

South Australia

**Environment Protection (Site Contamination)
Amendment Bill 2007**

A BILL FOR

An Act to amend the *Environment Protection Act 1993*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Environment Protection (Site Contamination) Amendment Act 2007*.

5 2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

10 Part 2—Amendment of *Environment Protection Act 1993*

4—Amendment of section 3—Interpretation

- (1) Section 3(1)—after the definition of *appointed member* insert:

appropriate person, in relation to the issuing of a site contamination assessment order or site remediation order, means the person who is the appropriate person under Part 10A to be issued with the order;

- (2) Section 3(1)—after the definition of *the Authority* insert:

background concentrations, in relation to chemical substances on a site or below its surface, means results obtained from carrying out assessments of the presence of the substances in the vicinity of the site in accordance with guidelines from time to time issued by the Authority;

- (3) Section 3(1)—after the definition of *business* insert:

cause site contamination—*see section 103D*;

chemical substance means any organic or inorganic substance, whether a solid, liquid or gas (or combination thereof), and includes waste;

- (4) Section 3(1)—after the definition of *the general environmental duty* insert:

holding company has the same meaning as in the *Corporations Act 2001* of the Commonwealth;

- (5) Section 3(1)—after the definition of *land* insert:

liability for site contamination means—

- (a) liability to be issued with an order under Part 10A in respect of the site contamination; or

(b) liability to pay an amount ordered by the Court under Part 11 in respect of the site contamination;

(6) Section 3(1)—after the definition of *related body corporate* insert:

remediate a site means treat, contain, remove or manage chemical substances on or below the surface of the site so as to—

(a) eliminate or prevent actual or potential harm to the health or safety of human beings that is not trivial, taking into account current or proposed land uses; and

(b) eliminate or prevent, as far as reasonably practicable—

(i) actual or potential harm to water that is not trivial; and

(ii) any other actual or potential environmental harm that is not trivial, taking into account current or proposed land uses,

and *remediation* has a corresponding meaning;

(7) Section 3(1)—after the definition of *sell* insert:

sensitive use means—

(a) use for residential purposes; or

(b) use for a pre-school within the meaning of the *Development Regulations 1993*; or

(c) use for a primary school; or

(d) use of a kind prescribed by regulation;

(8) Section 3(1)—after the definition of *serious environmental harm* insert:

site means an area of land (whether or not in the same ownership or occupation);

site contamination—see section 5B;

site contamination assessment order means a site contamination assessment order under Part 10A;

site contamination audit means a review carried out by a person that—

(a) examines assessments or remediation carried out by another person in respect of known or suspected site contamination on or below the surface of a site; and

(b) is for the purpose of determining any 1 or more of the following matters:

(i) the nature and extent of any site contamination present or remaining on or below the surface of the site;

(ii) the suitability of the site for a sensitive use or another use or range of uses;

(iii) what remediation is or remains necessary for a specified use or range of uses;

site contamination auditor means a person accredited under Division 4 of Part 10A as a site contamination auditor;

site contamination audit report, in relation to a site contamination audit, means a detailed written report that—

- 5 (a) sets out the findings of the audit and complies with the guidelines from time to time issued by the Authority; and
- (b) includes a summary of the findings of the audit certified, in the prescribed form, by the site contamination auditor who personally carried out or directly supervised the audit;

10 *site contamination audit statement*, in relation to a site contamination audit, means a copy (that must comply with the regulations) of the summary of the findings of the audit certified, in the prescribed form, by the site contamination auditor who personally carried out or directly supervised the audit;

15 *site contamination consultant* means a person other than a site contamination auditor who, for fee or reward, assesses the existence or nature or extent of site contamination;

site remediation order means a site remediation order under Part 10A;

- (9) Section 3(1)—after the definition of *serious environmental harm* insert:

20 *source site*—see section 103D;

- (10) Section 3(1), definition of *water*—delete the definition and substitute:

water means—

- (a) water occurring naturally above or under the ground; or
- (b) water introduced to an aquifer or other area under the ground; or
- 25 (c) an artificially created body of water or stream that is for public use or enjoyment;

5—Insertion of section 5B

After section 5A insert:

5B—Site contamination

- 30 (1) For the purposes of this Act, *site contamination* exists at a site if chemical substances introduced to the site are present on or below the surface of the site in concentrations above the background concentrations (if any) resulting in—

- 35 (a) actual or potential harm to the health or safety of human beings that is not trivial, taking into account current or proposed land uses; or
- (b) actual or potential harm to water that is not trivial; or
- (c) other actual or potential environmental harm that is not trivial, taking into account current or proposed land uses.

- (2) For the purposes of this Act, environmental harm is caused by the presence of chemical substances—
- (a) whether the harm is a direct or indirect result of the presence of the chemical substances; and
 - (b) whether the harm results from the presence of the chemical substances alone or the combined effects of the presence of the chemical substances and other factors.
- (3) For the purposes of this Act, site contamination does not exist at a site if circumstances of a kind prescribed by regulation apply to the site.

