Western Australia

Contaminated Sites Act 2003

As at 26 Sep 2025 Official Version
[PCO 01-i0-00] Published on www.legislation.wa.gov.au

Western Australia

Contaminated Sites Act 2003

Contents

Part 1 — Preliminary

1. Short title 2
2. Commencement 2
3. Terms used in this Act 2
4. Meaning of "contaminated" 5
5. Meaning of "owner" 5
6. Meaning of "owner, occupier, mortgagee or lessee of a site" 6
7. State bound 6
8. Object and principles of Act 6
9. Effect on other laws 7
10. Exemptions from Act 7

Part 2 — Reporting, classifying and recording sites

Division 1 — Reporting of sites

11. Reporting of known, or suspected, contaminated sites 10
12. Programme for reporting sites 11

Division 2 — Classification of sites

13. CEO to classify sites 13
14. Classification of reported sites 14
15. Notice of classification is to be given 14
16. Site classified as *possibly contaminated — investigation required* 16
17. Database and records to be adjusted 17

Division 3 — Appeals against classification

18. Appeals against classification 17

Division 4 — Contaminated sites database and other records

19. Contaminated sites database — public access 18
20. Other records to be kept 18
21. Public access to records 19

Part 3 — Remediation of contaminated sites

Division 1 — Person responsible for remediation

22. Reference to person responsible for remediation includes all persons responsible 21
23. Sites classified as *contaminated — remediation required* are to be remediated 21
24. Who is responsible for remediation — hierarchy of responsibility 21
25. Person who caused, or contributed to, contamination — responsibility for remediation 22
26. Person who changes use of land — responsibility for remediation 23
27. Land owners — responsibility for remediation 24
28. Insolvent bodies corporate — responsibility for remediation 26
29. State — responsibility for remediation 28
30. Responsibility for remediation may be transferred 30
31. Mortgagee — responsibility for remediation 32
32. Orphan sites 32

Division 2 — Contaminated Sites Committee

33. Contaminated Sites Committee 34
34. Procedure of committee 34

Division 3 — Decisions as to responsibility for remediation

35. Decisions as to responsibility for remediation 35
36. Committee to make decisions as to responsibility for remediation 35
37. Notice to be given before decision made 35

38. Matters to be taken into account in making a decision as to responsibility for remediation 37
39. Notice of decision to be given 37
40. Appeal from decision as to responsibility for remediation 38

Part 4 — Investigation, clean up and hazard abatement notices

Division 1 — General
41. Meaning of "notice" in this Part 39
42. Person to whom a notice may be given 39
43. Notice to be complied with 40
44. Auditor's report in relation to notice 41
45. Cancellation of notices 41
46. Notice may be amended, or additional notice may be given 42

Division 2 — Person on whom notice is binding
47. Person on whom notice is binding 42
48. Certain notices binding on new owners 42

Division 3 — Types of notices
49. Investigation notice 43
50. Clean up notice 45
51. Hazard abatement notice 47

Division 4 — Appeals from notices
52. Appeals from notices 48

Part 5 — Provisions relating to remediation and notices

Division 1 — Powers of CEO in respect of remediation, investigation and ensuring compliance with notices
53. Powers in respect of remediation, investigation and ensuring compliance with notices 49
54. Where entry to a site, or the taking of action, to comply with notice or to remediate refused 51

Division 2 — Recovery of cost, and liability for losses, in some circumstances
55. State may recover cost in some circumstances 53

56. Person may recover cost in some circumstances 55
57. Liability for losses 56

Division 3 — Memorials

58. Memorial is to be lodged if notice given, or land classified as contaminated 56
59. Notice of memorial to be given 59

Division 4 — Contaminated Sites Management Account

60. Contaminated Sites Management Account 60

Part 6 — Certificates of contamination audit, exemption certificates and disclosure statements

Division 1 — Interpretation

61. Meaning of "land" in this Part 62

Division 2 — Certificate of contamination audit

62. Request for certificate of contamination audit 62
63. Certificate of contamination audit 63

Division 3 — Disclosure regarding contamination, and exemption certificates

64. Disclosure statement made within 2 years of commencement of Act 65
65. Exemption certificates 67
66. Cancellation or amendment of exemption certificate 68
67. Appeals regarding exemption certificates 69
68. Disclosure required to potential owners of certain land before change of ownership occurs 70

Part 7 — Contaminated sites auditors

Division 1 — Accreditation

69. Accredited auditors 71
70. Authority of accredited auditor 71
71. Offences relating to accreditation 71
72. No action may be taken with respect to accreditation 72

Division 2 — Mandatory auditor's reports

73. Certification of mandatory auditor's reports 72
74. Offences relating to mandatory auditor's reports 73
75. Self-incriminatory information not exempt 74
76. Use of information 74

Part 8 — Appeals

Division 1 — Appeals from decisions of the committee

77. Appeals as to responsibility for remediation and exemption certificates 75
78. Supreme Court to hear and determine appeals on questions of law 75

Division 2 — Other appeals

79. Lodging of appeals under section 18 or 52 76
80. Preliminary action in respect of certain appeals 77
81. Reports under section 80 77
82. Decision of committee 77
83. Implementation by CEO of decisions on appeal 78

Part 9 — Enforcement

84. Who can take proceedings for offences 79
85. Time for bringing prosecutions 79
86. Evidentiary provisions 80
87. Daily penalties 80
88. Attempt, incitement and accessory after the fact 81
89. Inspectors, authorised officers and analysts 81
90. Additional powers available to the court 82

Part 10 — General

91. Delegation 83
92. Other provisions of EP Act apply 83
93. CEO may request information on wells 83
94. False or misleading information 84
95. Victimisation 85
96. Confidentiality 86
97. Guidelines 88
98. Regulations 88
99. Review of Act 89

Schedule 1 — Classification of sites

Schedule 2 — Matters in respect of which regulations may be made

Division 1 — General

Division 2 — Auditors and audits

Notes

Compilation table 94

Defined terms

Western Australia

Contaminated Sites Act 2003

An Act providing for the identification, recording, management and remediation of contaminated sites, to consequentially amend certain other Acts and for related purposes.

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Contaminated Sites Act 2003*.

2. Commencement

This Act comes into operation on a day fixed by proclamation.

3. Terms used in this Act

(1) In this Act, unless the contrary intention appears —

act includes an omission and extends to a series of acts or omissions;

affected site means a site on which contamination is caused, or contributed to —

(a) by contamination; or

(b) by a substance,

which has migrated to that site from another site (the ***source site***);

auditor means a person accredited under section 69 as a contaminated sites auditor;

binding, in relation to a notice under Part 4, has the meaning given by section 47;

CEO means the chief executive officer of the Department;

CEO of the Health Department means the chief executive officer of the department principally assisting the Minister responsible for the administration of the *Health Legislation Administration Act 1984*;

certificate of contamination audit means a certificate referred to in section 63;

classify, in respect of a site, means to classify the site under Part 2;

clean up notice means a notice referred to in section 50;

committee means the Contaminated Sites Committee established under section 33;

contaminated has the meaning given by section 4;

database means the contaminated sites database kept under section 19;

decision as to responsibility for remediation has the meaning given by section 35;

EP Act means the *Environmental Protection Act 1986*;

exemption certificate means a certificate referred to in section 65;

guidelines means the guidelines made under section 97;

hazard abatement notice means a notice referred to in section 51;

insolvent means —

(a) in the case of a natural person — a person who is an insolvent under administration within the meaning of the *Corporations Act 2001* of the Commonwealth; and

(b) in the case of a body corporate — a body corporate that is a Chapter 5 body corporate within the meaning of the *Corporations Act 2001* of the Commonwealth;

investigation notice means a notice referred to in section 49;

management plan means a plan for the investigation or remediation, or both, of a site;

mandatory auditor's report means a report by an auditor that is required for the purposes of this Act or the EP Act;

occupier, in relation to land, means a person in occupation or control of the land, whether or not the person also owns the land;

orphan site has the meaning given by section 32(1);

owner has the meaning given by section 5;

person responsible, in respect of a site classified as *contaminated — remediation required*, means a person responsible for remediation of the site in accordance with Part 3;

records means the information and documents to be kept under section 20;

remediation in respect of a site that is contaminated includes —

(a) the attempted restoration of the site to the state it was in before the contamination occurred;

(b) the restriction, or prohibition, of access to, or use of, the site;

(c) the removal, destruction, reduction, containment or dispersal of the substance causing the contamination, or the reduction or mitigation of the effect of the substance;

(d) the protection of human health, the environment or any environmental value from the contamination;

site means an area of land and includes —

(a) underground water under that land; and

(b) surface water on that land;

source site means a site —

(a) on which contamination; or

(b) on which a substance,

has originated and from which it has migrated to another site (the ***affected site***) causing, or contributing to, contamination on that other site.

(2) A word or expression used in this Act has the same meaning as it has in the EP Act unless —

(a) this Act gives it another meaning; or

(b) the contrary intention appears in some other way.

[Section 3 amended: No. 40 of 2005 s. 4; No. 14 of 2025 s. 8(2).]

4. Meaning of "contaminated"

(1) In this Act —

contaminated, in relation to land, water or a site, means having a substance present in or on that land, water or site at above background concentrations that presents, or has the potential to present, a risk of harm to human health, the environment or any environmental value.

(2) However, land, water or a site, or land, water or a site of a prescribed class or description, is not contaminated where the regulations so provide.

5. Meaning of "owner"

(1) In this Act —

owner means —

(a) in relation to freehold land —

(i) a holder of the freehold; and

(ii) a mortgagee in possession;

and

(b) in relation to Crown land —

(i) the care, control and management of which has been placed in a management body, that management body;

(ii) which is reserved, set apart or vested for, or dedicated to, the purposes of another written law, the person who is responsible for the administration of that Crown land while it is so reserved, set apart, vested or dedicated;

(iii) which comprises all, or part, of an orphan site taken in accordance with section 32(4), the Minister; and

(iv) other than land referred to in subparagraph (i), (ii) or (iii), the Minister for Lands, as referred to in section 7(1) of the *Land Administration Act 1997*.

