (b) an owner of the specified land,
  - (c) a notional owner of the specified land,
  - (d) a person who carried on activities on the specified land, but only if the activities are of the sort that—
    - (i) generate or consume the same substance as a specified substance, or
    - (ii) generate or consume substances that may be converted by reacting with each other or by the action of natural processes on the land into the same substance as any of the specified substances,
  - (e) a public authority.
- (4) In the application of Divisions 5–7 to a preliminary investigation order, any reference in those Divisions—

- (a) to significantly contaminated land is taken to be a reference to the specified land, and
  - (b) to an appropriate person is taken to be a reference to a person on whom a preliminary investigation order may be served.
- (5) A person (other than a public authority that is not a person referred to in subsection (3) (a)-(d)) must not, without reasonable excuse, fail to comply with a preliminary investigation order.
- Maximum penalty—
- (a) for a corporation—\$1,000,000 and, for a continuing offence, a further penalty of \$120,000 for each day the offence continues, or
  - (b) for an individual—\$250,000 and, for a continuing offence, a further penalty of \$60,000 for each day the offence continues.
- (6) Without limiting subsection (5), a person has a reasonable excuse if the person was unable to enter land because of the refusal of access to the land by its occupier in circumstances where entry to that land was essential to enable the person to comply with the relevant part of the preliminary investigation order.

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

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

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

- (3) Each substance that is specified in the notice under this section is a **significant contaminant** and the actual or possible contamination of the land by the significant contaminant is **significant contamination**.
- (4) The EPA is to serve a copy of the notice on—
  - (a) the owner of the land (or, if the EPA does not know the identity or address of the owner, the notional owner of the land, if any, whose identity and address are known to the EPA), and
  - (b) those persons (whose identities and addresses are known to the EPA) who the EPA has reason to believe are responsible for significant contamination of the land, and
  - (c) the occupier of the land, and
  - (d) the local authority in relation to the land, and
  - (e) if the EPA has reason to believe that a significant contaminant of land originates from the use of a cattle dip site on the land in relation to a treatment ordered under the *Biosecurity Act 2015* or the *Stock Diseases Act 1923* (an Act repealed by the *Biosecurity Act 2015*)—the Secretary of the Department of Industry, Skills and Regional Development.
- (5) The EPA is to publish a policy on its website setting out how it intends to notify the public about—
  - (a) land that it has declared to be significantly contaminated land, and
  - (b) land that has ceased to be significantly contaminated land,and it is to notify the public in accordance with that policy. However, failure to comply with this subsection does not invalidate any notice under this section.

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

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

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

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

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

pay the person's debts.

- (5) Despite subsection (2), in the case where a significant contaminant of the land originates from the use of a cattle dip site on the land in relation to a treatment ordered under the *Biosecurity Act 2015*, or the *Stock Diseases Act 1923* (an Act repealed by the *Biosecurity Act 2015*), the appropriate person is—
- (a) except in the case referred to in paragraph (b)—the Secretary of the Department of Industry, Skills and Regional Development, or
  - (b) if a person is responsible for significant contamination of the land (whether or not there are other persons who are responsible for such contamination of the land) because of the operation of section 6 (2) (b)—that person.
- (6) Any public authority may be specified as the subject of a management order whether or not as an appropriate person.

**Note—**

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

#### **14 Management orders**

- (1) The EPA may, by order in writing served on a person who is an appropriate person or a public authority, direct the person to do one or both of the following in relation to significantly contaminated land, within such reasonable time as is specified in the order—
- (a) carry out any action in relation to the management of the land that may be specified in the order in accordance with this Division,
  - (b) submit for the EPA's approval a plan of management of the land (a ***plan of management***).
- (1A) A management order may, in accordance with Division 6A, require the person to whom the order is directed to provide financial assurance to secure or guarantee funding for or towards the carrying out of an action required by or under the order.
- (2) The EPA must serve a copy of the management order on each of the following persons in addition to any person on whom the management order has been served under subsection (1)—
- (a) the owner of the land (or, if the EPA does not know the identity or address of the owner, any notional owner of the land whose identity and address are known to the EPA), and
  - (b) those persons (whose identities and addresses are known to the EPA) who the EPA has reason to believe may be responsible for the significant contamination of the

land.

- (3) A management order may adopt, with or without modification, a plan of management submitted in accordance with a previous management order or, at the discretion of the EPA, a plan recommended by the EPA or submitted by a site auditor.
- (4) The EPA must not serve a management order on a person unless it has considered any submissions it has received in accordance with section 11 (2) (e) as to whether the management order should be made.
- (5) Despite subsection (4), the EPA may serve a management order on a person at any time if it considers that it is in the public interest to do so.
- (6) A person (other than a public authority that is not an interested person with respect to the relevant land) served with a management order must not, without reasonable excuse, fail to comply with any direction or other requirement specified by the order within the time specified by the order.

Maximum penalty—

- (a) in the case of a corporation—\$1,000,000 (if responsible for the contamination) or \$137,500 (in any other case) and, in the case of a continuing offence, a further penalty of \$120,000 for each day the offence continues, or
  - (b) in the case of an individual—\$250,000 (if responsible for the contamination) or \$66,000 (in any other case) and, in the case of a continuing offence, a further penalty of \$60,000 for each day the offence continues.
- (7) Without limiting subsection (6), a person has a reasonable excuse if the person was unable to enter land because of the refusal of access to the land by its occupier in circumstances where entry to that land was essential to enable the person to comply with the relevant part of the management order.
  - (8) If land ceases to be significantly contaminated land, all management orders in force in relation to the land cease to have effect.

## **15 Details of management order**

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

(e) any other matter prescribed by the regulations.

- (2) The period for taking action must exceed by a reasonable amount the period for lodging an appeal against the management order, except if the EPA considers that the nature of the harm or possible harm presented by the contamination is so serious that, in the public interest, action during the period for lodging an appeal is necessary.

**Note—**

Part 6 provides for appeals.

- (3) A management order does not confer power on the person subject to it to enter or do anything on land, for the purposes of giving effect to the management order, without the consent of the occupier of the land.

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

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

- (a) to investigate the existence, nature and extent of any significant contamination of the significantly contaminated land to which the order relates,
- (b) to investigate the nature and extent of any harm that has been or may be caused by the significant contamination of the land,
- (c) to investigate the most appropriate means for undertaking remediation of the land,
- (d) to carry out remediation of the land,
- (e) to monitor the effectiveness of any remediation or the risk of harm presented by the significant contamination of the land,
- (f) to erect a fence, wall, bund or other barrier in a specified place on the land,
- (g) to treat, store or contain on the land, or remove from the land and treat or dispose of, any solid or liquid materials including any soil, sand, rock or water,
- (h) to vacate, or cease to carry on any activity on, the land or any part of it,
- (i) to display on the land any specified sign or notice,
- (j) to refrain from disturbing or further disturbing the land in a specified manner or below a specified depth,
- (k) to enter any specified land (which may, but need not, be the significantly contaminated land) in order to carry out the management order,
- (l) to serve notice of the management order on those persons who occupy land, access to which is necessary for the person to carry out the management order,



- (m) to have specified actions audited by a site auditor under Part 4,
- (n) to make progress reports to the EPA,
- (o) if the person finds that groundwater is contaminated, to report that fact to the Minister administering the *Water Management Act 2000*,
- (p) to make available for inspection by any person, free of charge, a report on the action taken under the management order, or the plan of management, and provide a copy of such a report or plan to any person for a reasonable fee,
- (q) to advertise and conduct meetings for the public to receive progress reports, and to make comments, on the action taken under the management order or on the plan of management,
- (r) to inform the EPA of any change in the ownership or occupancy of the land, to the extent that the person is aware of the change.