6—Amendment of section 10—Objects of Act

Section 10(1)(b)—after subparagraph (i) insert:

- (ia) to establish processes for carrying out assessments of known or suspected site contamination and, if appropriate, remediation of the sites;

7—Insertion of section 83A

After section 83 insert:

83A—Notification of site contamination of underground water

- (1) This section applies to—
- (a) an owner or occupier of a site; or
 - (b) a site contamination auditor or a site contamination consultant engaged for the purposes of making determinations or assessments in relation to site contamination on or below the surface of a site.
- (2) A person to whom this section applies must notify the Authority in writing as soon as reasonably practicable after becoming aware of the existence of site contamination at the site or in the vicinity of the site (whether arising before or after the commencement of this section) that affects or threatens water occurring naturally under the ground or introduced to an aquifer or other area under the ground.

Penalty:

If the offender is a body corporate—\$120 000.

If the offender is a natural person—Division 1 fine.

- (3) The notification must—
- (a) describe the location of the site contamination sufficient to identify it; and
 - (b) include the information known to the person about the nature and extent of the site contamination.

- (4) For the purposes of this section—
- (a) a person is not required to notify the Authority of a matter if the person has reason to believe that the matter has already come to the notice of the Authority or an officer engaged in the administration or enforcement of this Act; but
 - (b) a person is required to notify the Authority of a matter despite the fact that to do so might incriminate the person or make the person liable to a penalty.
- (5) A notification given by a person in compliance with this section is not admissible in evidence against the person in proceedings for an offence or for the imposition of a penalty (other than proceedings in respect of the making of a false or misleading statement).

8—Amendment of section 84—Defence where alleged contravention of Part

Section 84(1a)—delete subsection (1a) and substitute:

- (1a) Subsection (1)(c) does not apply where—
- (a) the property harmed comprises water occurring naturally above or under the ground or water introduced to an aquifer or other area under the ground; or
 - (b) the pollution resulted in site contamination.

9—Amendment of section 87—Powers of authorised officers

Section 87(2)—after paragraph (b) insert:

or

- (c) the exercise of the power is reasonably required for the purposes of assessing the existence or causes of known or suspected site contamination.

10—Amendment of section 88—Issue of warrants

Section 88(1)—after paragraph (b) insert:

or

- (c) that site contamination may exist in a place or something may be found in a place that constitutes evidence of a cause of site contamination,

11—Insertion of Part 10A

After Part 10 insert:

Part 10A—Special provisions and enforcement powers for site contamination

Division 1—Interpretation and application

103A—Interpretation

In this Part—

occupier, in relation to land—

- (a) has the meaning assigned to the term by section 3; and
- (b) if, in accordance with the regulations, a person of a particular kind is to be taken to be an occupier of the land in the circumstances of the case—includes a person of that kind,

and *occupy* land has a corresponding meaning.

103B—Application of Part to site contamination

This Part applies to site contamination at a site whether the chemical substances were first present there, or the environmental harm resulted, before or after the commencement of this Part or this Act.

Division 2—Appropriate persons to be issued with orders and liability for site contamination

103C—General provisions as to appropriate persons

- (1) Subject to this Part, the appropriate person to be issued with a site contamination assessment order or a site remediation order in respect of a site under Division 3 is—
 - (a) the person who caused the site contamination at the site; or
 - (b) if it is not practicable to issue the notice to that person and the site is all or portion of the source site—the owner of the site.
- (2) However, if the basis for issuing a site contamination assessment order is only the Authority's suspicion under section 103I(1)(b) as to the existence of site contamination at the site, subsection (1) of this section does not apply and the appropriate person to be issued with the order is the owner of the site.

(3) For the purposes of subsection (1), it is not practicable to issue a site contamination assessment order or a site remediation order to a person if the person—

- (a) has died or, in the case of a body corporate, ceased to exist; or
- (b) cannot, after reasonable inquiry, be identified or located; or
- (c) would, in the opinion of the Authority, for any reason, be unable to carry out, or meet the costs and expenses of, the action required or authorised under the order.

103D—Causing site contamination and source sites

(1) For the purposes of this Act—

- (a) a person is to be taken to have *caused* site contamination if the person was the occupier of land when there was an activity at the land that caused or contributed to the site contamination; and
- (b) the land that is affected by the site contamination and was then occupied by the person is the *source site* in relation to the site contamination.

Note—

The source site, as defined in subsection (1), may be, but need not be, the whole area affected by the site contamination. This is because the chemical substances giving rise to the site contamination might originally have been introduced to the source site but, by carriage by underground water or some other means, have come to be present at other land in the vicinity that was not occupied by the person who caused the contamination.

(2) If site contamination would not have resulted at the site but for a change of use of a kind prescribed by regulation (whether the change occurred before or after the commencement of this Part or this Act), the person who brought about the change of use of the site is to be taken to have *caused* the site contamination for the purposes of this Act.

(3) The operation of subsection (2) in a particular case is not to be taken to exclude the possibility of another person or persons also having caused the site contamination under subsection (1).

(4) For the purposes of subsection (2), a person does not bring about a change of use of a site because the person was a relevant authority that granted a consent or approval in respect of the site under the *Development Act 1993*.

103E—Liability for site contamination subject to certain agreements

(1) If—

- (a) site contamination exists at a site; and

- 5 (b) land that is all or portion of the site is sold or transferred after the commencement of this Part subject to an agreement in writing under which the purchaser or transferee will assume liability for all or a specified part of the site contamination at the site,

the purchaser or transferee is to be taken to have assumed the vendor's or transferor's liability for the site contamination in accordance with the agreement and this Act applies as if the purchaser or transferee (and not the vendor or transferor) had caused the site contamination or, as the case may be, the specified part of the site contamination.