(2) In this section —

Crown land and ***management body*** have the same respective meanings as in the *Land Administration Act 1997*.

6. Meaning of "owner, occupier, mortgagee or lessee of a site"

In this Act, a reference to an owner, occupier, mortgagee or lessee of a site is a reference to each person who is an owner, occupier, mortgagee or lessee, as is relevant, of land that comprises all, or part, of the site.

7. State bound

This Act binds the State.

8. Object and principles of Act

The object of this Act is to protect human health, the environment and environmental values by providing for the identification, recording, management and remediation of contaminated sites in the State, having regard to the principles in the Table to this section —

Table

1. The polluter pays principle

   Those who generate pollution and waste should bear the cost of containment, avoidance or abatement.

2. The principle of full life cycle costs

   The users of goods and services should pay prices based on the full life cycle costs of providing goods and services, including the use of natural resources and assets and the ultimate disposal of any wastes.

3. The principle of waste minimisation

All reasonable and practicable measures should be taken to minimise the generation of waste and its discharge into the environment.

9. Effect on other laws

(1) The provisions of this Act are complementary to and not in derogation of the provisions of any other law of the State.

(2) Without limiting the generality of subsection (1), this Act is not to be construed so as to prevent any person from being prosecuted under any other enactment for an offence punishable by this Act, or from being liable under any other law of the State to any other or higher penalty or punishment than is provided for the offence by this Act.

(3) Nothing in this section affects the operation of section 11 of the *Sentencing Act 1995*.

(4) Nothing in this Act affects any right a person has at law to prevent, control or abate contamination or to obtain damages.

10. Exemptions from Act

(1) The Minister may, with the approval of the Governor, declare by order that all or any of the provisions of this Act specified in the order do not apply in respect of —

(a) any specified area of the State;

(b) any specified premises, act or thing; or

(c) all premises, acts or things comprised in a specified class or situated in a specified area of the State,

if, in the opinion of the Minister —

(d) it is in the general interest of the public to do so; and

(e) no significant risk to human health, the environment or any environmental value will fail to be dealt with under this Act as a result of the order.

(2) Before making an order the Minister —

(a) is to consult with the Minister responsible for the administration of the *Health Legislation Administration Act 1984* and, if possible, reach agreement on any proposed aspect of the order relating to human health; and

(b) may seek comments from any public authority or any person which or who has, in the opinion of the Minister, a direct interest in the proposed subject matter of the order.

(3) The Minister may —

(a) specify any conditions to which the order is subject; and

(b) require specified persons or members of specified classes of persons to comply with any condition to which the order is subject.

(4) The Minister is to fix the day on which an order made under subsection (1) comes into operation by notice to be published in the *Gazette*, unless the order is disallowed under section 42(2) of the *Interpretation Act 1984* as applied by subsection (12).

(5) The day fixed under subsection (4) is to be after there is no longer any possibility of the order ceasing to have effect under section 42(2) of the *Interpretation Act 1984* as applied by subsection (12).

(6) The Minister is to cause to be published in the *Gazette* in which an order is published a notice, for public information, setting out reasons for the making of the order.

(7) Despite any other provisions of this Act, an order has effect according to its tenor subject to subsection (8).

(8) An order ceases to have effect if —

(a) a condition to which it is subject ceases to exist or is contravened; or

(b) it is revoked under subsection (9).

(9) Subject to subsection (10), the Minister may, with the approval of the Governor, by order revoke an order made under subsection (1).

(10) Before revoking an order the Minister is to publish in the *Gazette*, at least 14 days before the day on which the Minister revokes the order, notice of the intention to revoke the order so that persons likely to be aggrieved by that revocation may make representations in writing to the Minister.

(11) A person must not contravene a condition to which an order is subject.

Penalty: $250 000, and a daily penalty of $50 000.

(12) Section 42 of the *Interpretation Act 1984* applies to an order as if that order were regulations within the meaning of that section, except that the reference in section 42(1) of that Act to 6 sitting days is for the purposes of this section to be construed as a reference to 9 sitting days.

(13) Nothing in this section affects or prevents the application of section 43(8)(d) of the *Interpretation Act 1984* to regulations made under this Act.

(14) In this section —

specified means specified in the order.

Part 2 — Reporting, classifying and recording sites

Division 1 — Reporting of sites

11. Reporting of known, or suspected, contaminated sites

(1) A person may report to the CEO any site that the person knows, or suspects, is contaminated.

(2) A report is to —

(a) be in the prescribed form;

(b) contain a description of the location and extent of the site sufficient to identify it; and

(c) summarise the information on which the person bases their knowledge or suspicion that the site is contaminated.

(3) Except as provided in subsection (5), a person referred to in subsection (4) must report to the CEO any site that the person —

(a) knows is contaminated, within 21 days after the day on which the person first knew that the site was contaminated, or such later period as the CEO approves in writing before the expiry of that 21 days; or

(b) suspects is contaminated, as soon as it is reasonably practicable to do so.

Penalty: $250 000, and a daily penalty of $50 000.

(4) The following persons have a duty to report a site under subsection (3) —

(a) an owner or occupier of the site;

(b) a person who knows, or suspects, that he or she has caused, or contributed to, the contamination;

(c) an auditor engaged to provide a report that is required for the purposes of this Act in respect of the site.

(5) It is a defence to a charge of an offence under subsection (3) for the person to prove that the person knew or believed on reasonable grounds that —

(a) the site had already been reported to the CEO;

(b) the contamination, or suspected contamination, was caused by a discharge of waste of which the CEO had already been notified under section 72 of the EP Act; or

(c) the site was, or was to be, reported under a programme approved by the CEO under section 12, or in a programme submitted for that approval and approval has not been refused.

(6) A person does not contravene subsection (3), even though he or she does not comply with that provision, during the period of 6 months after the commencement of this Act.

(7) The CEO is to ensure that each owner and occupier of a site in relation to which the CEO has received a report is informed in writing within 14 days after the day on which the report was received that a report has been made under this section or that reasonable attempts have been made to do so.

(8) Subsection (7) does not apply in respect of an owner or occupier who made the report.

(9) A person must not report a site —

(a) maliciously; and

(b) without reasonable grounds to believe or suspect that the site was contaminated.

Penalty: $250 000.

12. Programme for reporting sites

(1) The CEO may approve a programme for the identification and reporting of sites described in the programme if the CEO is of the opinion that it is necessary or desirable to do so due to the

number of sites or the complexity of adequately identifying sites or the location and extent of sites.

(2) A programme may be approved under subsection (1) only if the programme is submitted to the CEO for approval within 6 months after the commencement of this Act.

(3) A programme submitted to the CEO is to specify —

(a) the sites or types of sites to be identified and reported under the programme;

(b) the methods to be used to identify the sites to be reported under the programme;

(c) the timetable proposed for the identification and reporting of sites under the programme;

(d) the time within which the programme is to be completed; and

(e) reasons why it is considered necessary or desirable for the sites to be identified and reported under this section.

(4) The CEO may, by written notice given to a person who has had a programme approved under subsection (1), amend the programme subject to subsection (5).

(5) A programme is not to be amended so as to —

(a) reduce the time within which the programme is to be completed; or

(b) increase the extent of the identification or reporting to be carried out under the programme,

unless the person who submitted the programme for approval has agreed in writing to the amendment.

(6) A person who has had a programme for the reporting of sites approved under subsection (1) must ensure that sites are identified and reported —

(a) in accordance with the programme; and

(b) within the time specified in the programme for the completion of the programme.

Penalty: $250 000, and a daily penalty of $50 000.

(7) In subsection (6)(a) —

programme includes, where relevant, a programme as amended under this section.

Division 2 — Classification of sites

13. CEO to classify sites

(1) Subject to this section, the CEO is to classify a site when required to do so under this Act, and may classify a site at any other time.

(2) The CEO may classify a site more than once and a site is classified as of the classification most recently conferred on it.

(3) The CEO is to classify a site as of the classification set out in the first column of Schedule 1 which corresponds, in the CEO's opinion, on reasonable grounds, to the criterion that applies to the site set out opposite the classification in the second column of that Schedule.

(4) In classifying a site the CEO is to take into account —

(a) any relevant guidelines;

(b) currently accepted industrial standards; and

(c) any other information the CEO considers relevant,

with respect to the identification, assessment, classification or management of contamination.

(5) Before classifying a site the CEO —

(a) is to consult with the CEO of the Health Department and, if possible, reach agreement on the classification of the site; and

(b) may seek comments from any public authority or any person which or who has, in the opinion of the CEO, a direct interest in the classification of the site.

(6) If the CEO and the CEO of the Health Department cannot agree on the classification of a site the Minister and the Minister responsible for the administration of the *Health Legislation Administration Act 1984* are to appoint a person to classify the site.

14. Classification of reported sites

(1) After receiving a report under section 11 or 12 the CEO is to inquire into the report and unless the site is already classified is to classify the site —

(a) within 45 days after receiving that report; or

(b) if, in the opinion of the CEO, there are particular circumstances which make it difficult to classify the site within that time, within such further time as the CEO decides is necessary to classify the site.

(2) The CEO is to cause written notice of a decision under subsection (1)(b) to be given, or to ensure that reasonable attempts have been made to do so —

(a) to the same persons as are to be given notice of the classification of the site under section 15(1)(a) to (f); and

(b) within 45 days after receiving the relevant report under section 11 or 12.

15. Notice of classification is to be given

(1) As soon as is practicable after a site is classified, and in any event not later than 10 days after the site is classified, the CEO is to cause written notice of the classification of the site to be given, or to ensure that reasonable attempts have been made to do so, to —

(a) each owner of the site;

(b) an occupier of the site;

(c) any relevant public authority;

(d) any other person whom, in the opinion of the CEO, there is particular reason to notify;

(e) a person who made the relevant report under section 11 or 12; and

(f) in respect of a site classified as *contaminated — remediation required*, each person who, in the opinion of the CEO, may be a person responsible for remediation of the site.