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

- (1) This section applies where one or more persons furnish the EPA with a proposal for the management of significantly contaminated land (a **voluntary management proposal**).
- (2) The EPA may approve a voluntary management proposal in respect of one or more of the parties to the proposal (an **approved party**).
- (3) The EPA may approve a voluntary management proposal unconditionally or subject to conditions by notice in writing served on each approved party.
- (4) The EPA must not approve a voluntary management proposal unless it is satisfied that—
  - (a) the terms of the voluntary management proposal, as modified by any conditions to be imposed by the EPA, are appropriate (including any plan of management, provision for giving notice and terms setting out a timetable or requiring progress reports), and
  - (b) the parties to the proposal have taken all reasonable steps to identify and find every owner and notional owner of the land and every person responsible for significant contamination of the land, and
  - (c) the parties to the proposal have given those persons identified and found a reasonable opportunity to participate in the formulation and carrying out of the proposal on reasonable terms.
- (5) Despite subsection (4), the EPA may approve a voluntary management proposal even if it is not satisfied as to the matters set out in subsection (4) (b) and (c), but only if

the EPA makes it a condition of its approval that the parties to the proposal cannot recover contributions under Division 6.

- (6) The EPA may serve a management order in relation to significantly contaminated land that is the subject of an approved voluntary management proposal but only on—
- (a) an appropriate person or public authority who is not an approved party to the proposal, or
  - (b) an appropriate person or public authority who is an approved party to the proposal, if in the opinion of the EPA—
    - (i) the terms of the approved proposal are not carried out, or
    - (ii) the management order relates to a matter that is not adequately addressed by the proposal, or
    - (iii) its approval to the proposal was given on the basis of false or misleading information.
- (7) A proposal ceases to be an approved voluntary management proposal—
- (a) if the EPA by notice in writing served on each approved party—
    - (i) specifies that it is satisfied that the terms of the voluntary management proposal have all been carried out, or
    - (ii) withdraws at any time its approval of the voluntary management proposal, and
  - (b) at the time specified in the notice, or if no time is specified, at the time the notice is served on each approved party.
- (8) If a proposal (other than a proposal referred to in subsection (5)) ceases to be an approved voluntary management proposal, the approved parties may recover contributions for carrying out requirements under the approved voluntary management proposal in accordance with Division 6 as if the requirements had been carried out under a management order.

**18-27 (Repealed)**

**Division 3 Ongoing maintenance of management action**

**28 Ongoing maintenance orders**

- (1) This section applies to land that has been the subject of a management order or an approved voluntary management proposal (whether or not the land is significantly contaminated land).

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

Maximum penalty—

- (a) for a corporation—\$1,000,000 and, for a continuing offence, a further penalty of \$120,000 for each day the offence continues, or
- (b) for an individual—\$250,000 and, for a continuing offence, a further penalty of \$60,000 for each day the offence continues.

**Note—**

An offence against subsection (4) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 98.

## **29 Ongoing maintenance—restrictions and covenants**

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

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

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

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

carry out that requirement.

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

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

## **Division 5 Entry on land**

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

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

### **33 Liability for losses**

- (1) A person who (with the permission of the occupier) enters any land, or does anything else on land, as required by an order under this Part, is liable (except as prescribed by the regulations) to the occupier of the land for any loss suffered by the occupier as a result of the entry or other actions (including any loss suffered by the occupier because of the interruption of the occupier's business on that land by that entry or those actions).
- (2) A person (other than the owner of land) who (with the permission of the occupier) enters the land, or does anything else on the land, as required by an order under this Part, is liable (except as prescribed by the regulations) to the owner of the land for any loss suffered by the owner as a result of that entry or those actions or for any injury to the land caused by that person.
- (3) In addition to any liability that a person who enters land as referred to in this section may have, the person has a duty to meet the reasonable costs and expenses of the owner and the occupier of the land in providing access to that land as referred to in this section.
- (4) A person has a duty to—
  - (a) take reasonable steps to minimise the loss and injury referred to in this section

caused by the person's actions, and

- (b) take reasonable steps towards restitution in respect of that loss or injury (except as prescribed by the regulations), and
- (c) compensate the party that suffered the loss or injury for which the person is liable to the extent that restitution is not practicable (except as prescribed by the regulations).

## **Division 6 Costs**

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

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

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

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

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

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

- (1) A public authority may, by notice in writing, require a person to pay all or any costs reasonably incurred by the public authority in connection with the public authority's carrying out, under section 30, of the requirements of an order made in respect of the person.
- (2) A public authority may, by notice in writing, require an owner of land to pay all or any costs reasonably incurred (and not recovered under subsection (1)) by the public authority in connection with the public authority's carrying out (otherwise than as an appropriate person) of the requirements of an order made in respect of the land

(whether or not the order was made in respect of the owner).

- (3) A public authority may enter into an arrangement with the owner of land for the payment of any cost under subsection (2), including an arrangement for the periodic, partial or deferred payment of such a cost, or for the compromise of any debt to which the arrangement relates.

### **36 Recovery of other costs**

- (1) **Person subject to order is not contaminator** A person—

(a) who carries out the requirements of a management order in relation to the significant contamination of land, and

(b) who is not responsible for the significant contamination,

may recover the person's costs in carrying out those requirements as a portion from each person who is responsible for the significant contamination.

- (2) A person—

(a) who carries out the requirements of a preliminary investigation order in relation to specific land, and

(b) who is not responsible for any significant contamination of that land,

may recover the person's costs in carrying out those requirements as a portion from each person who is responsible for significant contamination to that land.

- (3) **Person subject to order is contaminator** A person—

(a) who carries out the requirements of a management order in relation to the significant contamination of land, and

(b) who is responsible for the significant contamination,

may recover a portion of the person's costs in carrying out those requirements from each other person who is responsible for the significant contamination.

- (4) **Recovery by owner** If—

(a) an owner (or notional owner) of land pays any costs specified in a notice under section 34 or 35 with respect to a management order, and

(b) the owner (or notional owner) is not responsible for the significant contamination concerned,

the owner (or notional owner) may recover a portion of the amount paid from each person who is responsible for the significant contamination.

- (5) **Portion** The portion referred to in this section must reflect what is reasonable and just in the circumstances, including the following circumstances—
- (a) the proportion of responsibility of each person for the significant contamination,
  - (b) the reasonable cost of any steps taken by each person in respect of managing the significant contamination.
- (6) **Reference to person** In this section, a reference to a person includes a reference to a public authority.
- (7) **Persons entering voluntary management proposal may agree section not to apply** If the parties to a voluntary management proposal have agreed that this section is not to apply as among themselves, this section does not apply to allow the recovery of any costs by one party from a second party unless the second party has failed to comply with the terms of the proposal.
- (8) **Costs** For the purposes of this section, the costs of a person in carrying out the requirements of a management order include any amount for which the person is liable, or reasonable cost that the person has a duty to meet, under section 34 or 35.