- 10 (2) Subsection (1) does not apply to an agreement—

- (a) unless—

15 (i) the person has first given the purchaser or transferee a notice in a form approved by the Authority for the purposes of this section setting out the legal effect of the agreement under this section; and

(ii) a copy of the agreement is lodged with the Authority; or

- 20 (b) if the Environment Resources and Development Court determines, on application by the Authority, that the purchaser or transferee did not acquire the land in a genuine arms length transaction.

25 **103F—Liability for site contamination subject to determination by Authority**

- (1) The Authority may, on application by a person, determine that the person is not liable for site contamination on or below the surface of land if the Authority is satisfied that—

30 (a) the person sold the land to another person in a genuine arms length sale; and

(b) the sale occurred before the commencement of this Part or before the commencement of this Act for a price or other consideration that was, as a result of knowledge or suspicion of the presence of chemical substances, fixed on the basis that the purchaser might incur costs associated with remediation in respect of the site contamination.

- 35 (2) The Authority may not make a determination under this section unless the purchaser of the land has been given notice of the application and allowed a reasonable opportunity to make submissions to the Authority.
- 40

5 (3) If the Authority makes a determination in favour of the person under this section, the person has no liability for site contamination on or below the surface of the land sold and this Act applies as if the purchaser (and not that person) caused the site contamination on or below the surface of that land.

(4) An application under this section must be made in a manner and form approved by the Authority.

(5) An applicant under this section must provide the Authority with any information that the Authority requires to determine the application.

10 **103G—Order may be issued to one or more appropriate persons**

If, in the application of this Division, there are 2 or more persons to whom it is practicable to issue an order under Division 3 as appropriate persons, the Authority may determine that—

- 15 (a) any 1 of the persons is the appropriate person to be issued with the order; or
- (b) 2 or more of the persons are the appropriate persons to be issued with the order (with the effect that the persons are jointly and severally liable to comply with the requirements of the order).

20 **103H—Court may order that director of body is appropriate person in certain circumstances**

(1) If—

- 25 (a) a body corporate has been issued with a site contamination assessment order or a site remediation order in respect of a site, or grounds exist for the issuing of any such order to a body corporate; and
- (b) there is reason to believe that the body corporate is being or has been wound up, stripped of assets or subjected to other action as part of a scheme—
- 30 (i) to avoid meeting its obligations under or in connection with a site contamination assessment order or a site remediation order in respect of the site; or

(ii) to avoid its being issued with such an order,

35 the Environment Resources and Development Court may, on application by the Authority, make an order that a person who was, during the period in which it appears to the Court that the scheme was principally devised, a director or otherwise concerned in the management of the body corporate, or of a holding company of the body corporate, is an appropriate person to be issued with a site contamination assessment order or a site remediation order, or both,

40 in respect of the site.

(2) Without limiting the effect of subsection (1), there will be reason for such a belief—

(a) if—

(i) the body corporate is being or has been wound up; and

(ii) the body corporate has carried out 1 or more transactions—

(A) such as to give the liquidator of the body corporate a right to recover cash under section 567 of the *Corporations Act 2001* of the Commonwealth; or

(B) rendered voidable by section 588FE of the *Corporations Act 2001* of the Commonwealth; or

(C) 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

(iii) there was, at the time or times when the body corporate entered those transactions or a substantial portion of them, reason to believe that site contamination may exist at the site; or

(b) if—

(i) a holding company of the body corporate has contravened section 588V of the *Corporations Act 2001* of the Commonwealth in relation to the body corporate; and

(ii) there was, at the time of the contravention, reason to believe that site contamination may exist at the site; or

(c) if—

(i) the site has been transferred to a related body corporate (the *transferee*); and

(ii) a reasonable person could have anticipated that the transferee would be unable to pay its debts if it took steps to remediate the site (to the extent that a reasonable person would have expected would be necessary); and

(iii) there was, at the time of the transfer or when the body corporate entered the transactions for the transfer, or a substantial portion of them, reason to believe that site contamination may exist at the site.

- (3) 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.
- (4) The Court may make an order under this section despite the fact that the body corporate took steps to remediate the site.

Division 3—Orders and other action to deal with site contamination

103I—Site contamination assessment orders

- (1) If—
- (a) the Authority is satisfied that site contamination exists at a site; or
 - (b) the Authority suspects that site contamination exists at a site because a potentially contaminating activity of a kind prescribed by regulation has taken place there,
- the Authority may issue a site contamination assessment order in respect of the site to an appropriate person.
- (2) A site contamination assessment order—
- (a) must be in the form of a written notice served on the person to whom it is issued; and
 - (b) must specify the person to whom it is issued (whether by name or a description sufficient to identify the person); and
 - (c) must specify the site; and
 - (d) must include requirements for assessments to be carried out of the nature and extent of any site contamination on or below the surface of the site and, subject to subsection (3), if the Authority so determines, on or below the surface of land in the vicinity of the site; and
 - (e) must include a requirement for a written report of the assessments to be submitted to the Authority in a specified form within a specified period; and
 - (f) may include a requirement that a person with specified qualifications be appointed or engaged to carry out the assessments required by the order or to prepare the written report or the assessments; and

(g) may include a requirement for a site contamination audit to be carried out, in accordance with the guidelines issued from time to time by the Authority, and a site contamination audit report to be submitted to the Authority within a specified period; and

(h) may include a requirement for specified consultations to be carried out with owners or occupiers of land in the vicinity of the site; and

(i) must state that the person may, within 14 days, appeal to the Environment, Resources and Development Court against the order.