(2) Subject to subsection (3), notice of a classification may be given by way of —

(a) a notice under Part 4;

(b) a certificate of contamination audit, in respect of a classification referred to in subsection (3); or

(c) any other written notice.

(3) Written notice of a classification may be given by way of a certificate of contamination audit only where a certificate has been requested under section 62 and in respect of the following classifications —

(a) *not contaminated — unrestricted use*;

(b) *contaminated — restricted use*;

(c) *remediated for restricted use*;

(d) *contaminated — remediation required*; or

(e) *decontaminated*.

(4) Notice of the classification of a site as —

(a) *contaminated — restricted use*;

(b) *remediated for restricted use*; or

(c) *contaminated — remediation required*,

is to specify the restrictions on the use of the site.

(5) Notice of the classification of a site is to —

(a) state that the site has been classified under this Act;

(b) state the category of classification of the site;

(c) contain a description of the location and extent of the site sufficient to identify it;

(d) provide brief reasons for the classification of the site, with reference to the guidelines and any standards or other information taken into account under section 13(4);

(e) contain details of any appeal available under this Act in respect of the classification of the site, or the inclusion of land in the site;

(f) briefly and accurately summarise the effects of section 68 if the site is classified as —

(i) *contaminated — remediation required*;

(ii) *contaminated — restricted use*; or

(iii) *remediated for restricted use*.

16. Site classified as *possibly contaminated — investigation required*

A site classified as *possibly contaminated — investigation required* is to remain so classified until classified as —

(a) *contaminated — remediation required*;

(b) *contaminated — restricted use*;

(c) *remediated for restricted use*;

(d) *not contaminated — unrestricted use*; or

(e) *decontaminated.*

17. Database and records to be adjusted

As soon as is practicable after classifying a site, and in any event not later than 10 days after doing so, the CEO is to ensure that the database and records are adjusted to reflect the classification.

Division 3 — Appeals against classification

18. Appeals against classification

(1) A person who reports a site under section 11 or 12 may appeal against a classification of that site as *report not substantiated*.

(2) A person who is —

(a) an owner; or

(b) an occupier, who has been given notice under section 15(1)(b),

of a site classified as —

(c) *possibly contaminated — investigation required*;

(d) *decontaminated*; or

(e) *not contaminated — unrestricted use*,

may appeal against the classification, or the inclusion in the site of land of which the person is an owner or occupier.

(3) A person who is —

(a) responsible for remediation;

(b) an owner; or

(c) an occupier, who has been given notice under section 15(1)(b),

of a site classified as —

(d) *contaminated — remediation required*;

(e) *contaminated — restricted use*; or

(f) *remediated for restricted use*,

may appeal against the classification, or the inclusion in the site of land of which the person is an owner, occupier or responsible for remediation.

(4) An appeal is to be brought, dealt with and determined in accordance with Part 8.

Division 4 — Contaminated sites database and other records

19. Contaminated sites database — public access

(1) The CEO is to keep an accurate and up to date contaminated sites database containing —

(a) a list of all sites classified as —

(i) *contaminated — remediation required*;

(ii) *contaminated — restricted use*;

(iii) *remediated for restricted use*;

(b) a description of the location and extent of each of those sites sufficient to identify it; and

(c) a description of the nature and extent of the known contamination of each of those sites.

(2) The CEO is to ensure that members of the public have access, free of charge, to the contaminated sites database.

20. Other records to be kept

(1) The CEO is to keep accurate and up to date records containing —

(a) information on contaminated underground water;

(b) copies of all of the following documents —

(i) reports made under section 11 or 12;

(ii) programmes for the reporting of sites approved under section 12;

(iii) notices of the classification of a site given under section 15;

(iv) notices given under Part 4;

(v) management plans submitted to the CEO;

(vi) sampling and analysis programmes given to the CEO under section 49(4)(d);

(vii) memorials lodged under section 58;

(viii) disclosure statements made under section 64;

(ix) certificates of contamination audit;

(x) exemption certificates;

(xi) notices given under section 39(1);

(xii) details of decisions published under section 83(2);

(xiii) approvals given to the transfer of responsibility for remediation under section 30(1)(b) and (2);

(xiv) agreements to a transfer of responsibility for remediation under section 31;

(xv) written disclosures made under section 68;

and

(c) such other information and documents as the CEO considers appropriate.

(2) The records may be wholly or partly compiled, recorded or stored in written form or on microfilm, or by electronic or other means or in any other form the CEO considers appropriate.

(3) The records are to be retained by the CEO for such period as is determined by the CEO.

21. Public access to records

(1) The CEO is to ensure that a person who has, in the prescribed manner, requested access to a summary of records in respect of land specified in the application, and paid any fee prescribed, is given access to, or copies of, the summary of records.

(2) In this section —

summary of records means a summary, or copies, of such information and documents from the records as are prescribed, in the form prescribed, for the purposes of this section.

Part 3 — Remediation of contaminated sites

Division 1 — Person responsible for remediation

22. Reference to person responsible for remediation includes all persons responsible

(1) More than one person may be responsible for remediation of a site.

(2) If more than one person is responsible for remediation of a site, each person is responsible for that remediation to the extent provided in accordance with this Part.

(3) Unless the contrary intention appears, a reference in this Act to a person, or the person, responsible for remediation of a site, is to be construed as including each person responsible for remediation of the site to the extent that the person is responsible in each case under this Part.

(4) A person's responsibility for remediation of a site under a provision of this Part is in addition to any other responsibility for remediation of the site that the person has under another provision of this Part.

23. Sites classified as *contaminated — remediation required* are to be remediated

The only sites that are required to be remediated under this Act are sites classified as *contaminated — remediation required*.

24. Who is responsible for remediation — hierarchy of responsibility

(1) A person is responsible for remediation of a site —

(a) in accordance with section 25, if the person has caused, or contributed to, the contamination of the site;

(b) in accordance with section 26, if the person is an owner or occupier of the site who has changed, or proposes to

change, the use to which land that comprises all, or part, of the site is put; and

(c) in accordance with section 27, if the person is an owner of the site, or of a source site.

(2) Subsection (1) has effect subject to —

(a) section 28;

(b) responsibility of the State for remediation under section 29 (except where provision is made to the contrary in section 26(2)(b) and 27(1)(d));

(c) responsibility for remediation being transferred under section 30(1)(a); and

(d) a decision made under section 54.

[Section 24 amended: No. 40 of 2005 s. 5.]

25. Person who caused, or contributed to, contamination — responsibility for remediation

(1) A person is responsible for remediation of a site to the extent that the person caused, or contributed to, the contamination of the site after the commencement of this Act.

(2) Subsection (1) applies whether the contamination resulted from an act that was done with lawful authority or without lawful authority.

(3) A person who caused, or contributed to, the contamination of a site before the commencement of this Act is responsible for remediation of the site only to the extent that the person caused, or contributed to, that contamination by an act that was done without lawful authority.

(4) This section does not apply if the contamination resulted from a reasonable act that was carried out in an emergency situation to save life or to protect property or the environment.

(5) In this section —

an act that was done without lawful authority, without limiting the meaning of the expression, includes an act —

(a) that constituted an offence for which the person was convicted; or

(b) that contravened —

(i) any written law in force at the time the act occurred; or

(ii) any contract, permit, lease, licence, standard, policy, direction, exemption, authority, approval or requirement, however described, that was given or made under a written law in force at the time the act occurred.

(6) This section is subject to sections 26 and 27.

26. Person who changes use of land — responsibility for remediation

(1) Where, after the commencement of this Act, an owner or occupier of a site has changed, or proposes to change, the use to which land that comprises all, or part, of the site is put, that person is responsible for remediation of the site to the extent that remediation is required because of the change, or proposed change, of use.

(2) To the extent that the remediation is required because of the change, or proposed change, of use referred to in subsection (1) —

(a) a person who caused or contributed to the contamination is not responsible for remediation of the site under section 25; and

(b) the State is not responsible for remediation of the site under section 29(1)(a) or (b).

27. Land owners — responsibility for remediation

(1) A person who became an owner of a site before the commencement of this Act is responsible for remediation of the site to the extent that —

(a) the person knew, or suspected, or had reasonable grounds to know or suspect, that the site was contaminated at the time the person became an owner of the site; and

(b) the person is an owner of the site,

and, to that extent —

(c) a person is not responsible for remediation of the site under section 25; and

(d) the State is not responsible for remediation of the site under section 29(1)(a) or (b).

(2) A person who —

(a) became an owner of a site before the commencement of this Act and who did not know, or suspect, and had no reasonable grounds to know or suspect, that the site was contaminated at the time the person became an owner of the site;

(b) becomes an owner of a site after the commencement of this Act; or

(c) is an owner of a site and was an owner of that site at the time the contamination was caused, or contributed to,

is responsible for remediation of the site to the extent that —

(d) a person is not responsible under section 25 or 26; or

(e) a person who is responsible under section 25 or 26 —

(i) cannot, after reasonable attempts have been made, be identified or found or be made to assume responsibility for the remediation; or

(ii) is insolvent and a person has not been made responsible in accordance with section 28,

and to the extent that the person is an owner of the site.

(2a) A person who, under subsection (1) or (2), is responsible for remediation of a site that is a source site is also responsible for remediation of a site that is an affected site to the extent that —

(a) the contamination of the affected site is caused, or contributed to —

(i) by contamination; or

(ii) by a substance,

which has migrated to the affected site from the source site; and

(b) the person is an owner of the source site,

but only to the extent that —

(c) a person is not responsible for remediation of the affected site under section 25 or 26; or

(d) a person who is responsible for remediation of the affected site under section 25 or 26 —

(i) cannot, after reasonable attempts have been made, be identified or found or be made to assume responsibility for the remediation; or

(ii) is insolvent and a person has not been made responsible in accordance with section 28.