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

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

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

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



### 39 Registration of cost notices

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

### 40 Charge on land subject to cost notice

- (1) **Creation of charge** On the registration of a notice under section 39, a charge is created on the land in relation to which the notice is registered to secure the payment to the public authority specified in the notice.
- (2) **When charge ceases to have effect** Such a charge ceases to have effect in relation to the land when the first of the following occurs—
  - (a) the payment by the person to the public authority of the amount concerned,
  - (b) the completion of the sale or other disposition of the land with the consent of the public authority,
  - (c) the completion of the sale of the land to a purchaser, in good faith for value, who, at the time of the sale, has no notice of the charge.
- (3) **Charge is not subject to existing charges and encumbrances** Such a charge has priority over every charge or encumbrance to which the land was subject immediately before the notice was registered and, in the case of land under the provisions of the *Real Property Act 1900*, has priority over every mortgage, lease or other interest recorded in the Register kept under that Act.
- (4) **Charge not affected by change of ownership** Such a charge is not affected by any change of ownership of the land, except as provided by subsection (2).
- (5) **Registration of charge is notice** If—
  - (a) such a charge is created on land of a particular kind and the provisions of any law of the State provide for the registration of title to, or charges over, land of that kind, and
  - (b) the charge is so registered,a person who purchases or otherwise acquires the land after the registration of the charge is, for the purposes of subsection (2), taken to have notice of the charge.

- (6) **Charge on Torrens land not effective until registered** If such a charge relates to land under the provisions of the *Real Property Act 1900*, the charge has no effect until it is registered under that Act.
- (7) The provisions of this section have effect despite anything contained in section 42 of the *Real Property Act 1900*.

#### **41 Removal of charge**

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

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

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

### **Division 6A Financial assurances for actions required by relevant orders, restrictions and covenants**

#### **42A Application of Division**

- (1) This Division applies in relation to requirements under the following (each a **relevant order, restriction or covenant**) to provide financial assurance to secure or guarantee funding for or towards the carrying out of actions required under the relevant orders, restrictions or covenants—
  - (a) management orders,
  - (b) ongoing maintenance orders,
  - (c) restrictions or public positive covenants imposed under section 29.
- (2) A financial assurance is not to operate as a mere penalty for a contravention of this

Act, the regulations or a management order.

**42B Restriction on requiring financial assurance**

The EPA cannot require a person to provide a financial assurance unless it is satisfied that the requirement is justified having regard to—

- (a) the degree of risk of environmental harm associated with the activities of the person, or
- (b) the remediation work that may be required because of activities of the person, or
- (c) the environmental record of the person, or
- (c1) the financial capacity of the person, or
- (d) any other matters prescribed by the regulations.

**42C Form of financial assurance**

(1) A financial assurance may be in one or more of the following forms—

- (a) a bank guarantee,
- (b) a bond,
- (c) another form of security that the EPA considers appropriate and specifies in the relevant order, restriction or covenant.

(2) A relevant order, restriction or covenant may provide for the procedures under which the financial assurance may be claimed on or realised.

**42D Amount of financial assurance**

(1) The amount of a financial assurance is to be as determined by the EPA.

(2) However, the EPA must not require a financial assurance of an amount that exceeds the total cost of carrying out the action.

(2A) For the purposes of subsection (2), the total cost is the amount that, in the EPA's opinion, represents a reasonable estimate of the total likely costs and expenses that may be incurred in carrying out the action, including the likely costs and expenses of the EPA in directing and supervising the carrying out of the action.

(3) The EPA may require the person who is required to provide a financial assurance to provide to the EPA an independent assessment of the cost of the relevant action for which the assurance is required.

#### **42E Guidelines about financial assurances**

The regulations may provide for guidelines to be observed in relation to—

- (a) the content of requirements for financial assurances under relevant orders, restrictions or covenants, and
- (b) the calculation of the amount of financial assurances required.

#### **42F Carrying out of action when assurer fails to do so**

- (1) If a person to whom a relevant order, restriction or covenant is directed fails, in the opinion of the EPA, to carry out an action covered by a financial assurance required under a relevant order, restriction or covenant in accordance with the relevant order, restriction or covenant, the EPA may—
  - (a) carry out the action, or
  - (b) direct or supervise the carrying out of the action by another person.
- (2) The EPA may do so by the use of contractors, consultants or otherwise.
- (3) The EPA may enter, or authorise any other person to enter, the premises concerned to carry out the action.

#### **42G Claim on or realising of financial assurance**

- (1) The EPA may recover or fund the reasonable costs or expenses of the EPA or other person in carrying out any action (including the likely costs or expenses of the EPA in directing and supervising the carrying out of the action) by making a claim on or realising the financial assurance or part of it.
- (2) Before making the claim on or realising the financial assurance or part of it, the EPA must give to the person who was required to provide the assurance a written notice under this section.
- (3) The notice must—
  - (a) state details of the action carried out or proposed to be carried out, and
  - (b) state the amount of the financial assurance to be claimed or realised, and
  - (c) invite the person to make representations to the EPA to show why the financial assurance should not be claimed or realised as proposed, and
  - (d) state the period (at least 30 days after the notice is given to the person) within which representations may be made.
- (4) The representations must be made in writing.

- (5) After the end of the period stated in the notice, the EPA must consider any representations properly made by the person.
- (6) If the EPA decides to make a claim on or realise the financial assurance or part of it, the EPA must immediately give written notice to the person of its decision and the reasons for the decision.
- (7) The EPA must return any excess amounts to the person or that person's successors.
- (8) If the amount of financial assurance claimed or realised by the EPA is not sufficient to cover all the costs or expenses concerned, the EPA may recover the excess from the person as a debt in any court of competent jurisdiction.

#### **42H Lapsing of financial assurance**

The requirement to provide financial assurance lapses and no longer binds the person who was required to provide it if the EPA—

- (a) is satisfied that the action for which the financial assurance was required has been satisfactorily carried out, and
- (b) has given the person written notice of the lapsing of the financial assurance.

#### **42I Liability of EPA, State and others**

- (1) Anything done by or at the direction, or under the supervision, of the EPA under section 42F (1) is taken to have been done by the person who was required to provide the financial assurance.
- (2) The State, the Minister, the EPA, the members of the Board of the EPA, the CEO of the EPA, any members of the staff of the EPA and any persons engaged by or otherwise acting with the authority of the EPA (or any of them)—
  - (a) are not liable for anything done or omitted to be done in good faith in connection with a requirement to which this Division applies or in carrying out or giving effect to this Division, and
  - (b) without affecting the generality of the above, are taken, for the purposes of sections 98 and 98A, not to be involved in the management of a corporation when doing or omitting to do anything in connection with such a requirement or when carrying out or giving effect to this Division.

#### **42J Financial assurance not to affect other action**

A financial assurance may be claimed on or realised, despite and without affecting—

- (a) any liability of the person who was required to provide the assurance to any penalty for an offence for a contravention to which the assurance relates, and

- (b) any other action that might be taken or is required to be taken in relation to any contravention or other circumstances to which the assurance relates.

#### **42K Disputes regarding claim on or realisation of financial assurance**

The Land and Environment Court has jurisdiction to determine disputes about claiming on or realising a financial assurance.

### **Division 7 General**

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

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

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

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

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

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

Maximum penalty—

- (a) for a corporation—\$1,000,000 and, for a continuing offence, a further penalty of \$120,000 for each day the offence continues, or

(b) for an individual—\$250,000 and, for a continuing offence, a further penalty of \$60,000 for each day the offence continues.

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

#### **46 EPA may give clean-up and prevention notices**

(1) This section applies in relation to the following land—

(a) significantly contaminated land,

(b) land in relation to which the EPA has been given notice under section 60.

(2) The EPA may give a notice or direction in accordance with the *Protection of the Environment Operations Act 1997*, Part 4.2 or 4.3 in relation to the land—

(a) as if the EPA were the appropriate regulatory authority within the meaning of that Act, and

(b) despite any order or approved voluntary management proposal relating to the land.