(3) If the order is issued to an appropriate person as an owner of the site as distinct from a person who caused the site contamination, the order must be limited in its application to site contamination on or below the surface of the site.

(4) Where a proposed site contamination assessment order or a proposed variation of such an order would require the undertaking of an activity for which a permit would, but for section 129 of the *Natural Resources Management Act 2004*, be required under that Act, the Authority must, before issuing or varying the order, give notice of the proposal to the authority under the *Natural Resources Management Act 2004* to whom an application for a permit for the activity would otherwise have to be made inviting the authority to make written submission in relation to the proposal within a period specified in the notice.

(5) The Authority may, by written notice served on a person to whom a site contamination assessment order has been issued, vary or revoke the order.

(6) A person to whom a site contamination assessment order is issued must comply with the order.

Penalty:

If the offender is a body corporate—\$120 000.

If the offender is a natural person—Division 1 fine.

(7) It is not an excuse for a person to refuse or fail to provide information in response to a requirement imposed by a site contamination assessment order on the ground that to do so might tend to incriminate the person or make the person liable to a penalty.

(8) If compliance by a prescribed person with a requirement to provide information imposed by a site contamination assessment order might tend to incriminate the person or make the person liable to a penalty, then the information given in compliance with the requirement is not admissible in evidence against the person in proceedings for an offence or for the imposition of a penalty (other than proceedings in respect of the making of a false or misleading statement).

103J—Voluntary site contamination assessment proposals

- 5
- (1) The Authority may agree not to issue a site contamination assessment order to a person in relation to known or suspected site contamination if the person undertakes to carry out an assessment in accordance with an approved voluntary site contamination assessment proposal.
- (2) An agreement under subsection (1) must be in writing and copies of the agreement must be served on the parties to the agreement.
- 10
- (3) The Authority may, on application by a person, approve a voluntary site contamination assessment proposal if satisfied that the terms of the proposal are appropriate.
- (4) The Authority must, if satisfied that the assessment has been carried out and completed in accordance with the approved proposal, notify the holder of the approval in writing that it is so satisfied.
- 15
- (5) If a notification is given to a person under subsection (4), the person may apply to the Court under Part 11 for an order for payment of the whole or a portion of the costs and expenses of the assessment against others as if the person had carried out the assessment in compliance with the requirements of a site contamination assessment order.
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103K—Site remediation orders

- (1) If—
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- (a) the Authority is satisfied that site contamination exists at a site; and
- (b) the Authority considers that remediation of the site is required, taking into account current or proposed land uses,
- the Authority may issue a site remediation order in respect of the site to an appropriate person.
- (2) A site remediation order—
- 30
- (a) must be in the form of a written notice served on the person to whom it is issued; and
- (b) must specify the person to whom it is issued (whether by name or a description sufficient to identify the person); and
- (c) must specify the site; and
- 35
- (d) must give particulars of the site contamination; and
- (e) may include requirements for the person to whom it is issued to remediate the site within a specified period; and
- (f) may include requirements for—
- 40
- (i) preparing, in accordance with specified requirements and to the satisfaction of the Authority, a plan of remediation; and

(ii) complying with such a proposal to the satisfaction of the Authority; and

5 (g) may include authorisation for the site to be remediated, or any other action to be taken in respect of its remediation, on the Authority's behalf by authorised officers or other persons authorised by the Authority; and

(h) may include a requirement for a written report of the remediation to be submitted to the Authority in a specified form within a specified period; and

10 (i) may include a requirement that a person with specified qualifications be appointed or engaged to—

(i) prepare a plan of remediation under paragraph (f); or

15 (ii) to prepare a written report of the remediation under paragraph (h); or

(iii) to carry out the remediation or other activities associated with the remediation; and

20 (j) may include requirements for a site contamination audit to be carried out, in accordance with the guidelines issued from time to time by the Authority, and a site contamination audit report to be submitted to the Authority within a specified period; and

25 (k) may include a requirement for specified consultations to be carried out with owners or occupiers of land in the vicinity of the site; and

(l) must state that the person may, within 14 days, appeal to the Environment, Resources and Development Court against the order.

30 (3) If the order is issued to an appropriate person as an owner of the site as distinct from a person who caused the site contamination, the order must be limited in its application to site contamination on or below the surface of the site.

35 (4) Where a proposed site remediation order (except an emergency site remediation order) or a proposed variation of a site remediation order would require the undertaking of an activity for which a permit would, but for section 129 of the *Natural Resources Management Act 2004*, be required under that Act, the Authority must, before issuing or varying the order, give notice of the proposal to the authority under the *Natural Resources Management Act 2004* to whom an application for a permit for the activity would otherwise have to be made inviting the authority to make written submission in relation to the proposal within a period specified in the notice.