(2b) A person who is an owner of a site that is an affected site is not responsible for remediation of the site under subsection (1) or (2) to the extent that the contamination of the site is caused, or contributed to —

(a) by contamination; or

(b) by a substance,

which has migrated to the affected site from a source site.

(3) An owner within the meaning of section 5(1)(b)(i) or (ii) is not responsible for remediation of a site under this section to the extent in each case as is decided by the committee after taking into account the relevant circumstances and any matters prescribed for the purposes of this section.

(4) A decision of the committee under subsection (3) is a decision as to responsibility for remediation to which Part 3 Division 3 applies.

(5) A person is not responsible for remediation under subsection (2) or (2a) to the extent provided by an exemption certificate held by that person.

[Section 27 amended: No. 40 of 2005 s. 6.]

28. Insolvent bodies corporate — responsibility for remediation

(1) This section applies to and in respect of a body corporate which is a person responsible for remediation of a site under section 25, 26 or 27, or under this section and —

(a) which is insolvent; or

(b) in respect of which the committee has decided that the body corporate would become insolvent if it took action to remediate the site.

(2) Subject to subsections (3) and (4) —

(a) each person who was a director of an insolvent body corporate; and

(b) each body corporate that was a related body corporate, for the purposes of the *Corporations Act 2001* of the Commonwealth, of an insolvent body corporate,

at the relevant time, may become a person responsible for the remediation if so decided by the committee, to the extent as is decided by the committee, after taking into account the relevant circumstances and any matters prescribed for the purposes of this section.

(3) The persons referred to in paragraphs (a) and (b) of subsection (2) may not, as a result of the operation of this section, be jointly responsible for remediation of the site to a greater extent than the insolvent body corporate was responsible for remediation of the site.

(4) Subsection (2) does not apply in respect of a person referred to in paragraph (a) or (b) of that subsection unless the committee has decided that —

(a) the insolvency, or lack of solvency, of the insolvent body corporate is a result of deliberate conduct engaged in with, the committee has decided, the probable intent of avoiding responsibility for remediation under this Act; and

(b) the person —

(i) engaged in the conduct or knew, or had reasonable grounds to suspect, that the conduct was being engaged in;

(ii) intended to avoid responsibility for remediation under this Act or knew, had reasonable grounds to suspect, or did not inquire as to whether, the conduct was being engaged in with the intent of avoiding responsibility for remediation under this Act; and

(iii) was in a position to influence the conduct.

(5) Where it is necessary to establish the state of mind of a body corporate in relation to particular conduct under subsection (4), it is sufficient that —

(a) the conduct was engaged in by a director, employee or agent of the body corporate within the scope of his or her actual or apparent authority; and

(b) the director, employee or agent had the relevant state of mind.

(6) A decision of the committee under subsection (1), (2) or (4) is a decision as to responsibility for remediation to which Part 3 Division 3 applies.

(7) In this section —

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

engage in conduct includes failing or refusing to engage in conduct;

insolvent body corporate means a body corporate referred to in subsection (1);

relevant time means, in relation to a person who was responsible for remediation under —

(a) section 25, when the act that caused, or contributed to, the contamination occurred;

(b) section 26, when the change of use occurred;

(c) section 27(1) or (2), when the person became an owner of the site; and

(d) section 27(2a), when the person became an owner of the source site of the relevant affected site;

state of mind of a person includes —

(a) the knowledge, intention, opinion, belief or purpose of the person; and

(b) the person's reasons for the intention, opinion, belief or purpose.

[Section 28 amended: No. 40 of 2005 s. 7.]

29. State — responsibility for remediation

(1) The State is responsible for remediation of a site to the extent that —

(a) the contamination of the site was a direct and unavoidable result of a direction given, or an action carried out, by a public authority, other than a local

authority, unless the contamination resulted from a reasonable direction given, or a reasonable act carried out, in an emergency situation to save life or to protect property or the environment;

(b) the contamination was present, or was caused or contributed to by contamination that was present, on land that comprised all, or part, of the site and in respect of which a certificate of contamination audit was given which, at the time the certificate was given —

(i) failed to identify the contamination due to a failure under section 63(4) to take into account —

(I) any relevant guideline;

(II) any currently accepted industrial standard; or

(III) any other information contained in, or accompanying, the request for the certificate of contamination audit;

or

(ii) identified the contamination, but failed to classify the site as *contaminated — remediation required*, *contamination — restricted use* or *remediated for restricted use* as a result of that contamination being identified;

(c) no other person is responsible for remediation of the site in accordance with section 24;

(d) if it has been decided by the committee that a person who is responsible for remediation of the site in accordance with section 24 —

(i) cannot be identified or found; or

(ii) cannot be made to assume responsibility for the remediation,

after reasonable attempts have been made to do so;

(e) a person responsible for remediation of the site in accordance with section 24 is insolvent;

(f) an owner is not responsible for remediation of the site in accordance with section 27(3); or

(g) responsibility for remediation is transferred to the State under section 30(1)(b) or 31.

(2) A decision of the committee under subsection (1)(d) is a decision as to responsibility for remediation to which Part 3 Division 3 applies.

(3) The CEO is to take such action as the CEO considers necessary, with such assistance as the CEO considers necessary, to investigate and remediate a site for which, and to the extent to which, the State is responsible for remediation.

(4) Subject to sections 87 and 88 of the EP Act, an authorised person or an inspector may assist the CEO to take any action under subsection (3), if the CEO so requests.

30. Responsibility for remediation may be transferred

(1) A person responsible for remediation of a site may transfer that responsibility, or part of that responsibility —

(a) to another person, with that person's written agreement; or

(b) in prescribed circumstances, and with the written approval of the Minister, to the State.

(2) An agreement under subsection (1)(a) is of no effect unless approved in writing by the CEO.

(3) A transfer under subsection (1) is to be on such terms and conditions as the parties agree which may include —

(a) the transfer of all or part of the relevant land; or

(b) creating a charge on the relevant land.

(4) When seeking approval from the CEO under subsection (2), the person responsible for remediation is to give to the CEO —

(a) a statement —

(i) to the effect that the person believes on reasonable grounds that the person to whom responsibility is to be transferred has sufficient financial capacity to carry out the remediation; and

(ii) setting out the details of that financial capacity;

and

(b) a certificate of contamination audit in respect of the relevant land, or a request for a certificate of contamination audit under section 62.

(5) If the CEO considers that there is not enough information about the financial capacity of the person to whom responsibility is to be transferred for the CEO to approve the transfer under subsection (2), the CEO may, by written notice, request —

(a) that person; or

(b) with the permission of that person, any other person,

to provide additional information about that financial capacity.

(6) A person must not provide information or make a statement under subsection (4) or (5) that the person knows is false or misleading in a material particular.

Penalty: $250 000, and a daily penalty of $50 000.

(7) Section 32(3) applies in respect of a charge on land under subsection (3)(b) if the charge is for the benefit of the State, or a public authority nominated by the Minister.

(8) Where responsibility is transferred to a person or the State under this section, that person or the State becomes responsible for remediation under this Act to the extent set out in the agreement or approval of the Minister, as is relevant, and the person from

whom the responsibility was transferred is no longer the person responsible for that remediation.

31. Mortgagee — responsibility for remediation

(1) If a mortgagee in possession who is a person responsible for remediation of a site under section 27 so requests, that responsibility, or part of it, subject to agreement being reached under subsection (3), is to be transferred to the State.

(2) A request is to be made —

(a) in writing to the CEO; and

(b) within 45 days after the day on which the person became responsible under section 27.

(3) A transfer under this section is to be on the terms and conditions agreed by the Minister, which may include —

(a) the transfer of all, or part, of the relevant land to the State, or a public authority nominated by the Minister; or

(b) creating a charge on the relevant land, to secure the estimated costs of the remediation, in favour of the State or a public authority nominated by the Minister.

(4) Section 32(3) applies in respect of a charge under subsection (3)(b).

32. Orphan sites

(1) In this section —

orphan site means all, or part, of a site for which the State is responsible for remediation in accordance with —

(a) section 29(1)(c), unless the State is responsible for remediation under that provision due to the operation of an exemption certificate;

(b) section 29(1)(d); or

(c) section 29(1)(e), because a person responsible for remediation is insolvent and the person, within 45 days

or such longer period as is approved by the CEO before the expiry of those 45 days, after the day on which the person became insolvent, has not transferred responsibility under section 30.

(2) The Minister may, to secure the payment to the State of the cost of actions taken to investigate and remediate an orphan site, create a charge on land that comprises all, or part, of the orphan site in favour of the State or a public authority nominated by the Minister.

(3) Whether or not a memorial has been registered under section 58, a charge on land for the benefit of the State, or a public authority nominated by the Minister, under subsection (2) or section 30(3)(b) or 31(3)(b) —

(a) ranks —

(i) equally with any other charge on the land created by an Act; and

(ii) before any other encumbrance on the land, whether created or arising before or after the charge was created;

and

(b) remains on the land despite any disposal of the land, and section 110 of the *Transfer of Land Act 1893* does not apply to the charge.

(4) Subject to subsection (5), land —

(a) that comprises all, or part, of an orphan site; and

(b) in respect of which the State is responsible for all of the remediation,

may be compulsorily taken under Parts 9 and 10 of the *Land Administration Act 1997* as if for a public work within the meaning of that Act.

(5) The power conferred by subsection (4) may be exercised only on the recommendation of the Minister.

Division 2 — Contaminated Sites Committee

33. Contaminated Sites Committee

(1) The Minister is to establish a Contaminated Sites Committee (the ***committee***).

(2) The committee is to consist of between 3 and 5 persons selected from a panel of names by the Minister each of whom, in the opinion of the Minister, has suitable expertise to make decisions for the purposes of this Act.

(3) A panel of names from which a committee is to be selected is to —

(a) contain the names of at least one legal practitioner and one auditor; and

(b) be chosen and submitted to the Minister in accordance with the regulations.