(3) The notice or direction is taken to have been given under the *Protection of the Environment Operations Act 1997*.

### **Part 4 Site audits**

#### **47 Definition**

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

(a) a requirement under this Act,

(b) an approved voluntary management proposal,

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

(d) any other requirement imposed by or under an Act,

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

#### **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—\$250,000 and, for a continuing offence, a further penalty of \$60,000 for each day the offence continues.

(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—\$1,000,000 and, for a continuing offence, a further penalty of \$120,000 for each day the offence continues.

#### **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 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.

**Note—**

"De facto partner" is defined in section 21C of the [Interpretation Act 1987](#).

- (4) (Repealed)

**55 (Repealed)**

**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—\$250,000 and, for a continuing offence, a further penalty of \$60,000 for each day the offence continues.

- (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—\$250,000 and, for a continuing offence, a further penalty of \$60,000 for each day the offence continues.

- (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—\$1,000,000 and, for a continuing offence, a further penalty of \$120,000 for each day the offence continues.

## Part 5 Information

### 58 Record to be maintained by the EPA

- (1) The EPA is to maintain a record that consists of the following—

(a) a copy of the relevant notice under section 11 that relates to land that is

- significantly contaminated land,
- (b) a copy of any preliminary investigation order,
  - (c) a copy of any other order under Part 3 that has not been revoked or ceased to have effect,
  - (d) a copy of any site audit statement furnished to the EPA under section 53B that relates to land that is significantly contaminated land,
  - (e) a copy of any approved voluntary management proposal that has not been fully carried out and where the EPA's approval has not been revoked,
  - (f) as far as reasonably practicable, a copy of anything that was formerly required to be included as part of the record (marked in such a way as to show that it no longer has effect),
  - (g) anything prescribed by the regulations.
- (2) A copy of the record (whether in electronic or other form) is to be available for public inspection—
- (a) at the principal office of the EPA, and
  - (b) on the EPA's website, and
  - (c) 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 after the occurrence of any of the following in relation to land, inform the local authority for the area in which land is situated of that matter—
- (a) the land being declared to be significantly contaminated land or ceasing to be

significantly contaminated land,

- (b) a management order in relation to the land being served on a person or being revoked,
  - (c) the EPA giving its approval or withdrawing its approval for a voluntary management proposal in relation to the land or a voluntary management proposal in relation to the land being completed to the satisfaction of the EPA,
  - (d) an ongoing maintenance order in relation to the land being served on a person or being revoked.
- (2) For the purposes of section 10.7 of the *Environmental Planning and Assessment Act 1979*, the following matters are prescribed in addition to any other matters, prescribed by the regulations under that section, to be specified in a certificate under that section—
- (a) that the land to which the certificate relates is significantly contaminated land—if the land (or part of the land) is significantly contaminated land at the date when the certificate is issued,
  - (b) that the land to which the certificate relates is subject to a management order—if it is subject to such an order at the date when the certificate is issued,
  - (c) that the land to which the certificate relates is the subject of an approved voluntary management proposal—if it is the subject of such an approved proposal at the date when the certificate is issued,
  - (d) that the land to which the certificate relates is subject to an ongoing maintenance order—if it is subject to such an order at the date when the certificate is issued,
  - (e) that the land to which the certificate relates is the subject of a site audit statement—if a copy of such a statement has been provided at any time to the local authority issuing the certificate.

**Note—**

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

- (3) If a local authority, under section 10.7 (5) of the *Environmental Planning and Assessment Act 1979*, includes advice in a certificate in relation to a matter set out in subsection (2) (a)-(e) that no longer applies to the land, the authority is to make this clear on the certificate.

## **60 Duty to report contamination**

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

Maximum penalty—

- (a) for a corporation—\$2,000,000 and, for a continuing offence, a further penalty of \$240,000 for each day the offence continues, or
- (b) for an individual—\$500,000 and, for a continuing offence, a further penalty of \$120,000 for each day the offence continues.

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

Maximum penalty—

- (a) for a corporation—\$2,000,000 and, for a continuing offence, a further penalty of \$240,000 for each day the offence continues, or
- (b) for an individual—\$500,000 and, for a continuing offence, a further penalty of \$120,000 for each day the offence continues.

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

(a) each of the following is true—

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

(b) a guideline specifies a level of the contaminant in soils with respect to a current or approved use of the land and the level of the contaminant on or in any part of the soil on that land is equal to or above that specified in the guideline and a person has been, or foreseeably will be, exposed to the contaminant or any by-product of the contaminant, or

(c) the contamination meets any other criteria that may be prescribed by the regulations for the purposes of this subsection.

- (4) A person is required to notify the EPA under this section as soon as practicable after the person becomes aware of the contamination.

- (5) A person is taken to be aware of contamination for the purposes of this section if the

person ought reasonably to have been aware of the contamination.

- (6) A notice under this section is to be in a form approved by the EPA and is to specify the following matters to the extent that they are within the knowledge of the person required to give the notice—
- (a) the location of the land,
  - (b) the activities that have contaminated the land,
  - (c) the nature of the contamination,
  - (d) the nature of the risk posed by the contamination,
  - (e) any other matter prescribed by the regulations.
- (7) Information provided by a person for the purpose of complying with this section is not admissible as evidence in any proceedings against that person for an offence under the environment protection legislation (except in proceedings for an offence under this section).
- (8) The EPA may identify land as significantly contaminated land or make an order under Part 3 in respect of any person, whether or not the person has notified the EPA in accordance with this section.
- (9) The following are to be taken into account in determining when a person should reasonably have become aware of contamination—
- (a) the person's abilities, including his or her experience, qualifications and training,
  - (b) whether the person could reasonably have sought advice that would have made the person aware of the contamination,
  - (c) the circumstances of the contamination.
- (10) The regulations may exempt, or provide for the exemption of—
- (a) any person or class of persons, or
  - (b) any premises or class of premises, or
  - (c) any area or class of areas, or
  - (d) any activity or class of activities, or
  - (e) any other matter or thing or class of matters or things,
- from any specified provision or provisions of this section in such circumstances (if any) and subject to such conditions (if any) as may be specified or referred to in the regulations.

- (11) In this section, a reference to the **level** of a contaminant or by-product of a contaminant includes a reference to the concentration of the contaminant or by-product.

**Note—**

An offence against subsection (1) or (2) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 98.

## **Part 6 Appeals**

### **61 Appeals about management orders**

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

### **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 manage contamination 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 a management 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 management order.
- (2) Once the Court has made its order under this section, the original management 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 management 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 management 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 management 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 a management 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 management order.

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

- (1) The Land and Environment Court may order a person to comply with a management 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, to which the management order related, within the 2 years before the Court's order is made, and
  - (b) the person to whom the land was transferred (the **transferee**) has failed to comply with the management order.
- (2) A person who is subject to an order of the Court under this section must comply with the management 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 management 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 management of the land (whether or not a management 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 with respect to the management of contamination of 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 a management 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 management order.
- (2) The corporation must comply with the management 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 management 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 management 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 management 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 a management 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 management order.

## Part 8 Evidence

### 66 Definitions

In 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, 68 (Repealed)**

**69 Proof of certain matters 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 Chairperson of the EPA Board, the CEO of the EPA, or any member of the staff of the EPA, or
- (b) the appointment of an authorised officer, or
- (c) the fact that a person is, or at any relevant time was, the owner or occupier of any land to which the proceedings relate.