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- (5) An authorised officer may, if of the opinion that urgent action is required for the remediation of a site, issue a site remediation order imposing requirements of a kind referred to in subsection (2)(e) as reasonably required for the remediation of the site (an *emergency site remediation order*).
- 10
- (6) An emergency site remediation order may be issued orally, but, in that event, the person to whom the order is issued must be advised forthwith of the person's right to appeal to the Environment, Resources and Development Court against the order.
- (7) Where an emergency site remediation order is issued to a person, the order will cease to have effect on the expiration of 72 hours from the time of its issuing unless confirmed by a written site remediation order issued by the Authority and served on the person.
- 15
- (8) The Authority or an authorised officer may, if of the opinion that it is reasonably necessary to do so in the circumstances, include in an emergency or other site remediation order a requirement for an act or omission that might otherwise constitute a contravention of this Act and, in that event, a person incurs no criminal liability under this Act for compliance with the requirement.
- 20
- (9) The Authority may, by written notice served on a person to whom a site remediation order has been issued, vary or revoke the order.
- (10) Where, in accordance with subsection (2)(g), a site remediation order is issued authorising a person other than an authorised officer to take action, the following provisions apply:
- 25
- (a) the Authority must issue the person with an instrument of authority;
- (b) the person may exercise such powers of an authorised officer as are reasonably required for the purpose of taking action under that subsection;
- 30
- (c) the provisions of this Act apply in relation to the exercise of such powers by the person in the same way as in relation to an authorised officer;
- (d) the person must produce the instrument of authority for the inspection of any person in relation to whom the person
- 35
- intends to exercise powers of an authorised officer.
- (11) A person to whom a site remediation order is issued must comply with the order.
- Penalty:
- If the offender is a body corporate—\$120 000.
- 40
- If the offender is a natural person—Division 1 fine.
- (12) It is not an excuse for a person to refuse or fail to provide information in response to a requirement imposed by a site remediation order on the ground that to do so might tend to incriminate the person or make the person liable to a penalty.

- 5 (13) If compliance by a prescribed person with a requirement to provide information imposed by a site remediation order might tend to incriminate the person or make the person liable to a penalty, then the information given in compliance with the requirement is not admissible in evidence against the person in proceedings for an offence or for the imposition of a penalty (other than proceedings in respect of the making of a false or misleading statement).

103L—Voluntary site remediation proposals

- 10 (1) The Authority may agree not to issue a site remediation order to a person in relation to site contamination if the person undertakes to carry out remediation in accordance with an approved voluntary site remediation proposal.
- (2) An agreement under subsection (1) must be in writing and copies of the agreement must be served on the parties to the agreement.
- 15 (3) The Authority may, on application by a person, approve a voluntary site remediation proposal if satisfied that the terms of the proposal are appropriate.
- (4) The Authority must, if satisfied that the remediation has been carried out and completed in accordance with the approved proposal, notify the holder of the approval in writing that it is so satisfied.
- 20 (5) If a notification is given to a person under subsection (4), the person may apply to the Court under Part 11 for an order for payment of the whole or a portion of the costs and expenses of the remediation against others as if the person had carried out the remediation in compliance with the requirements of a site remediation order.
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103M—Entry onto land by person to whom order is issued

- 30 (1) A site contamination assessment order or a site remediation order does not confer on the person to whom it is issued a power to enter land of which that person is not an occupier, to remain on such land or to do anything on such land, without the permission of—
- (a) the occupier of the land; and
 - (b) the owner of the land (unless the order has been issued to the owner or the occupier is the owner).
- (2) However—
- 35 (a) if permission is withheld or withdrawn by the owner, the Authority may—
- (i) revoke, suspend or vary the order; and
 - (ii) if the owner has been warned of the possible consequences of withholding or withdrawing permission, issue a site contamination assessment order or a site remediation order in respect of the land to the owner as if the owner were the appropriate person;
- 40

(b) if permission is withheld or withdrawn by the occupier, the Authority may—

(i) revoke, suspend or vary the order; and

(ii) if the occupier has been warned of the possible consequences of withholding or withdrawing permission, issue a site contamination assessment order or a site remediation order in respect of the land to the occupier as if the occupier were the appropriate person.

(3) If a site remediation order is issued under subsection (2), this Act applies as if no person other than the person issued with the order has liability for site contamination described in the order in respect of the land.

103N—Liability for property damage etc caused by person entering land

(1) This section applies to a person who enters or does anything on land in order to carry out—

(a) the requirements of a site contamination assessment order or site remediation order; or

(b) an approved voluntary site contamination assessment proposal or approved voluntary site remediation proposal.

(2) A person to whom this section applies is liable, except as prescribed by the regulations, to the occupier of the land for damage to property of the occupier, or other loss suffered by the occupier, as a result of the entry or other actions (including loss suffered by the occupier because of the interruption of the occupier's business on the land by such entry or actions).

(3) A person to whom this section applies is liable, except as prescribed by the regulations, to the owner of the land for damage to land or other property of the owner, or other loss suffered by the owner, as a result of the entry or other actions.

(4) A person who incurs a liability under this section must—

(a) take all reasonable steps to minimise and make good the damage or loss; and

(b) to the extent that it is not practicable for the person to make good the damage or loss—compensate the person suffering the damage or loss.

(5) Proceedings for the recovery of compensation under this section must be brought by application to the Environment, Resources and Development Court.

