

South Australia

Environment Protection (Site Contamination) Amendment Bill 2005

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 2005*.

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 locality of the site in accordance with procedures from time to time approved by the Authority;

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

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 *prescribed activity of environmental significance* insert:

prescribed contaminating activity means an activity declared by regulation to be a prescribed contaminating activity;

- 5 (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 that there is no longer any resulting—

- (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
10 (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,

and *remediation* has a corresponding meaning;

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

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

site contamination—see section 5A;

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

20 *site contamination audit* means a review required under this Act, the *Development Act 1993* or any other Act that—

- (a) relates to assessments or remediation carried out in respect of known or suspected site contamination on or below the surface of a site; and
25 (b) is for the purpose of determining any one or more of the following matters:
(i) the nature, extent and level of any site contamination present or remaining on or below the surface of the site;
(ii) the suitability of the site for a specified use or range of uses;
30 (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;

35 *site contamination audit report* means a detailed written report of the findings of a site contamination audit prepared by the site contamination auditor who carried out the audit, together with a summary of those findings that complies with guidelines from time to time issued by the Authority;

site contamination audit statement means the written summary of the findings of a site contamination audit contained in the site contamination audit report in respect of the audit;

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

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

source site—see section 103D;

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

water means water occurring naturally above or under the ground or an artificially created body of water or stream that is for public use or enjoyment;

5—Insertion of section 5A

After section 5 insert:

5A—Site contamination

- (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—
- (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, where appropriate, remediation of the sites;

7—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 at ground level or underground; or

- (b) the pollution resulted in site contamination.

8—Amendment of section 87—Powers of authorised officers

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

or

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

9—Amendment of section 88—Issue of warrants

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

10 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,

10—Insertion of Part 10A

15 After Part 10 insert:

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

Division 1—Interpretation and application

103A—Interpretation

20 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,
- 25

and *occupation* has a corresponding meaning;

owner, in relation to land—

- (a) has the meaning assigned to the term by section 3; and
(b) includes a tenant with a right to occupy the land for 10 years or more (including any period in respect of which the tenant has a right of renewal under the lease).
- 30

103B—Application of Part to site contamination

35 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**103C—General provisions as to appropriate persons**

- 5
- (1) Subject to this Part, the appropriate person to be issued with a site contamination assessment order or a site remediation order under Division 3 is—
- (a) the person responsible for the site contamination, if it is practicable to issue the notice to that person; or
- (b) the owner of the source site.
- 10
- (2) However, if the basis for issuing a site contamination assessment order is only the Authority's suspicion as to the existence of site contamination under section 103J(1)(b), the appropriate person to be issued with the order is the owner of the source site.
- 15
- (3) For the purposes of this section, 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
- 20
- (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—Responsibility for site contamination

- 25
- (1) For the purposes of this Part, a person is to be taken to have responsibility for site contamination if the person was the occupier of land (the *source site*) when there was an activity at the land that caused or contributed to the site contamination.

Note—

30

The source site, as defined in subsection (1), may be, but need not be, the same area of land as the site affected by the site contamination. 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 parcels of land in the vicinity of the source site. (*Site* is defined in section 3(1) as an area of land (whether or not in the same ownership or occupation)).

35

- 40
- (2) Despite subsection (1), if site contamination would not have resulted 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, if the Authority so determines, to be taken to have responsibility for the site contamination to the exclusion of any other person for the purposes of this Act.

- (3) 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*.

5 **103E—Responsibility for site contamination subject to certain agreements**

- (1) If—
- 10 (a) site contamination exists at a site; and
- (b) land comprising all or portion of the site has been sold by any person or transferred by a public authority subject to an agreement in writing under which the purchaser or transferee will assume full or partial responsibility under this Part and Part 11 in respect of the site contamination,
- 15 the question of responsibility for the site contamination for the purposes of this Part and Part 11 as between those persons is to be determined subject to the agreement.
- (2) Subsection (1) does not apply to the sale of land by a person other than a public authority if the Environment Resources and Development Court determines, on application by the Authority, that
- 20 the purchaser did not purchase the land in a genuine arms length sale.