**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 CEO of the EPA (or an officer of the EPA designated in writing by the CEO of the EPA for the purposes of this section) 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 or the *Protection of the Environment Operations Act 1997*, 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 or was published in a specified manner 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 land was or was not, at a specified time or during a specified period, significantly contaminated land,
- (k) that land was or was not, at a specified time or during a specified period, subject to an order under Part 3 set out in, or annexed to, the certificate,
- (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 an analyst that a container containing a sample was received at a specified laboratory and that the container was sealed by an authorised officer or another person is admissible in proceedings under this Act as evidence—

- (a) of the facts stated in the certificate, and
  - (b) that the sample was the same sample as the sample obtained by the authorised officer or other person, and
  - (c) that the sample had not been tampered with since the time the container was sealed by the authorised officer or other person.
- (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**

### **73-90 (Repealed)**

## **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 the Local Court, or
  - (b) summarily before the Land and Environment Court in its summary jurisdiction.
- (2) If any such proceedings are brought in the 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.

#### **92A Penalty notices**

- (1) An authorised officer may issue a penalty notice to a person if it appears to the officer that the person has committed an offence against this Act or the regulations, being an offence prescribed by the regulations as a penalty notice offence.
- (2) The [Fines Act 1996](#) applies to a penalty notice issued under this section.

#### **Note—**

The [Fines Act 1996](#) provides that, if a person issued with a penalty notice does not wish to have the matter determined by a court, the person may pay the amount specified in the notice and is not liable to any further proceedings for the alleged offence.

- (3) The amount payable under a penalty notice issued under this section is the amount prescribed for the alleged offence by the regulations, not exceeding the maximum amount of penalty that could be imposed for the offence by a court.
- (4), (5) (Repealed)
- (5A) An authorised officer, whether or not the officer by whom the penalty notice has been issued—
- (a) may withdraw the notice within 28 days after the date on which the notice was issued, and
  - (b) must withdraw the notice immediately if directed to do so by the EPA.
- (5B) The following provisions have effect in relation to an alleged offence if a penalty notice for the alleged offence is withdrawn in accordance with subsection (5A)—
- (a) the amount that was payable under the notice ceases to be payable,
  - (b) any amount that has been paid under the notice is repayable to the person by whom it was paid,
  - (c) further proceedings in respect of the alleged offence may be taken against any person (including the person to whom the notice was issued) as if the notice had never been issued.
- (6), (7) (Repealed)
- (8) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.
- (9) (Repealed)

### **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 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 order under Part 3.

## **Division 2A Court orders in connection with offences**

### **95AA Operation of Division**

(1) This Division applies where a court finds an offence against this Act or the regulations proved.

(2) Without limiting the generality of subsection (1), a court finds an offence proved if—

(a) the court convicts the offender of the offence, or

(b) the court makes an order under the *Crimes (Sentencing Procedure) Act 1999*, section 10 against the offender in relation to the offence.

(3) In this Part—

**the court** means the court that finds the offence proved.

**the offender** means the person who is found to have committed the offence.

### **95AB Orders generally**

(1) One or more orders may be made under this Division against the offender.

(2) Orders may be made under this Division in addition to any penalty that may be imposed, or other action that may be taken, in relation to the offence.

(3) Orders may be made under this Division regardless of whether a penalty is imposed, or other action is taken, in relation to the offence.

### **95AC Orders for restoration and prevention**

The court may order the offender to take steps specified in the order, within a time specified or a further time that the court on application may allow—

(a) to investigate, manage or remediate any contamination caused by the commission of the offence, or



- (b) to address the risk of harm from the contamination, or
- (c) to prevent the continuance or recurrence of the offence.

**95AD Orders for costs, expenses and compensation at time offence proved**

- (1) This section applies if the court is satisfied that—
  - (a) a public authority has incurred costs and expenses in connection with—
    - (i) investigating, managing or remediating any contamination caused by the commission of an offence, or
    - (ii) addressing the risk of harm from the contamination, or
  - (b) a person, including a public authority, has—
    - (i) by reason of the commission of an offence, suffered loss of or damage to property, or
    - (ii) incurred costs and expenses in preventing or mitigating, or in attempting to prevent or mitigate, the loss or damage.
- (2) The court may order the offender to pay to the public authority or person an amount, fixed by the order, representing—
  - (a) compensation for the loss or damage suffered, or
  - (b) the costs and expenses incurred.
- (3) An order made by the Land and Environment Court under subsection (2) is enforceable as if it were an order made by the Land and Environment Court in Class 4 proceedings under the *Land and Environment Court Act 1979*.
- (4) The Local Court may not make an order under subsection (2) for the payment of an amount that exceeds the amount for which an order may be made by the Local Court when exercising jurisdiction under the *Civil Procedure Act 2005*.
- (5) An order made by the Local Court is enforceable as if it were an order made by the Local Court when exercising jurisdiction under the *Civil Procedure Act 2005*.

**95AE Recovery of costs, expenses and compensation after offence proved**

- (1) This section applies if, after the court finds the offence proved—
  - (a) a public authority has incurred costs and expenses in connection with—
    - (i) investigating, managing or remediating any contamination caused by the commission of an offence, or
    - (ii) addressing the risk of harm from the contamination, or

(b) a person, including a public authority, has—

(i) by reason of the commission of an offence, suffered loss of or damage to property, or

(ii) incurred costs and expenses in preventing or mitigating, or in attempting to prevent or mitigate, the loss or damage.

(2) The person or public authority may recover from the offender the costs and expenses incurred or the amount of the loss or damage in the Land and Environment Court.

(3) The amount of any costs and expenses, but not the amount of any loss or damage, may be recovered as a debt.

### **95AF Orders regarding costs and expenses of investigation**

(1) If the court is satisfied that the EPA has reasonably incurred costs and expenses during the investigation of an offence, the court may order the offender to pay to the EPA an amount, fixed in the order, representing the costs and expenses incurred.

(2) An order made by the Land and Environment Court under subsection (1) is enforceable as if it were an order made by the Land and Environment Court in Class 4 proceedings under the [Land and Environment Court Act 1979](#).

(3) An order made by the Local Court under subsection (1) is enforceable as if it were an order made by the Local Court when exercising jurisdiction under the [Civil Procedure Act 2005](#).

(4) In this section—

**costs and expenses**, in relation to the investigation of an offence, means the costs and expenses of—

(a) taking a sample or conducting an inspection, test, measurement or analysis during the investigation of the offence, or

(b) transporting, storing or disposing of evidence during the investigation of the offence.

### **95A Orders regarding monetary benefits**

(1) The court may order the offender to pay, as part of the penalty for committing the offence, an additional penalty of an amount the court is satisfied, on the balance of probabilities, represents the amount of any monetary benefits acquired by the offender, or accrued or accruing to the offender, as a result of the commission of the offence.

(2) The amount of an additional penalty for an offence is not subject to any maximum amount of penalty provided elsewhere by or under this Act.

- (3) The regulations may prescribe a protocol to be used in determining the amount that represents the monetary benefit acquired by the offender or accrued or accruing to the offender.
- (4) In this section—
- the court** does not include the Local Court.