(4) The committee is to determine its own procedures.

(5) A member of the committee is to be paid such remuneration and allowances as the Minister, on the recommendation of the Public Sector Commissioner, determines from time to time.

(6) The Minister is to arrange for the committee to have, or to have the services or use of, staff or facilities to enable it to carry out its functions.

[Section 33 amended: No. 39 of 2010 s. 89.]

34. Procedure of committee

In making a decision under this Act the committee —

(a) is to consult the CEO and may consult any other person it considers necessary to consult; and

(b) is to act according to equity, good conscience and the substantial merits of the case, without regard to technicalities or legal forms, is not bound by the rules of

evidence and is to conduct its inquiries in any manner it considers appropriate.

Division 3 — Decisions as to responsibility for remediation

35. Decisions as to responsibility for remediation

In this Division —

decision as to responsibility for remediation means a decision of the committee under section 27(3), 28(1), (2) or (4), 29(1)(d), 36(2) or 54(1)(c).

[Section 35 amended: No. 40 of 2005 s. 8.]

36. Committee to make decisions as to responsibility for remediation

(1) The committee is to make decisions as to —

(a) who is responsible for remediation of a site;

(b) the extent to which a person is, or persons are, responsible for remediation of a site.

(2) The committee —

(a) is to make a decision as to responsibility for remediation if it is requested to do so by an interested person; and

(b) may make a decision as to responsibility for remediation on its own initiative.

(3) In this section —

interested person means a person who is prescribed as being an interested person for the purposes of this section.

37. Notice to be given before decision made

Before making a decision as to responsibility for remediation in respect of a person, the committee is to give written notice to that person —

(a) if the decision is proposed to be made in accordance with section 25, specifying —

(i) the nature of the contamination that the committee reasonably suspects that the person caused, or contributed to; and

(ii) the extent of the contamination that the committee reasonably suspects that the person caused, or contributed to;

(b) if the decision is proposed to be made in accordance with section 25(3), specifying the act that the committee reasonably suspects the person carried out without lawful authority and giving details of —

(i) the conviction of the person for the offence that was constituted by the act; or

(ii) any contravention described in paragraph (b) of the definition of "an act that was done without lawful authority" in section 25(5);

(c) if the decision is proposed to be made in accordance with section 26, specifying the change of use, or proposed change of use, to which the relevant land is, or is to be, put;

(d) setting out any other matters regarding responsibility for remediation that are relevant;

(e) informing the person that if the person wishes to disagree with any statements made in the notice the person may, within the time specified in the notice, make a written submission to the committee —

(i) specifying any statement that the person disagrees with;

(ii) giving reasons as to why the person disagrees with the statement; and

(iii) providing any information or documents supporting the reasons given;

and

(f) briefly and accurately summarising the effect of section 38.

38. Matters to be taken into account in making a decision as to responsibility for remediation

(1) A decision as to responsibility for remediation is to be made in accordance with Division 1 and the section which empowers the decision to be made.

(2) In making a decision as to responsibility for remediation the committee is to take into consideration —

(a) the contents of any notice given by the committee under section 37; and

(b) any submission made to the committee referred to in section 37(e) and any information or documents provided in support of the reasons given in that submission,

and may take into consideration any other matters the committee considers relevant.

39. Notice of decision to be given

(1) The committee is to ensure that notice of a decision as to responsibility for remediation is given in writing to —

(a) each person who the committee has decided is responsible for remediation;

(b) each person in respect of whom the committee has decided there is to be a change in the extent of the person's responsibility for remediation;

(c) in the case of a decision under section 28, the insolvent body corporate;

(d) in the case of a request under section 36(2)(a) any person who made the request;

(e) in the case of a decision under section 54(1)(c), the first person within the meaning of that section; and

(f) each interested person, within the meaning of section 36(3).

(2) A notice given under subsection (1) is to —

(a) specify who is responsible for remediation and the extent of the responsibility;

(b) specify the section of the Act under which the decision is made;

(c) specify the reasons for the decision;

(d) contain details of the appeal available in respect of the decision under section 77; and

(e) contain any other details prescribed.

(3) A notice given under subsection (1) has effect according to its tenor.

40. Appeal from decision as to responsibility for remediation

A person who has been given a notice of a decision under section 39(1) may appeal against a decision of the committee in accordance with section 77.

Part 4 — Investigation, clean up and hazard abatement notices

Division 1 — General

41. Meaning of "notice" in this Part

In this Part, unless the contrary intention appears —

notice means any of the following —

(a) a clean up notice, a hazard abatement notice and an investigation notice;

(b) a notice amending such a notice.

42. Person to whom a notice may be given

(1) The CEO may, in his or her discretion, give a notice to any of the following persons —

(a) if given in relation to a site classified as *contaminated — remediation required*, a person responsible for remediation of the site;

(b) a person who, in the opinion of the CEO, would be a person responsible for remediation of the site if the land to which the notice relates was land that comprised all, or part, of a site classified as *contaminated — remediation required*;

(c) an owner or occupier of land that comprises all, or part, of the site to which the notice relates.

(2) The CEO may give more than one notice in respect of particular land or a particular site or to a particular person.

(3) A notice is to —

(a) be in writing; and

(b) contain details of any appeal available under this Act in respect of the notice.

(4) Each owner and occupier of a site in relation to which a notice is given who has not been given the notice is to be provided with a copy of the notice by the CEO within 10 days after the day on which the notice was given, or the CEO is to ensure that reasonable attempts have been made to do so.

(5) Before giving a notice the CEO —

(a) is to consult with the CEO of the Health Department and, if possible, reach agreement on the requirements of the notice that relate to human health; and

(b) may seek comments from any public authority or any person which or who has, in the opinion of the CEO, a direct interest in the site.

(6) If the CEO and the CEO of the Health Department cannot agree on the requirements of a notice that relates to human health the Minister and the Minister responsible for the administration of the *Health Legislation Administration Act 1984* are jointly to appoint a person to decide what the requirements of the notice will be.

43. Notice to be complied with

(1) A person on whom a notice is binding must ensure that the requirements of the notice are complied with within such time as is specified in the notice.

Penalty: $500 000, and a daily penalty of $100 000.

(2) If a person —

(a) is convicted of an offence under subsection (1) in respect of a notice; or

(b) in the opinion of the CEO, has not complied with a requirement of a hazard abatement notice within such time as is specified in the notice, subject to subsections (3) and (4),

the CEO may take such action as is necessary under section 53 to ensure that the requirements of the notice are complied with.

(3) Before taking action under section 53 in the circumstances referred to in subsection (2)(b), the CEO is to give to the person, who in the opinion of the CEO has not complied with a requirement of the hazard abatement notice, written notice —

(a) stating that in the opinion of the CEO the person has not complied with the requirement, or requirements, of the hazard abatement notice which is, or are, specified in the notice under this subsection; and

(b) giving details of the proposed action.

(4) Notice is not required to be given under subsection (3) if the Minister has given written approval for it to be dispensed with because, in the opinion of the Minister, there is an urgent need to take action to reduce or control the immediate and serious risk of harm to human health, the environment or an environmental value.

44. Auditor's report in relation to notice

A notice is to require a person on whom the notice is binding to engage an auditor to report on the actions taken to comply with the requirements of the notice.

45. Cancellation of notices

(1) A notice may be cancelled —

(a) in relation to all persons on whom the notice is binding, by the CEO giving written notice of the cancellation to each of those persons; or

(b) in relation to one or more of the person or persons on whom the notice is binding, by the CEO giving written notice of the cancellation to that person or each of those persons.

(2) A notice that is cancelled under subsection (1)(a) is of no effect.

(3) A notice that is cancelled under subsection (1)(b) in relation to a person is no longer binding on that person.

(4) Each owner and occupier of a site in relation to which a notice is cancelled under subsection (1)(b) who has not been given written notice of the cancellation is to be provided with a copy of that notice by the CEO within 10 days after the day on which it was given, or the CEO is to ensure that reasonable attempts have been made to do so.

46. Notice may be amended, or additional notice may be given

Where there is a requirement, or discretion, to give a notice under this Act, a notice amending the notice, or an additional notice of the same type, may be given.

Division 2 — Person on whom notice is binding

47. Person on whom notice is binding

Subject to sections 45 and 79(3) and the outcome of any appeal, a notice is binding on each person —

(a) to whom it is given; and

(b) on whom it is binding in accordance with section 48 or 54.

48. Certain notices binding on new owners

(1) Subject to subsections (2) and (3), a notice —

(a) in respect of which a memorial under section 58 is registered in respect of land; and

(b) which is binding on an owner of the land,

becomes binding on each person who becomes an owner of the land at the time that the person becomes such an owner.

(2) A clean up notice, or an investigation notice, in respect of which a memorial under section 58 is registered in respect of land, does not become binding on a person who becomes an owner of

the land because the person is a mortgagee in possession, until 45 days after the day on which the person became an owner of the land.

(3) A clean up notice does not become binding on a person under subsection (2) if, and to the extent that, within that 45 days, the relevant responsibility for remediation is transferred to the State under section 31.

Division 3 — Types of notices

49. Investigation notice

(1) An investigation notice is to set out the requirements to be complied with to ensure that a site is investigated, monitored and assessed.

(2) An investigation notice is to be given only if, in the opinion of the CEO, there are grounds to indicate —

(a) the possible contamination of a site; and

(b) that appropriate action to investigate, monitor or assess the site is not being, or has not been, taken.

(3) An investigation notice —

(a) is to specify —

(i) the name and address of the person to whom it is given;

(ii) the reason for which it is given; and

(iii) a description of the location and extent of the site sufficient to identify it;

and

(b) is to describe —

(i) the form of investigation, monitoring and assessment to be undertaken; and

(ii) the content and form of information that is to be reported to the CEO.