103F—Responsibility for site contamination subject to determination by Authority

- (1) If site contamination exists at a site, the Authority may, on
- 25 application, determine that a person is not responsible, for the purposes of this Part and Part 11, for the site contamination on or below the surface of land comprising all or portion of the site if the Authority is satisfied that—
- (a) the person sold the land to another person (the *purchaser*) in a genuine arms length sale; and
- 30 (b) the sale occurred before the commencement of this Part or before the commencement of this Act for a price 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 of remediation in respect of the site
- 35 contamination.
- (2) If the Authority makes a determination in favour of a person under this section, this Act applies as if neither that person nor any other person had responsibility, for the purposes of this Part and Part 11, for site contamination on or below the surface of the land concerned insofar as the site contamination occurred before the sale of the land to the purchaser.
- 40 (3) An application under this section must be made in a manner and form approved by the Authority.

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

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

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

- (a) any one 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).

103H—Authority may determine that public authority is appropriate person

- (1) The Authority may, if the Authority considers it appropriate to do so in a particular case, determine that a specified public authority is the appropriate person to be issued with an order under Division 3.
- (2) The Authority may not make a determination under this section except with the approval of the Minister given after such consultation as the Minister considers appropriate.

103I—Court may order that director of body is appropriate person in certain circumstances

- (1) If—
- (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 a such an 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—
- (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,

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, 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 one 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

103J—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 prescribed contaminating activity 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, extent and level 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 locality of the site; and
 - (e) must include a requirement for a written report of the assessments to be submitted to the Authority within a specified period; and
 - (f) may include a requirement for a site contamination audit to be carried out of the assessments and a site contamination audit report to be submitted to the Authority within a specified period; and

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

5 (3) If the order is issued to an appropriate person as an owner of the source site as distinct from a person with responsibility for the site contamination, the order must be limited in its application to site contamination on or below the surface of the source site and any other land of which the person is an owner.

10 (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.

15 (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.

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

Penalty:

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

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

30 (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.

35 (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).

103K—Site remediation orders

40 (1) If—

(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—
- (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 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—
 - (i) preparing, in accordance with specified requirements and to the satisfaction of the Authority, a plan of remediation; and
 - (ii) complying with such a plan to the satisfaction of the Authority; and
 - (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 requirements for a site contamination audit to be carried out of the remediation and a site contamination audit report to be submitted to the Authority within a specified period; 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 source site as distinct from a person with responsibility for the site contamination, the order must be limited in its application to site contamination on or below the surface of the source site and any other land of which the person is an owner.
- (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.

- 5
- (5) An authorised officer may, if of the opinion that urgent action is required for the remediation of a site, issue an emergency site remediation order imposing requirements of a kind referred to in subsection (2)(e) as reasonably required for the remediation of the site.
- (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.
- 10
- (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—Entry onto land by person to whom order is issued

- 10 (1) A site contamination assessment order or a site remediation order does not confer on the person to whom it is issued any power to enter land of which that person is not an owner or occupier, to remain on such land or to do anything on such land, without the permission of the occupier of the land.
- 15 (2) However, if the occupier withholds or withdraws that permission, the Authority—
- (a) may revoke, suspend or vary the order;
 - (b) may, 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 to the occupier as if the occupier were the appropriate person.
- 20

103M—Areas of special concern

- 25 (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
 - (b) declare the area or areas to be of special concern for the purposes of this section.
- 30 (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
 - (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 one or more environment performance agreements under which the parties to the agreements are to carry out, or contribute to or assist in the carrying out of—
- 35
- (i) assessments of—
- 40

- (A) the nature and extent of site contamination within the area or areas of special concern; and
- (B) the remediation that is necessary; and
- 5 (ii) the preparation of plans of remediation; and
- (iii) the remediation of the sites that are affected by the relevant site contamination.
- (3) To the extent to which such agreements are not reached to the satisfaction of the Authority, the Authority is to issue site
- 10 contamination assessment orders or site remediation orders, or both, to appropriate persons in relation to the area or areas of special concern in accordance with this Division.

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

- 15 (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— apply to the Registrar-General for registration of the order in
- 20 relation to the site; or
- (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—
- 25 (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
- 30 time to time of the land;
- (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
- 35 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.
- (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.
- 40

- (4) Where 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—
- 5 (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.
- 10 (5) A person who fails to comply with subsection (4)(b) is guilty of an offence.
Penalty: Division 6 fine.
- (6) 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.
- 15 (7) 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—
- 20 (a) on revocation of the order; or
- (b) on full compliance with the requirements of the order; or
- (c) where 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.
- 25

1030—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:

- (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;
- (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.