103O—Special management areas

- 5
- (1) If the Authority has reason to believe that site contamination of a particular kind exists in a wide area, or in numerous areas, as a result of the same activity or proximate or related activities, the Authority may, by notice in the Gazette—
- (a) declare that the area or areas described in the proclamation may be affected by site contamination described in the proclamation; and
- 10 (b) declare the area or areas to be a special management area or special management areas for the purposes of this section.
- (2) On the making of a declaration under this section, the Authority is to conduct a program in which it—
- (a) publicises the matters to which the declaration relates; and
- 15 (b) establishes consultative processes involving itself and other relevant public authorities, industries, businesses, residents and others involved, or with a relevant interest, in the matter; and
- (c) endeavours to bring about the making of 1 or more environment performance agreements or other voluntary arrangements under which the parties to the agreements or arrangements are to carry out, or contribute to or assist in the carrying out of—
- 20 (i) assessments of—
- (A) the nature and extent of site contamination within the special management area or areas; and
- 25 (B) the remediation that is necessary; and
- (ii) the preparation of plans of remediation; and
- 30 (iii) the remediation of the sites that are affected by the relevant site contamination.
- (3) The Authority may, by notice in the Gazette, vary or revoke a notice under this section.

103P—Registration of site contamination assessment orders or site remediation orders in relation to land

- 35 (1) Where a site contamination assessment order or site remediation order has been issued under this Division, the Authority may do either or both of the following:
- (a) if the order was issued to an owner or occupier of the site—
40 apply to the Registrar-General for registration of the order in relation to the site;

- (b) apply to the Registrar-General for registration of the order in relation to land owned by a person to whom the order was issued.
- (2) An application under this section must—
- 5 (a) describe the land to which it relates; and
- (b) do either or both of the following as the case may require:
- (i) state that the registration of the order in relation to the land will, by virtue of subsection (4), result in the order becoming binding on each owner from time to time of the land;
- 10 (ii) state that the registration of the order in relation to the land is to operate as the basis for a charge on land owned by the person to whom the order was issued, as provided by this Division, securing payment to the Authority of costs and expenses incurred in taking action in the event of non-compliance with requirements of the order or in taking action in pursuance of the order.
- 15
- (3) The Registrar-General must, on application by the Authority under subsection (1) and lodgement of a copy of the site contamination assessment order or site remediation order, register the order by making such entries in any register book, memorial or other book or record in the Lands Titles Registration Office or in the General Registry Office as he or she thinks fit.
- 20
- (4) Where a site contamination assessment order or a site remediation order (other than an order authorising remediation of a site by authorised officers or other persons authorised by the Authority) was issued to an owner or occupier of the site and is registered under this section in relation to the site—
- 25 (a) the order is binding on each owner from time to time of the site, and this Division applies as if the order had been issued to each owner; and
- (b) a person who ceases to be an owner of the site must, as soon as reasonably practicable, notify the Authority in writing of the name and address of the new owner.
- 30
- (5) Where a site contamination assessment order or site remediation order is registered under this section in relation to a site, the Authority must, as soon as reasonably practicable, notify, in writing, each owner of the site of the registration and of the obligations of owners under subsection (4).
- 35
- 40 (6) A person who fails to comply with subsection (4)(b) is guilty of an offence.
- Penalty: Division 6 fine.

- 5
- (7) The Registrar-General must, on application by the Authority, cancel the registration of a site contamination assessment order or site remediation order in relation to land and make such endorsements to that effect in the appropriate register book, memorial or other book or record in respect of the land as he or she thinks fit.
- (8) The Authority may, if it thinks fit, apply to the Registrar-General for cancellation of the registration of a site contamination assessment order or site remediation order in relation to land, and must do so—
- 10
- (a) on revocation of the order; or
- (b) on full compliance with the requirements of the order; or
- (c) if the Authority takes action under this Division to carry out the requirements of the order—on payment to the Authority of the amount recoverable by the Authority under this Division in relation to the action so taken.

15

103Q—Notation of site contamination audit report in relation to land

- (1) This section applies to a site contamination audit report relating to land whether or not required under this or any other Act.
- 20
- (2) The Registrar-General must, on application by the Authority, include in any register book, memorial or other book or record in the Lands Titles Registration Office or in the General Registry Office a notation that a site contamination audit report has been prepared in respect of the land and is to be found in the register kept by the Authority under section 109 of this Act.
- 25
- (3) The Registrar-General must, on application by the Authority, remove a notation made in relation to land under this section.

103R—Action on non-compliance with site contamination assessment order or site remediation order

- 30
- (1) If—
- (a) the requirements of a site contamination assessment order are not complied with; or
- (b) a site remediation order requires remediation of the site by the person to whom it is issued and the requirements of the order are not complied with,
- 35
- the Authority may take any action required by the order.
- (2) Any action to be taken by the Authority under subsection (1) may be taken on the Authority's behalf by authorised officers or by other persons authorised by the Authority for the purpose.
- (3) Where a person other than an authorised officer is authorised to take action under subsection (1), the following provisions apply:
- 40
- (a) the Authority must issue the person with an instrument of authority;

- 5
- (b) the person may exercise such powers of an authorised officer as are reasonably required for the purpose of taking action under that subsection;
 - (c) the provisions of this Act apply in relation to the exercise of such powers by the person in the same way as in relation to an authorised officer;
 - (d) the person must produce the instrument of authority for the inspection of any person in relation to whom the person intends to exercise powers of an authorised officer.