(4) Without limiting subsection (1) or (3), an investigation notice may require a person on whom it is binding to do one or more of the following —

(a) to take such measures as the CEO considers necessary to investigate the nature and extent of contamination and its consequences;

(b) to prepare a management plan and submit it to the CEO;

(c) to monitor the effectiveness of actions taken under paragraph (a);

(d) to prepare a sampling and analysis programme for investigating the nature and extent of contamination and give the programme to the CEO;

(e) to prepare and implement a plan, in accordance with any relevant guidelines, for informing and consulting with the community regarding the investigation of the site;

(f) to report to the CEO on any action taken under the notice and its outcome;

(g) specify the time within which any requirement of the notice is to be complied with.

(5) An investigation notice may require a person on whom it is binding to do any thing referred to in subsection (3) or (4) in accordance with an approval, direction or requirement of a type specified in the notice by a person specified in the notice.

(6) If, in order to comply with an investigation notice, a person will need to enter land of which the person is not an occupier, the notice —

(a) may require the person to make reasonable attempts to obtain, within the time specified in the notice, the permission of the occupier or owner, as is relevant, to enter the land to take action to comply with the requirements of the notice; and

(b) if a requirement is made under (a), is to briefly and accurately describe the effect of subsection (7).

(7) If a person on whom a notice, which has a requirement referred to in subsection (6), is binding fails to obtain the permission of the occupier or owner after making reasonable attempts to do so within the time specified in the notice, the person is to notify the CEO of that failure within 3 days after the latest day on which the person was required to obtain the permission.

50. Clean up notice

(1) A clean up notice is to set out the requirements to be complied with to remediate a site.

(2) A clean up notice may be given only —

(a) in respect of a site classified as *contaminated — remediation required*; and

(b) if the CEO believes, on reasonable grounds, that appropriate action to remediate the site is not being, or has not been, taken.

(3) A clean up notice —

(a) is to specify —

(i) the name and address of the person to whom it is given;

(ii) the reason for which it is given; and

(iii) a description of the location and extent of the site sufficient to identify it;

and

(b) is to describe —

(i) the form of remediation and monitoring to be undertaken; and

(ii) the content and form of information that is to be reported to the CEO.

(4) Without limiting subsection (1) or (3), a clean up notice may require a person on whom it is binding to do one or more of the following —

(a) to prepare a management plan and submit it to the CEO;

(b) to comply with any management plan set out or referred to in the notice;

(c) to comply with any approved policy or with any standard prescribed by or under the EP Act;

(d) to prepare and implement a plan, in accordance with any relevant guidelines, for informing and consulting with the community regarding the remediation of the site;

(e) to monitor compliance with, and remediation resulting from, a management plan;

(f) to report to the CEO on any action taken under the notice and its outcome;

(g) specify the time within which any requirement of the notice is to be complied with.

(5) A clean up notice may require a person on whom it is binding to do any thing referred to in subsection (3) or (4) in accordance with an approval, direction or requirement of a type specified in the notice by a person specified in the notice.

(6) If, in order to comply with the requirements of a clean up notice, a person will need to enter land of which the person is not an occupier, the notice —

(a) may require the person to make reasonable attempts to obtain, within the time specified in the notice, the permission of the occupier or owner, as is relevant, to enter the land to take action to comply with the requirements of the notice; and

(b) if a requirement is made under (a), is to briefly and accurately describe the effect of subsection (7).

(7) If a person on whom a notice, which has a requirement referred to in subsection (6), is binding fails to obtain the permission of the occupier or owner after making reasonable attempts to do so within the time specified in the notice, the person is to notify the CEO of that failure within 3 days after the latest day on which the person was required to obtain the permission.

51. Hazard abatement notice

(1) A hazard abatement notice is to be given if in the opinion of the CEO a site is contaminated and there is an immediate and serious risk of harm to human health, the environment or any environmental value (***a hazard***).

(2) A hazard abatement notice —

(a) is to specify —

(i) the name and address of the person to whom it is given;

(ii) the reason for which it is given; and

(iii) a description of the location and extent of the site sufficient to identify it;

and

(b) is to describe —

(i) the actions required to be taken to abate the hazard; and

(ii) the content and form of information that is to be reported to the CEO.

(3) A hazard abatement notice —

(a) is to set out the requirements —

(i) to be complied with to immediately control or reduce the hazard; and

(ii) for informing and consulting with the community regarding the hazard and the abatement of the hazard, in accordance with any relevant guidelines;

(b) may require a report to be made to the CEO on any action taken under the notice and its outcome; and

(c) may specify the time within which any requirement of the notice is to be complied with.

Division 4 — Appeals from notices

52. Appeals from notices

(1) Subject to subsection (5), a person on whom an investigation notice or a clean up notice is binding may appeal against a requirement of the notice.

(2) Subject to subsection (3), a person may appeal against a decision of the CEO —

(a) under section 42(1) to give the person a notice; or

(b) under section 54(1)(d) that a notice is binding on the person.

(3) A person —

(a) who is an owner or occupier of a site to which a notice relates, other than an owner or occupier on whom a notice is binding as a result of a decision made under section 54(1)(d); or

(b) who is responsible for remediation of a site to which a notice relates,

may not appeal against a decision referred to in subsection (2).

(4) Subsection (3)(b) does not affect the right of a person to appeal under section 40.

(5) An appeal is to be brought, dealt with and determined in accordance with Part 8.

Part 5 — Provisions relating to remediation and notices

Division 1 — Powers of CEO in respect of remediation, investigation and ensuring compliance with notices

53. Powers in respect of remediation, investigation and ensuring compliance with notices

(1) The CEO may, with such assistance as the CEO considers necessary, enter on any land —

(a) in respect of which the CEO is authorised to take action under section 43(2) and on that land may take such action as the CEO considers necessary to ensure that the requirements of the relevant notice are complied with; or

(b) that comprises all, or part, of a site in respect of which the State is responsible for remediation under section 29 and on that land may take such action as the CEO considers necessary to investigate and remediate the site to the extent to which the State is responsible for remediation.

(2) Before exercising a power of entry under subsection (1) in respect of any land which —

(a) is occupied by a person or persons; or

(b) if it is not occupied by a person or persons, has been alienated from the Crown for any estate of freehold,

the CEO is to give not less than 14 days written notice to the occupier or, if it is not occupied, to the owner specifying —

(c) that —

(i) a requirement of a notice under Part 4, described in or attached to that notice, has not been complied with and the CEO is to take action to ensure that the requirements of the notice under Part 4 are complied with; or

(ii) the State is responsible for remediation under section 29 and the CEO is to take action to ensure that investigation and remediation are carried out;

(d) the part of the land on which entry is to be made; and

(e) the actions proposed to be taken on that part of that land to comply with the requirements of the notice or to carry out the investigation and remediation.

(3) Notice is not required to be given under subsection (2) if —

(a) the land comprises all, or part, of a site for which the State is responsible for remediation under section 29 and, in the opinion of the CEO, the occupier, or if it is not occupied, the owner cannot be identified or found;

(b) the land has been taken in accordance with section 32(4); or

(c) the Minister has given written approval to that effect under subsection (4).

(4) At the request of the CEO, the Minister may give approval for notice of entry under subsection (2) to be dispensed with if —

(a) the entry is to be made due to a failure to comply with a requirement of a hazard abatement notice; and

(b) in the opinion of the Minister, there is an urgent need to take action to reduce or control the immediate and serious risk of harm to human health, the environment or an environmental value.

(5) Despite approval being given under subsection (4), the CEO is to ensure that such notice as is reasonably practicable is given to the occupier, or if the land is not occupied, to the owner before exercising a power of entry under subsection (1).

(6) Subject to sections 87 and 88 of the EP Act, an authorised person or an inspector may assist the CEO to take any action under this section, if the CEO so requests.

54. Where entry to a site, or the taking of action, to comply with notice or to remediate refused

(1) If a person who is responsible for remediation of a site, or on whom a notice under Part 4 is binding (the ***first person***) —

(a) needs to enter any land to take any action necessary to remediate, or to comply with a requirement of the notice; and

(b) without reasonable cause, the occupier or owner, as is relevant, of the land —

(i) refuses permission for the person to enter, or remain on, the land or to take any action on the land necessary to carry out the remediation, or to comply with a requirement of the notice; or

(ii) after a reasonable amount of time has elapsed, has failed to give permission for the person to do any of those things on the land,

then a decision may be made —

(c) by the committee that the occupier or owner is to be the person responsible for that remediation and the first person is no longer the person responsible for that remediation; or

(d) by the CEO that the notice is binding on that occupier or owner and is no longer binding on the first person,

as is relevant.

(2) An owner or occupier referred to in subsection (1)(b) commits an offence.

Penalty: $500 000, and a daily penalty of $100 000.

(3) An owner or occupier who takes any action necessary to remediate a site, or to comply with the requirements of a notice, as a result of a decision under subsection (1) may recover from the first person the reasonable costs incurred in taking that

action and interest at the prescribed rate by action in a court of competent jurisdiction as a debt due.

(4) If the committee considers that there is not enough information about the financial capacity of an owner or occupier in respect of whom the committee is considering making a decision under subsection (1), the committee may, by written notice, request —

(a) that person; or

(b) with the permission of that person, any other person,

to provide additional information about that financial capacity.

(5) A person —

(a) must comply with a request under subsection (4) within the time specified in the request; and

(b) must not provide information or make a statement under subsection (4) that the person knows is false or misleading in a material particular.

Penalty: $250 000, and a daily penalty of $50 000.

(6) A person on whom a notice is binding as a result of a decision under subsection (1)(d) may appeal in accordance with section 52.

(7) A decision under subsection (1)(c) is a decision as to responsibility for remediation to which Part 3 Division 3 applies.

(8) A decision under subsection (1)(c) or (d) is to be given by written notice to —

(a) the relevant occupier or owner; and

(b) the first person.