103P—Recovery of costs and expenses incurred by Authority

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

- (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.

(3) 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.

103Q—Prohibition or restriction of taking of water affected by site contamination

- (1) If the Authority is satisfied that—
- (a) water is affected by site contamination; 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**103R—Requirement for auditors to be accredited**

A person must not—

- (a) carry out a site contamination audit; or
- (b) make any representation, or cause any representation to be made, to the effect that he or she is an accredited site contamination auditor or able to carry out a site contamination audit,

except as authorised by an accreditation under this Division.

Penalty: Division 4 fine.

103S—Persons taken to be accredited

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.

103T—Grant or renewal of accreditation

- (1) An application for accreditation or renewal of accreditation must—
- (a) be made to the Authority in such manner and form as the Authority may approve; and
 - (b) be supported by such information as the Authority may require; and
 - (c) be accompanied by the fee fixed by regulation.

- 5 (2) The Authority may require the applicant to furnish to it, within such time as may be specified, such further particulars as the Authority considers necessary to determine the eligibility of the applicant for accreditation or renewal of accreditation.
- 5 (3) An application for accreditation or renewal of accreditation is to be referred by the Authority to an accreditation committee established by the Authority.
- 10 (4) The Authority may require an applicant to appear before the accreditation committee and undergo such examination as to his or her knowledge or other details as the committee considers necessary for determining the applicant's eligibility for accreditation or renewal of accreditation.
- 15 (5) Only a natural person is eligible for accreditation as a site contamination auditor.
- 15 (6) The Authority must determine an application for accreditation or renewal of accreditation having regard to prescribed criteria and the report of the accreditation committee.
- 20 (7) If the Authority determines that an applicant is eligible for accreditation or renewal of accreditation, the Authority must grant the application on payment of the prescribed accreditation fee for a period not exceeding 5 years.
- (8) The Authority must serve written notice of accreditation on the person accredited.

25 **103U—Grounds for revocation, suspension or refusal of accreditation**

The Authority may revoke, suspend or refuse to renew a person's accreditation if it is satisfied that—

- 30 (a) the site contamination auditor is not or has ceased to be eligible to be granted accreditation under this Division; or
- 30 (b) the site contamination auditor has contravened any of the provisions of this Division or the regulations; or
- 35 (c) the site contamination auditor is not carrying out sufficient site contamination audits to justify continued accreditation; or
- 35 (d) the site contamination auditor's accreditation as a site contamination auditor under any corresponding law of a State or Territory of Australia has been revoked or suspended; or
- (e) any other ground prescribed by the regulations exists.

103V—Conflict of interest and honesty

A site contamination auditor must not—

- (a) unless authorised by the Authority in writing, carry out a site contamination audit of a site—

(i) if he or she is an associate of a person by whom any part of the site is owned or occupied; or

(ii) if he or she 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 he or she has been involved in, or is an associate of a 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 any statement that he or she 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.

103W—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 listing the site contamination audits commenced, in progress or completed by the auditor 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) The return must include any particulars of a kind prescribed by the regulations in respect of each site contamination audit mentioned in the return.

- (3) A site contamination auditor must, within 14 days after any change of address or any other change relating to his or her practice 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 subsection (1)—

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

103X—Requirements for notification, reports and statements relating to audits

- 5 (1) A site contamination auditor must, within 14 days after agreeing to carry out a site contamination audit for any person, 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.

- 10 (2) A site contamination auditor must, in respect of each site contamination audit carried out by the auditor—
- (a) provide a site contamination audit report to the person who commissioned the audit; and
- (b) at the same time, provide a site contamination audit report to the Authority, the council for the area in which the land to which the audit related is situated and any prescribed body.

15 Penalty: Division 5 fine.

11—Amendment of section 104—Civil remedies

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

- 20 (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 one or more other persons who were, under Division 2 of Part 10A, persons with responsibility for the site contamination;
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12—Amendment of section 106—Appeals to Court

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

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

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

- 35 (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;

13—Amendment of section 109—Public register

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

- (i) 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 any consequent action taken by the person to whom such an order was issued or by the Authority;
- (ia) each site contamination audit statement submitted to the Authority under Division 4 of Part 10A;

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