**95B Additional orders**

- (1) **Orders** The court may do any one or more of the following—
- (a) order the offender to take specified action to publicise the offence (including the circumstances of the offence) and its environmental and other consequences and any other orders made against the person,
  - (b) order the offender to take specified action to notify specified persons or classes of persons of the offence (including the circumstances of the offence) and its environmental and other consequences and of any orders made against the person (including, for example, the publication in an annual report or any other notice to shareholders of a company or the notification of persons aggrieved or affected by the offender's conduct),
  - (c) order the offender to carry out a specified project for the restoration or enhancement of the environment in a public place or for the public benefit,
  - (c1) order the offender to carry out a specified environmental audit of activities carried on by the offender,
  - (c2) order the offender to pay a specified amount to the Environmental Trust established under the *Environmental Trust Act 1998*, or a specified organisation for—
    - (i) the purposes of a specified project for the restoration or enhancement of the environment, or
    - (ii) general environmental purposes,
  - (c3) order the offender to attend, or to cause employees or contractors of the offender to attend, a training or other course specified by the court,
  - (c4) order the offender to establish, for employees or contractors of the offender, a training course of a kind specified by the court,
  - (d) if the EPA is a party to the proceedings, order the offender to provide a financial assurance, of a form and amount specified by the court, to the EPA, if the court orders the offender to carry out a specified work or program for the restoration or enhancement of the environment.

- (2) Without limiting subsection (1) (c), the court may order the offender to carry out any social or community activity for the benefit of the community or persons that are adversely affected by the offence (a **restorative justice activity**) that the offender has agreed to carry out.
- (2A) The Local Court is not authorised to make an order referred to in subsection (1)(c), (c1), (c2) or (d) or (2).
- (3) **Machinery** The court may, in an order under this section, fix a period for compliance and impose any other requirements the court considers necessary or expedient for enforcement of the order.
- (4) **Failure to publicise or notify** If the offender fails to comply with an order under subsection (1) (a) or (b), the prosecutor or a person authorised by the prosecutor may take action to carry out the order as far as may be practicable, including action to publicise or notify—
- (a) the original contravention, its environmental and other consequences, and any other penalties imposed on the offender, and
  - (b) the failure to comply with the order.
- (5) **Cost of publicising or notifying** The reasonable cost of taking action referred to in subsection (4) is recoverable by the prosecutor or person taking the action, in a court of competent jurisdiction, as a debt from the offender.
- (6) **Financial assurances** Sections 42F–42K apply to a financial assurance provided by an offender under an order made under this section in the same way as they apply to a financial assurance provided by a person to whom a relevant order, restriction or covenant is directed.

## **Division 2B Civil proceedings to recover particular monetary benefits**

### **95C Recovery of monetary benefits from related persons after offence proved**

- (1) This section applies if a court convicts a corporation of an offence against this Act or the regulations.
- (2) The prosecutor for the offence may apply to the court for an order (a **monetary benefits order**) that any of the following persons pay an amount representing the amount of monetary benefits acquired by the person, or accrued or accruing to the person, as a result of the commission of the offence by the corporation—
- (a) a person who is, or was, at the time of the commission of the offence, a director of the corporation,
  - (b) a related body corporate,

- (c) a person who is, or was, at the time of the commission of the offence, a director of a related body corporate.
- (3) The court may make a monetary benefits order in relation to a person only if the court is satisfied, on the balance of probabilities, that the person acquired, accrued, or will accrue the monetary benefits as a result of the commission of the offence by the corporation.
- (4) When making a monetary benefits order, the court may order that the person pay the amount—
- (a) into the Environment Protection Authority Fund or another fund the court considers appropriate, or
- (b) to an entity the court considers appropriate in the circumstances.
- (5) The regulations may prescribe a protocol to be used in determining the amount that represents the monetary benefit acquired by the person or accrued or accruing to the person.
- (6) A monetary benefits order made by the court is enforceable as if it were an order made by the court in Class 4 proceedings under the *Land and Environment Court Act 1979*.
- (7) A reference in subsection (2) to a director of a corporation or related body corporate extends to a person involved in the management of the affairs of the corporation or related body corporate.
- (8) In this section—

**Environment Protection Authority Fund** means the Environment Protection Authority Fund established under the *Protection of the Environment Administration Act 1991*, section 34A.

**prosecutor**, for an offence, means the person that instituted the proceedings for the offence.

**the court** does not include the Local Court.

### **Division 3 Civil proceedings to remedy or restrain breaches of Act or harm to environment or to enforce undertakings**

#### **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.

### **96A Enforcement of undertakings**

- (1) The EPA may accept a written undertaking given by a person for the purposes of this section in connection with a matter in relation to which the EPA has a function under this Act.
- (2) Without limiting subsection (1), an undertaking that the EPA may accept under that subsection includes an undertaking to carry out a restorative justice activity.
- (3) The person may withdraw or vary the undertaking at any time, but only with the consent in writing of the EPA. The consent of the EPA is required even if the undertaking purports to authorise withdrawal or variation of the undertaking without that consent.
- (4) The EPA may apply to the Land and Environment Court for an order under subsection (5) if the EPA considers that the person who gave the undertaking has breached any of its terms.
- (5) The Court may make all or any of the following orders if it is satisfied that the person has breached a term of the undertaking—
  - (a) an order directing the person to comply with that term of the undertaking,
  - (b) an order directing the person to pay to the State an amount not exceeding the amount of any financial benefit that the person has obtained directly or indirectly and that is reasonably attributable to the breach,
  - (c) any order that the Court thinks appropriate directing the person to compensate any other person who has suffered loss or damage as a result of the breach,
  - (d) an order suspending or revoking any environment protection licence under the *Protection of the Environment Operations Act 1997* held by the person,
  - (e) an order requiring the person to prevent, control, abate or mitigate any actual or likely harm to the environment caused by the breach,

- (f) an order requiring the person to make good any actual or likely harm to the environment caused by the breach,
- (g) any other order the Court considers appropriate.

## **Division 4 General**

### **96B Application of Chapter 7 of Protection of the Environment Operations Act 1997**

Chapter 7 (Investigation) of the *Protection of the Environment Operations Act 1997* extends to the exercise of powers in connection with this Act and the regulations.

**Note—**

Section 186 of the *Protection of the Environment Operations Act 1997* provides that Chapter 7 of that Act extends to the exercise of powers in connection with certain other legislation, including this Act. Chapter 7 of the *Protection of the Environment Operations Act 1997* deals with such matters as the appointment of authorised officers, powers to require information and records, powers of entry and search, powers to question and to identify persons, and powers with respect to certain things such as vehicles.

### **96C Powers of entry**

- (1) Without limiting section 96B, 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 significantly contaminated land—at any time.
- (2) Chapter 7 (Investigation) of the *Protection of the Environment Operations Act 1997* applies to the exercise of functions by an authorised officer under this section in the same way as it applies to the exercise of other powers to enter premises under that Chapter.

### **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 Liability of directors etc for offences by corporation—offences attracting executive liability**

- (1) For the purposes of this section, an **executive liability offence** is an offence against any of the following provisions of this Act that is committed by a corporation—
  - (a) section 14 (6),
  - (b) section 28 (4),
  - (c) section 60 (1) or (2).
- (2) A person commits an offence against this section if—
  - (a) a corporation commits an executive liability offence, and
  - (b) the person is—
    - (i) a director of the corporation, or
    - (ii) an individual who is involved in the management of the corporation and who is in a position to influence the conduct of the corporation in relation to the commission of the executive liability offence, and
  - (c) the person—
    - (i) knows or ought reasonably to know that the executive liability offence (or an offence of the same type) would be or is being committed, and
    - (ii) fails to take all reasonable steps to prevent or stop the commission of that offence.

Maximum penalty—The maximum penalty for the executive liability offence if committed by an individual.

- (3) The prosecution bears the legal burden of proving the elements of the offence against this section.
- (4) The offence against this section can only be prosecuted by a person who can bring a



prosecution for the executive liability offence.