10 **103S—Recovery of costs and expenses incurred by Authority**

15 (1) Where action has been taken by the Authority either on non-compliance with the requirements of a site contamination assessment order or a site remediation order, or in pursuance of a site remediation order, the Authority may recover the reasonable costs and expenses incurred by the Authority in taking that action as a debt from the person to whom the order was issued.

(2) Subject to subsection (3), where—

- 20
- (a) a site contamination assessment order or site remediation order has been registered in relation to a site under section 103P; or
 - (b) the registration of a site contamination assessment order or site remediation order in relation to land has been cancelled under that section,

25 the Authority may recover, as a debt from the person to whom the order was issued, an amount prescribed by regulation in respect of the registration or cancellation (as the case may be).

(3) No amount is recoverable by the Authority under subsection (2) in relation to a site contamination assessment order or site remediation order that has been revoked.

30 (4) Where an amount is recoverable from a person by the Authority under this section—

- 35
- (a) the Authority may, by notice in writing to the person, fix a period, being not less than 28 days from the date of the notice, within which the amount must be paid by the person, and, if the amount is not paid by the person within that period, the person is liable to pay interest charged at the prescribed rate per annum on the amount unpaid; and
 - (b) the amount together with any interest charge so payable is until paid a charge in favour of the Authority on any land owned by the person in relation to which the site contamination assessment order or site remediation order is registered under this Division.
- 40

- (5) A charge imposed on land by this section has priority over—
- (a) any prior charge imposed on the land (whether or not registered) that operates in favour of a person who is an associate of the owner of the land; and
 - (b) any other charge on the land other than a charge registered prior to registration of the site contamination assessment order or site remediation order in relation to the land.

103T—Prohibition or restriction on taking water affected by site contamination

- (1) If the Authority is satisfied that—
- (a) there is site contamination that affects or threatens water; and
 - (b) action is necessary under this section to prevent actual or potential harm to human health or safety,
- the Authority may, by notice in the Gazette, prohibit or restrict the taking of the water.
- (2) A notice under this section must—
- (a) specify the water to which it relates; and
 - (b) give particulars of the site contamination affecting the water.
- (3) A person must not contravene a notice under this section.
Penalty: Division 5 fine.
- (4) The Authority may, by notice in the Gazette, vary or revoke a notice under this section.

Division 4—Site contamination auditors and audits

103U—Application of Division

This Division applies to—

- (a) a site contamination audit; or
- (b) a site contamination audit report; or
- (c) a site contamination audit statement,

whether or not required under this or any other Act.

103V—Requirement for auditors to be accredited

A person must not carry out a site contamination audit unless—

- (a) the person is a site contamination auditor and personally carries out or directly supervises the work involved in the audit; or

- (b) the person carries out the audit through the instrumentality of a site contamination auditor who personally carries out or directly supervises the work involved in the audit.

Penalty: Division 4 fine.

5 **103W—Accreditation of site contamination auditors**

- (1) Only a natural person may be granted accreditation as a site contamination auditor.
- (2) The regulations may provide for matters relating to the accreditation of site contamination auditors, including (without limitation)—
 - 10 (a) the grant or renewal of accreditation by the Authority; and
 - (b) referral of applications to an accreditation committee established by the Authority; and
 - (c) powers of the Authority or accreditation committee to examine applicants or require the provision of information by applicants; and
 - 15 (d) application fees and accreditation fees; and
 - (e) the imposition or variation of conditions of accreditation; and
 - (f) the term for which accreditation may be granted or renewed; and
 - 20 (g) powers of the Authority to suspend or cancel accreditation and disqualify persons from obtaining accreditation; and
 - (h) the grounds for refusing the grant or renewal of accreditation or for suspending or cancelling accreditation or disqualifying persons from obtaining accreditation; and
 - 25 (i) appeals to the Administrative and Disciplinary Division of the District Court against decisions of the Authority relating to accreditation.
- (3) The regulations may provide that persons of a specified class are to be taken to be accredited under this Division subject to compliance with requirements specified in the regulations.

30 **103X—Illegal holding out as site contamination auditor**

- (1) A person must not hold himself or herself out as a site contamination auditor unless the person is accredited under this Division as a site contamination auditor.
35 Penalty: Division 4 fine.
- (2) A person must not hold out another as a site contamination auditor unless the other person is accredited under this Division as a site contamination auditor.
40 Penalty: Division 4 fine.

103Y—Conflict of interest and honesty

- (1) This section applies to—
- (a) a site contamination auditor; or
 - (b) a person who carries out a site contamination audit on behalf of another through the instrumentality of a site contamination auditor.
- (2) A person to whom this section applies must not—
- (a) unless authorised by the Authority in writing, carry out a site contamination audit of a site—
 - (i) if the person is an associate of another person by whom any part of the site is owned or occupied; or
 - (ii) if the person has a direct or indirect pecuniary or personal interest in any part of the site or any activity that has taken place or is to take place at the site or part of the site; or
 - (iii) if the person has been involved in, or is an associate of another person who has been involved in, assessment or remediation of site contamination at the site; or
 - (b) in or in relation to a site contamination audit, site contamination audit report or site contamination audit statement, make a statement that the person knows to be false or misleading in a material particular (whether by reason of the inclusion or omission of any particular).