Division 2 — Recovery of cost, and liability for losses, in some circumstances

55. State may recover cost in some circumstances

(1) If the CEO takes action under section 53(1)(a), the CEO may recover the reasonable costs incurred in taking the action, and interest at the prescribed rate, from a person on whom the relevant notice is binding, by action in a court of competent jurisdiction as a debt due to the Crown.

(2) If —

(a) the CEO takes action under section 53(1)(b) in respect of an orphan site for which the State is responsible for remediation in accordance with section 29(1)(d); and

(b) within 6 years of the site becoming an orphan site the person referred to in section 29(1)(d) is, in the opinion of the committee, identified, found or can be made to assume responsibility for remediation,

that person —

(c) on being given notice under subsection (3); and

(d) subject to subsection (5),

is liable to repay the reasonable costs incurred in taking the action under section 53(1)(b), with interest at the prescribed rate, to the CEO.

(3) The committee is to give written notice to a person referred to in subsection (2) —

(a) who, in the opinion of the committee, would have been responsible for remediation under section 24 if the State had not taken responsibility;

(b) stating that, in the opinion of the committee, the person is liable under this section and —

(i) specifying the extent of the person's responsibility for remediation;

(ii) specifying the reasonable costs incurred in carrying out the investigation and remediation, and the amount of interest, that the person is liable to pay;

(iii) requiring that the amount referred to in subparagraph (ii) be paid within the time specified in the notice, or such further time as is agreed; and

(iv) containing such other details as are prescribed;

and

(c) containing details of any appeal available under section 77.

(4) The CEO may recover the costs and interest referred to in subsection (2) by action in a court of competent jurisdiction as a debt due to the Crown.

(5) Subsection (2) applies in respect of land which has been taken in accordance with section 32(4) only if the land, as remediated, is valued at a lesser amount than the amount of the reasonable costs incurred in taking the action under section 53(1)(b), and in that situation, the amount which may be recovered under subsection (2) is the amount of the reasonable costs incurred in taking the action under section 53(1)(b) minus the amount of the value of the land.

(6) A person who has been given a notice under subsection (3) may appeal against a decision of the committee —

(a) to give the person the notice; or

(b) to require the payment of the amount specified in the notice,

in accordance with section 77.

56. Person may recover cost in some circumstances

(1) Subject to subsection (3), a person who carries out any investigation or remediation in respect of a site may, to the extent that that person is not the person responsible for that remediation of the site, recover from the person responsible for that remediation, the reasonable cost incurred in taking reasonable action —

(a) to carry out that investigation or remediation; and

(b) to comply with any notice under Part 4 binding on that person in respect of the site,

and interest at the prescribed rate, by action in a court of competent jurisdiction as a debt due.

(2) A written statement by the CEO, in respect of a particular site, stating that —

(a) the action described in the statement was reasonable to investigate or remediate the site; or

(b) that costs specified in the statement were reasonable costs to incur in taking the action described in the statement or under the relevant notice under Part 4,

is to be taken to be proof of the statement in any proceedings under this Act, unless the contrary is shown.

(3) Subsection (1) applies in respect of a site for which the State is responsible for remediation only if —

(a) the action was taken to comply with a notice under Part 4 in respect of the site; or

(b) the State is responsible for remediation of the site under section 29(1)(a) or (b).

(4) An action under this section may be commenced at any time within 6 years after the date on which the cause of action accrued and may not be commenced after that time.

57. Liability for losses

Except as may be otherwise prescribed, a person responsible for remediation of a site or a person on whom a notice under Part 4 is binding who, with the permission of the occupier or owner of land, as is relevant, enters that land to take any action necessary to enable the person to carry out the remediation or to comply with the requirements of the notice is liable —

(a) to that occupier for any loss suffered by the occupier as a result of that entry or those actions, including any loss suffered by the occupier due to interruption to the business of the occupier on that land; and

(b) to the owner of the land for any loss suffered by the owner as a result of that entry or those actions, including any loss suffered by the owner due to interruption to the business of the owner on that land or any injury to the land caused by that person.

Division 3 — Memorials

58. Memorial is to be lodged if notice given, or land classified as contaminated

(1) The CEO is to ensure a memorial is lodged with the Registrar in respect of —

(a) land —

(i) that comprises all, or part, of a site, classified as —

(I) *contaminated — remediation required*;

(II) *contaminated — restricted use*;

(III) *remediated for restricted use*; or

(IV) *possibly contaminated — investigation required*;

or

(ii) in respect of which a notice under Part 4 has been given, other than a notice under section 46 amending a previous notice;

or

(b) land on which a charge in favour of the State, or a public authority nominated by the Minister, has been placed under —

(i) section 30(3)(b);

(ii) section 31(3)(b); or

(iii) section 32(2),

as soon as is practicable after the site has been classified, the notice has been given or the charge has been created.

(2) The Registrar, on payment of any relevant fee, is to register the memorial against the relevant land.

(3) If —

(a) in respect of land referred to in subsection (1)(a)(i), the site of which the land comprises all, or part, is classified as *decontaminated* or *not contaminated — unrestricted use*;

(b) in respect of land referred to in subsection (1)(a)(ii), the relevant notice is cancelled under section 45(1)(a);

(c) in respect of land referred to in subsection (1)(b), in the opinion of the CEO, the amount secured by the charge is paid or recovered, or the charge is no longer required; or

(d) a decision is made on appeal —

(i) in respect of land referred to in subsection (1)(a)(i), to set aside the classification of the site of which the land comprises all, or part, or to exclude the land from the site to which the classification applies; or

(ii) in respect of land referred to in subsection (1)(a)(ii), that the notice no longer applies in respect of the land,

the CEO is to give notice to the Registrar that the memorial is to be withdrawn and the Registrar, on payment of any relevant fee, is to register the withdrawal of the memorial in the appropriate manner and by doing so, in respect of land referred to in subsection (1)(b), remove the charge from the land.

(4) A memorial, and notice that a memorial is to be withdrawn —

(a) is to —

(i) specify the classification of the site of which the land comprises all, or part, or the type of notice, as is relevant; or

(ii) describe the charge;

and

(b) is to be in a form approved by the Registrar.

(5) In a memorial in respect of land that comprises all, or part, of a site classified as *contaminated — remediation required*, the CEO may specify that an instrument affecting the land is not to be registered or accepted for registration unless the CEO consents in writing to that registration and the Registrar is to give effect to such a specification.

(6) If a memorial is registered under this section in respect of land referred to in subsection (1)(a)(i), then —

(a) the Western Australian Planning Commission is not to approve under section 135 of the *Planning and Development Act 2005* the subdivision of that land, or the amalgamation of that land with any other land; and

(b) a responsible authority is not to grant approval under a scheme for any proposed development of that land,

without seeking, and taking into account, the advice of the CEO as to the suitability of the land for the subdivision, amalgamation or development.

(7) A memorial registered in respect of a notice under Part 4 retains its priority in relation to all other mortgages, charges and encumbrances on that land despite the amendment of the notice under section 46.

(8) A memorial registered under this section has effect until it is withdrawn.

(9) In this section —

register means to register under the *Registration of Deeds Act 1856* or *Transfer of Land Act 1893*, as the case requires;

Registrar means the Registrar of Titles under the *Transfer of Land Act 1893* or the Registrar of Deeds and Transfers under the *Registration of Deeds Act 1856*, as the case requires.

[Section 58 amended: No. 38 of 2005 s. 15.]

59. Notice of memorial to be given

As soon as is practicable after a memorial is registered or withdrawn under section 58 written notice that the memorial is registered or withdrawn, with a copy of the memorial or notice to withdraw the memorial attached, as is relevant, is to be given by the CEO to —

(a) each owner of the relevant land;

(b) the Western Australian Planning Commission;

(c) the CEO of the Health Department;

(d) each local government which has located within its district all, or part, of the relevant land; and

(e) each responsible authority the scheme of which applies to all, or part, of the relevant land.

Division 4 — Contaminated Sites Management Account

[Heading amended: No. 77 of 2006 s. 17.]

60. Contaminated Sites Management Account

(1) An agency special purpose account called the Contaminated Sites Management Account (the ***Account***) is established under section 16 of the *Financial Management Act 2006* to which the funds referred to in subsection (2) are to be credited.

(2) The funds available for the purposes set out in subsection (3) are —

(a) moneys from time to time appropriated by Parliament for that purpose;

(b) at the discretion of the Treasurer —

(i) money received by the State from the sale of land that comprised all, or part, of an orphan site taken in accordance with section 32(4); and

(ii) fees collected under section 21(1) or 62(3)(f) or under the regulations;

(c) moneys received or recovered by the State under section 55 or 56;

(d) moneys received by the State as a result of a charge under section 30(3)(b), 31(3)(b), or 32(2); and

(e) other moneys lawfully received by, or made available or payable to, the Account or to the CEO for the purpose of —

(i) the Account; or

(ii) investigation or remediation carried out by the State under this Act.

(3) The Account may be applied by the Minister for all or any of the following purposes —

(a) the investigation or remediation of any site for the remediation of which the State, or a public authority (other than a local government), is responsible;

(b) taking any action under section 53.

(4) The Account is to be administered by the Minister.

(5) The provisions of the *Financial Management Act 2006* and the *Auditor General Act 2006* regulating the financial administration, audit and reporting of departments apply to and in relation to the Account.

(6) For the purposes of section 52 of the *Financial Management Act 2006*, the administration of the Account is to be regarded as a service of the Department.

[Section 60 amended: No. 77 of 2006 s. 17.]

Part 6 — Certificates of contamination audit, exemption certificates and disclosure statements

Division 1 — Interpretation

61. Meaning of "land" in this Part

In this Part, unless the contrary intention appears —

land includes —

(a) underground water under that land; and

(b) surface water on that land.

Division 2 — Certificate of contamination audit

62. Request for certificate of contamination audit

(1) Any of the following persons may, in the prescribed form, request a certificate of contamination audit from the CEO in respect of land —

(a) the owner of the land;

(b) the occupier of the land;

(c) a person responsible for remediation of a site of which the land comprises all, or part;

(d) a person on whom a notice under Part 4 in respect of the land is binding.