- (5) This section does not affect the liability of the corporation for the executive liability offence, and applies whether or not the corporation is prosecuted for, or convicted of, the executive liability offence.
- (6) This section does not affect the application of any other law relating to the criminal liability of any persons (whether or not directors or other managers of the corporation) who are accessories to the commission of the executive liability offence or are otherwise concerned in, or party to, the commission of the executive liability offence.
- (7) In this section—

**director** has the same meaning it has in the *Corporations Act 2001* of the Commonwealth.

**reasonable steps**, in relation to the commission of an executive liability offence, includes, but is not limited to, such action (if any) of the following kinds as is reasonable in all the circumstances—

- (a) action towards—
  - (i) assessing the corporation's compliance with the provision creating the executive liability offence, and
  - (ii) ensuring that the corporation arranged regular professional assessments of its compliance with the provision,
- (b) action towards ensuring that the corporation's employees, agents and contractors are provided with information, training, instruction and supervision appropriate to them to enable them to comply with the provision creating the executive liability offence so far as the provision is relevant to them,
- (c) action towards ensuring that—
  - (i) the plant, equipment and other resources, and
  - (ii) the structures, work systems and other processes,relevant to compliance with the provision creating the executive liability offence are appropriate in all the circumstances,
- (d) action towards creating and maintaining a corporate culture that does not direct, encourage, tolerate or lead to non-compliance with the provision creating the executive liability offence.

**98A Liability of directors etc for offences by corporation—accessory to the commission of**

**the offences**

- (1) For the purposes of this section, a **corporate offence** is an offence against this Act or the regulations that is capable of being committed by a corporation, whether or not it is an executive liability offence referred to in section 98.
- (2) A person commits an offence against this section if—
  - (a) a corporation commits a corporate offence, and
  - (b) the person is—
    - (i) a director of the corporation, or
    - (ii) an individual who is involved in the management of the corporation and who is in a position to influence the conduct of the corporation in relation to the commission of the corporate offence, and
  - (c) the person—
    - (i) aids, abets, counsels or procures the commission of the corporate offence, or
    - (ii) induces, whether by threats or promises or otherwise, the commission of the corporate offence, or
    - (iii) conspires with others to effect the commission of the corporate offence, or
    - (iv) is in any other way, whether by act or omission, knowingly concerned in, or party to, the commission of the corporate offence.

Maximum penalty—The maximum penalty for the corporate offence if committed by an individual.

- (3) The prosecution bears the legal burden of proving the elements of the offence against this section.
- (4) The offence against this section can only be prosecuted by a person who can bring a prosecution for the corporate offence.
- (5) This section does not affect the liability of the corporation for the corporate offence, and applies whether or not the corporation is prosecuted for, or convicted of, the corporate offence.
- (6) This section does not affect the application of any other law relating to the criminal liability of any persons (whether or not directors or other managers of the corporation) who are concerned in, or party to, the commission of the corporate offence.

**98B Evidence as to state of mind of corporation**

- (1) Without limiting any other law or practice regarding the admissibility of evidence,

evidence that an officer, employee or agent of a corporation (while acting in his or her capacity as such) had, at any particular time, a particular state of mind, is evidence that the corporation had that state of mind.

- (2) In this section, the ***state of mind*** of a person includes—
- (a) the knowledge, intention, opinion, belief or purpose of the person, and
  - (b) the person's reasons for the intention, opinion, belief or purpose.

### **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 Continuing offences**

- (1) A person who is guilty of an offence because the person contravenes a direction or other requirement made by or under this Act or the regulations (whether the direction or other requirement is imposed by a notice or otherwise) to do or cease to do something (whether or not within a specified period or before a particular time)—
- (a) continues, until the direction or other requirement is complied with and despite the fact that any specified period has expired or time has passed, to be liable to comply with the direction or other requirement, and
  - (b) is guilty of a continuing offence for each day the contravention continues.
- (2) This section does not apply to an offence if the relevant provision of this Act or the regulations does not provide for a penalty for a continuing offence.
- (3) This section does not apply to the extent that a direction or other requirement is revoked.

## **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 or a decision to issue an order under section 30, 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 False or misleading information**

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

Maximum penalty—

(a) for a corporation—

- (i) in relation to a requirement under section 10, 14, 28 or 53B—\$1,000,000, or
- (ii) in relation to another requirement—\$137,500, or

(b) for an individual—

- (i) in relation to a requirement under section 10, 14, 28 or 53B—\$250,000 or imprisonment for 18 months, or both, or
- (ii) in relation to another requirement—\$66,000 or imprisonment for 18 months, or both.

- (2) For the purposes of this section, information given in connection with a site audit, a site audit report or a site audit statement is taken to be given in compliance with this Act.
- (3) In this section—

**give information** includes make a statement, give evidence or produce a document.

### 103A Receiving monetary benefits

- (1) Any of the following persons who receives, acquires or accrues a monetary benefit as a result of the commission by a corporation of a proved offence under this Act or the regulations (the **underlying offence**) is guilty of an offence—
  - (a) a person who is, or was, at the time of the commission of the underlying offence, a director of the corporation,
  - (b) a related body corporate,
  - (c) a person who is, or was, at the time of the commission of the underlying offence, a director of a related body corporate.

Maximum penalty—

- (a) for a corporation—the maximum penalty that applies to a corporation for the underlying offence, or
  - (b) for an individual—the maximum penalty that applies to an individual for the underlying offence.
- (2) Proceedings for an offence under this section may be commenced—
  - (a) after the date on which the underlying offence is alleged to have been committed, but
  - (b) despite section 93, no later than the later of the following—
    - (i) the date that is 12 months after the date on which a court finds the underlying offence proved,
    - (ii) the date by which the proceedings may be commenced under section 93(2).
- (3) Despite section 92, proceedings for an offence under this section may not be dealt with before the Local Court.
- (4) Without limiting subsection (1) or (2)(b), a court finds an offence proved if—
  - (a) the court convicts the offender of the offence, or
  - (b) the court makes an order under the *Crimes (Sentencing Procedure) Act 1999*, section 10 against the offender in relation to the offence.
- (5) A reference in subsection (1) to a director of a corporation or related body corporate extends to a person involved in the management of the affairs of the corporation or related body corporate.

#### **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.

#### **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 vary the terms of its approval of a guideline under this section, or revoke that approval.
- (4A) A guideline may amend or revoke another guideline. If an amendment to a guideline is a minor amendment, the EPA is not required to comply with subsection (2) (a) or (b).
- (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.
- (7) In this section—
- minor amendment*** includes the following—
- (a) the correction of a typographical or grammatical error,
  - (b) the updating of a cross-reference or contact or address details,
  - (c) any other amendment that is declared by the regulations to be a minor amendment.

## **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 warrant regulation under Division 2 of Part 3, the EPA must provide a written statement of the reasons for its decision to any person who makes written request for those reasons in relation to that land.
- (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 8 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—200 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.



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

**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 documents**

- (1) A document that is authorised or required by this Act or the regulations to be served on any person may be served by any of the following methods—
- (a) in the case of an individual—by personal delivery to the person,
  - (b) by post to the address specified by the person for the service of documents of that kind,
  - (c) in the case of an individual who has not specified such an address—by post to the residential or business address of the person last known to the person serving the document,
  - (d) in the case of a corporation—by post to the registered office or any other office of the corporation or by leaving it at any such office with a person apparently over the age of 16 years,
  - (e) by email to an email address specified by the person for the service of documents of that kind,
  - (f) by any other method authorised by the regulations for the service of documents of that kind.
- (2) Nothing in this section affects the operation of any provision of a law or of the rules of a court authorising a document to be served on a person by any other method.
- (3) In this section, **serve** includes give or send.