Penalty: Division 4 fine or Division 4 imprisonment.

103Z—Annual returns and notification of change of address etc

- (1) A site contamination auditor must, during the prescribed period each year, furnish the Authority with a return relating to site contamination audits for which the auditor is or was the responsible auditor, listing each such audit commenced, in progress, completed or terminated before completion during the period commencing—
- (a) in the case of an auditor in his or her first year of accreditation—on the day on which accreditation was granted; or
 - (b) in any other case—on the first day of the prescribed period in the preceding year.
- Penalty: Division 5 fine.
- (2) A return under this section must be in the form prescribed by regulation.

- (3) A site contamination auditor must, within 14 days after any change of address or any other change relating to his or her activities as a site contamination auditor that affects the accuracy of particulars last furnished to the Authority, notify the Authority of the change.

Penalty: Division 5 fine.

- (4) In this section—

prescribed period means the period commencing 8 weeks before, and ending 4 weeks before, the anniversary of the day on which the auditor's accreditation was granted or last renewed;

responsible auditor—a site contamination auditor is the responsible auditor for a site contamination audit if the work involved in the audit is carried out personally by, or under the direct supervision of, the auditor.

103ZA—Requirements relating to site contamination audits

- (1) A site contamination auditor must, within 14 days after the commencement of a site contamination audit for which the auditor is the responsible auditor, notify the Authority in writing of the person who commissioned the audit and the location of the land to which the audit is to relate.

Penalty: Division 5 fine.

- (2) A site contamination auditor must, within 14 days after the termination before completion of a site contamination audit for which the auditor was the responsible auditor, notify the Authority in writing of the termination and the reasons for the termination.

Penalty: Division 5 fine.

- (3) A notification under subsection (1) or (2) must be in the form prescribed by regulation.

- (4) A site contamination auditor must, on the completion of each site contamination audit for which the auditor is the responsible auditor—

(a) provide a site contamination audit report to the person who commissioned the audit; and

(b) at the same time, provide—

(i) a site contamination audit report to the Authority; and

(ii) a site contamination audit statement to the council for the area in which the land to which the audit relates is situated and any prescribed body.

Penalty: Division 5 fine.

(5) In this section—

responsible auditor—a site contamination auditor is the responsible auditor for a site contamination audit if the work involved in the audit is carried out personally by, or under the direct supervision of, the auditor.

Division 5—Reports by site contamination auditors and consultants

103ZB—Reports by site contamination auditors and consultants

A site contamination auditor or site contamination consultant must, in any written report that the auditor or consultant prepares in relation to a site, clearly qualify any statement of the auditor's or consultant's opinion as to the existence of site contamination at the site by specifying the land uses that were taken into account in forming that opinion.

Penalty: Division 5 fine.

12—Amendment of section 104—Civil remedies

Section 104(1)—after paragraph (e) insert:

- (ea) if a person who has been issued with a site contamination assessment order or site remediation order has incurred costs and expenses in carrying out the requirements of the order or reimbursing the Authority for action taken in pursuance of the order—an order for payment of the whole or a portion of the costs and expenses, as the Court considers appropriate, against 1 or more other persons who caused the site contamination;

13—Amendment of section 106—Appeals to Court

- (1) Section 106(1)(d)—delete "information discovery order or clean-up order" and substitute:

information discovery order, clean-up order, site contamination assessment order or site remediation order

- (2) Section 106(1)—after paragraph (d) insert:

- (e) an appeal may be made to the Court against a determination by the Authority under section 103F of liability for site contamination on or below the surface of land—
- (i) in the case of a determination in favour of the vendor—by the purchaser; or
- (ii) in the case of a determination against the vendor—by the vendor;

(3) Section 106(3)(a)—delete paragraph (a) and substitute:

- 5 (a) in the case of an appeal against an environment protection order, information discovery order, clean-up order, site contamination assessment order or site remediation order or variation of such an order—within 14 days after the order is issued or the variation is made;

14—Amendment of section 109—Public register

Section 109(3)(i)—delete paragraph (i) and substitute:

- 10 (i) details of site contamination notified to the Authority under section 83A;
- (ia) details of any environment protection order, clean-up order, clean-up authorisation, site contamination assessment order or site remediation order issued under this Act and of—
- 15 (i) any action taken by the person to whom the order was issued or by the Authority or another administering agency in consequence of the order; and
- (ii) any report provided by the person to whom the order was issued in consequence of the order;
- 20 (ib) details of each agreement for the exclusion or limitation of liability for site contamination to which section 103E applies;
- (ic) details of each determination excluding liability for site contamination made by the Authority under section 103F;
- (id) details of each agreement entered into with the Authority relating to—
- 25 (a) an approved voluntary site contamination assessment proposal under section 103J; or
- (b) an approved voluntary site remediation proposal under section 103L;
- (ie) details of the circumstances giving rise to—
- 30 (i) declarations of special management areas under section 103O; or
- (ii) prohibitions or restrictions on taking water under section 103T;
- (if) details of each notification relating to the commencement or the termination before completion of a site contamination audit under section 103ZA;
- 35 (ig) each site contamination audit report submitted to the Authority under section 103ZA;