**108A Continuing effect of notices, orders and conditions**

- (1) A notice or order that is given, made or issued, or a condition that is imposed, under this Act or the regulations that specifies a time by which, or period within which, a direction or other requirement of the notice, order or condition must be complied with continues to have effect until the direction or other requirement is complied with even though the time has passed or the period has expired.
- (2) A notice or order that does not specify a time by which, or period within which, a direction or other requirement of the notice or order must be complied with continues to have effect until the direction or other requirement is complied with.

- (3) This section does not apply to the extent that any direction or other requirement of a notice, order or condition is revoked.
- (4) Nothing in this section affects the powers of the EPA with respect to the enforcement of a notice, order or condition.

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

#### **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 (Repealed)**

##### **111A Offset arrangements**

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

**Note—**

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

- (2) Despite subsection (1), the Minister is not to enter into offset arrangements with a person who is or has been an approved party to a voluntary management proposal in respect of land that has been the subject of that proposal if—

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

## **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,
  - (b1) the circumstances in which any or all of the costs recoverable under section 34 may be waived or refunded by the EPA,
  - (b2) the circumstances in which the EPA may disclose any information obtained in connection with the administration or execution of this Act or the regulations (including personal information within the meaning of the *Privacy and Personal Information Protection Act 1998*) other than information that may not be disclosed under section 107 (1),
  - (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) 400 penalty units in the case of a corporation, or
  - (b) 200 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)

## **Part 1 General**

### **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*
  - Contaminated Land Management Amendment Act 2008*
  - any other Act that amends this Act
- (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 6 took place before that commencement or an existing use referred to in that section arose before that commencement.

### **2A Reference to Board of Tick Control**

A reference in this Act to “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*” is taken to be a reference to “the use of a cattle dip site on the land in relation to a treatment ordered under the *Stock Diseases Act 1923*”.

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

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

#### **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) (Repealed)

(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.

### **Part 3 Provisions consequent on enactment of the [Environment Protection Legislation Amendment Act 2002](#)**

#### **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.

### **Part 4 Provisions consequent on enactment of the [Contaminated Land Management Amendment Act 2003](#)**

#### **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.

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

## **12 Definition**

In this Part—

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

## **13 Orders, declarations and voluntary proposals**

- (1) Land that is an investigation area or a remediation site immediately before the substitution of Division 2 of Part 3 by the amending Act is, on the substitution of that Division, taken to be significantly contaminated land.
- (2) An investigation order or remediation order that is in force immediately before the substitution of Division 2 of Part 3 by the amending Act is, on the substitution of that Division, taken to be a management order that is in force on the same terms as the investigation order or remediation order.
- (3) A voluntary investigation proposal or voluntary remediation proposal that has been agreed to by the EPA and that has not been fully carried out immediately before the substitution of Division 2 of Part 3 by the amending Act is, on the substitution of that Division, taken to be an approved voluntary management proposal in force on the same terms as the voluntary investigation proposal or voluntary remediation proposal.



- (4) In relation to any investigation area, remediation site, investigation order, remediation order, voluntary investigation proposal or voluntary remediation proposal to which this clause applies the following references (whether in the order or proposal or elsewhere) are, on and from the substitution of Division 2 of Part 3 by the amending Act, to be read as follows—
- (a) a reference to an investigation area or a remediation site is taken to be a reference to significantly contaminated land,
  - (b) a reference to an investigation order or remediation order is taken to be a reference to a management order,
  - (c) a reference to a voluntary investigation proposal or voluntary remediation proposal that has been agreed to by the EPA is taken to be a reference to an approved voluntary management proposal and a reference to a party to such a voluntary investigation proposal or voluntary remediation proposal is taken to be a reference to an approved party,
  - (d) a reference to land being contaminated in such a way as to present a significant risk of harm is taken to be a reference to contamination that the EPA considers to be significant enough to warrant regulation under Division 2 of Part 3 of this Act.
- (5) Subclause (4) (d) does not apply to a reference in a guideline.

#### **14 Public consultation**

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

#### **15 Voluntary management proposals**

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

#### **16 Maintenance of remediation**

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

- (a) the subject of an investigation order or a remediation order, or
  - (b) the subject of a voluntary investigation proposal or voluntary remediation proposal that has been agreed to by the EPA under section 19 or 26.
- (3) A covenant imposed by the EPA under section 29 before the substitution of that section by the amending Act may be released or varied under section 29 (2) as substituted by the amending Act.
- (4) Land that is taken to be land the subject of remediation under Part 3 because of the operation of clause 3 (3) is, on the substitution of section 28 by the amending Act, taken to be land the subject of a management order.

### **17 Cost recovery**

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

### **18 Penalty notices**

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

### **19 Disclosure of information**

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

### **20 Records**

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

## **Part 6 Provisions consequent on enactment of [Protection of the Environment Legislation Amendment Act 2014](#)**

### **21 Definition**

In this Part—

**amending Act** means the [Protection of the Environment Legislation Amendment Act 2014](#).

### **22 Financial assurances for actions required by management order**

Section 14 (1A) and Division 6A of Part 3, as inserted by the amending Act, apply with respect to management orders made on or after the commencement of those provisions.

### **23 Penalty notices for repeat offenders**

Section 92A (6) (d), as inserted by the amending Act, extends to convictions and payments of penalty notices that occurred before its commencement for the purposes of counting the number of offences for which an offender was convicted, or has paid a penalty notice, within a 5-year period referred to in that paragraph.

### **24 Court orders in connection with offences**

- (1) Division 2A of Part 10, as inserted by the amending Act, extends to proceedings that were initiated, but not determined, before the commencement of the Division.
- (2) Proceedings are not determined for the purposes of subclause (1) even if all that remains to be completed is the sentencing of an offender.

### **25 Continuing offences**

Section 100, as inserted by the amending Act, extends to a direction or other requirement given or made before the commencement of that section, but only if the contravention of the direction or requirement began on or after that commencement.

### **26 Notices, orders and conditions**

Section 108A, as inserted by the amending Act, applies to notices and orders given, made or issued, or conditions imposed, under this Act or the regulations on or after the commencement of that section.

## **Part 7 Provisions consequent on enactment of [Protection of the Environment Legislation Miscellaneous Amendments Act 2017](#)**

### **27 Definition**

In this Part—

**amending Act** means the [Protection of the Environment Legislation Miscellaneous Amendments Act 2017](#).

### **28 Existing authorised officers**

A person appointed as an authorised officer under Part 9 before the repeal of that Part by the amending Act is taken to be an authorised officer appointed under Chapter 7 (Investigation) of the [Protection of the Environment Operations Act 1997](#) on the commencement of sections 96B and 96C of this Act, as inserted by the amending Act.

### **29 Investigations—exercise of powers**

Chapter 7 (Investigation) of the [Protection of the Environment Operations Act 1997](#) extends to the exercise of powers in connection with an investigation commenced before the commencement of sections 96B and 96C of this Act, as inserted by the amending Act.

## **Part 8 Provisions consequent on enactment of Environment Legislation Amendment Act 2022**

### **30 Definition**

In this Part—

***amended***, in relation to a provision, means the provision as in force on and from the date this Part commences.

### **31 Extended powers to give clean-up notices**

A reference in amended section 46 to land in relation to which the EPA has been given notice under section 60 extends to land in relation to which the EPA was given notice under section 60 before the date this clause commences.

### **32 Court orders in connection with offences**

Sections 95AA-95AF and amended 95B extend to proceedings commenced, but not finally determined, before the date this clause commences.