(2) If a request for a certificate of contamination audit is made in respect of land by a person who is not the owner of the land a copy of the request is to be given by that person to the owner within 14 days after the day on which the request was made.

(3) A request for a certificate of contamination audit is to contain or be accompanied by the following —

(a) an assessment of whether the land is contaminated and, if contaminated, the extent and type of the known contamination;

(b) a recommendation as to classification and where relevant, any recommended restrictions on land use;

(c) any other information prescribed;

(d) any other information requested by the CEO to enable the CEO to deal with the request;

(e) where a mandatory auditor's report is required in accordance with the regulations, that report;

(f) the prescribed fee.

(4) The CEO —

(a) may decline to deal with a request if the request or accompanying information does not comply with this section; and

(b) if the CEO so declines, is to advise the person who made the request in writing accordingly and request such further information as is required.

63. Certificate of contamination audit

(1) After considering a request for a certificate of contamination audit in respect of land, the CEO is to —

(a) subject to subsections (4) and (5), give a certificate of contamination audit to the person who requested it; or

(b) classify a site that comprises all, or part, of the land as *possibly contaminated — investigation required* and give written notice of the classification to the person who requested the certificate.

(2) The CEO is to take action under subsection (1) —

(a) within 45 days after —

(i) receiving a request for a certificate of contamination audit in respect of the land; or

(ii) if a request for further information has been made under section 62(4), receiving the further information requested; or

(b) if, in the opinion of the CEO, there are particular circumstances which make it difficult to take action under subsection (1) within that time, within such further time as the CEO decides is necessary to take the action.

(3) The CEO is to cause written notice of a decision under subsection (2)(b) to be given, or to ensure that reasonable attempts have been made to do so —

(a) to the person who requested the certificate of contamination audit in respect of the land and, at the discretion of the CEO, any other owner or occupier of the land; and

(b) within the time referred to in subsection (2)(a).

(4) The CEO is to give a certificate of contamination audit in respect of land if satisfied, on reasonable grounds, that all contamination on the land that can be identified has been identified, taking into account —

(a) any relevant guidelines;

(b) currently accepted industrial standards; and

(c) any other information the CEO considers relevant,

with respect to the identification of contamination.

(5) A certificate of contamination audit in respect of land is to —

(a) be in the prescribed form;

(b) classify the site in accordance with section 15(3); and

(c) specify the nature and extent of all identified contamination of the land.

(6) A copy of a certificate of contamination audit is to be given by the CEO to —

(a) each owner of the land in respect of which the certificate is given; and

(b) at the discretion of the CEO, an occupier of the land.

(7) The CEO may, by written notice given to a person to whom a certificate of contamination audit has been given, amend that certificate to correct —

(a) a clerical mistake or unintentional error or omission in the certificate;

(b) a figure in the certificate which has been miscalculated; or

(c) the misdescription of any person, thing or property referred to in the certificate.

(8) Where a certificate of contamination audit is given in respect of land, any certificate of contamination audit given previously in respect of that land is no longer of any effect under this Act in respect of that land.

Division 3 — Disclosure regarding contamination, and exemption certificates

64. Disclosure statement made within 2 years of commencement of Act

(1) An owner of land may make a disclosure statement with respect to the contamination of that land to the committee —

(a) in the prescribed form;

(b) in respect of land of which that person —

(i) is the owner; and

(ii) was the owner immediately before the commencement of this Act;

and

(c) subject to subsection (2), within 2 years after the commencement of this Act.

(2) If a person —

(a) gives written notice to the committee within 2 years after the commencement of this Act that the person

intends to make a disclosure statement, that person has 12 months after giving that notice to the committee within which to make the disclosure statement; or

(b) has had a programme for the reporting of sites approved under section 12, that person may make a disclosure statement in respect of land that comprises all, or part, of a site described in the programme at any time before the programme is to be completed.

(3) If a disclosure statement does not contain enough information for the committee to make a decision under subsection (4), the committee is to advise the person who made the request in writing accordingly and request such further information as is required.

(4) Within 45 days after the day on which a disclosure statement, or further information in respect of the statement, is received the committee is to —

(a) if section 65 applies, give an exemption certificate;

(b) by written notice to the person who made the statement —

(i) refuse to give an exemption certificate; or

(ii) decline to deal with the statement if it is not in compliance with this section;

or

(c) request further information, in accordance with subsection (3).

(5) Where land in respect of which an owner has made a disclosure statement under subsection (1) comprises all, or part, of a source site then the disclosure statement may also be made in respect of the contamination of any land that comprises all, or part, of an affected site on which contamination is caused, or contributed to —

(a) by contamination; or

(b) by a substance,

which has migrated to the affected site from the source site.

[Section 64 amended: No. 40 of 2005 s. 9.]

65. Exemption certificates

(1) On receiving a disclosure statement under section 64 from a person with respect to the contamination of land, and any further information requested under that section, the committee is to give an exemption certificate in respect of all, or part, of the land in respect of which the disclosure statement was made to the person if, and to the extent that, in the opinion of the committee —

(a) the land is contaminated;

(b) the contamination was not caused, or contributed to, by an action of the person;

(c) the person did not fail to prevent the contamination of the land, as far as it was reasonably within the person's control to prevent that contamination; and

(d) the land in respect of which the statement was made which was owned by the person was contaminated at the time the person became an owner of the land and, at that time, the person did not know, or suspect, and could not reasonably have known or suspected, that the land was contaminated.

(2) An exemption certificate is to specify the extent to which a person who made a disclosure statement is not responsible for remediation under section 27(2) or (2a) of the land in respect of which the statement was made.

(3) A person who would otherwise be responsible for remediation of a site under section 27(2) or (2a), is not responsible under those provisions for remediation of the site to the extent provided by an exemption certificate held by that person.

(4) Other than as set out in subsection (3), a person's responsibility for remediation of a site under this Act is not affected by an exemption certificate.

(5) An exemption certificate in respect of land may be transferred by the holder of the certificate to another person who, at any time after the certificate has been given, has become an owner of the land, or part of the land, if so decided by the committee, and to the extent as is decided by the committee after taking into account —

(a) the relevant circumstances; and

(b) any matters prescribed for the purposes of this section.

[Section 65 amended: No. 40 of 2005 s. 10.]

66. Cancellation or amendment of exemption certificate

(1) Subject to subsections (2) and (3), the committee may cancel or amend an exemption certificate by written notice given to the holder of the certificate if satisfied, on reasonable grounds, that the disclosure statement made under section 64 —

(a) contained information that was false or misleading in a material particular; or

(b) failed to disclose information that was materially relevant or without which the statement was misleading,

and, in the opinion of the committee, this resulted in an exemption certificate being given —

(c) when it should not have been given; or

(d) which contained erroneous information.

(2) Before cancelling or amending an exemption certificate the committee is to give the holder of the certificate written notice —

(a) stating details of the proposed action;

(b) inviting the person to make representations to the committee to show why the action should not be taken; and

(c) stating the period (at least 21 days after the day on which the notice is given to the person) within which written representations may be made.

(3) The committee may take the proposed action —

(a) at any time after the holder of the certificate gives the committee written notice that the holder does not intend to make any representations or any further representations; or

(b) if such notice is not given —

(i) after the end of the period stated in the notice within which representations may be made; or

(ii) if representations are made, after considering any representations properly made.

(4) An exemption certificate that is cancelled is of no effect.

67. Appeals regarding exemption certificates

A person who submitted a disclosure statement may appeal in accordance with section 77 against a decision of the committee —

(a) under section 64(4) —

(i) to refuse to give an exemption certificate; or

(ii) regarding the extent to which the person is not responsible for remediation, as provided in the exemption certificate;

or

(b) under section 66 to cancel or amend an exemption certificate.

68. Disclosure required to potential owners of certain land before change of ownership occurs

(1) At least 14 days before the completion of a transaction which would result in another person becoming an owner, mortgagee or lessee of —

(a) land that comprises all, or part, of a site classified as —

(i) *contaminated — remediation required*;

(ii) *contaminated — restricted use*; or

(iii) *remediated for restricted use*;

or

(b) land in respect of which a notice under Part 4 has been given and in respect of which a memorial is registered,

each owner of the land who is to be a party to the transaction must give —

(c) a written disclosure in respect of the land in the prescribed form to each person who would become an owner, mortgagee or lessee of the land as a result of the transaction; and

(d) a copy of that disclosure to the CEO.

Penalty: $125 000, and a daily penalty of $25 000.

(2) A contravention of subsection (1)(c) is a breach of statutory duty that, subject to the defences and other incidents applying to actions for breach of statutory duty, is actionable at the suit of a person who should have been given the disclosure and who has sustained loss or damage in consequence of that breach.

Part 7 — Contaminated sites auditors

Division 1 — Accreditation

69. Accredited auditors

The CEO may, in accordance with the regulations, accredit a person as a contaminated sites auditor.

70. Authority of accredited auditor

(1) The CEO is to cause to be given to each auditor an authority in writing —

(a) bearing a photograph or digital image of that auditor;

(b) stating that the person is an accredited contaminated sites auditor; and

(c) signed by the CEO.

(2) The CEO may limit, or impose conditions on, the duties that may otherwise be undertaken by an auditor under this Act or the EP Act by specifying in the authority given to the auditor under subsection (1) any limitation of, or condition imposed on, those duties.

(3) An auditor must not carry out any duty, or advertise or otherwise hold out or imply that he or she is authorised to carry out any duty, as an auditor under this Act or the EP Act other than in accordance with the authority.

Penalty: $125 000, and a daily penalty of $25 000.

71. Offences relating to accreditation

A person —

(a) must not obtain or attempt to obtain accreditation as an auditor by —

(i) providing information that the person knows is false or misleading in a material particular;

(ii) providing information that is false or misleading in a material particular, with reckless disregard as to whether or not the information is false or misleading in a material particular; or

(iii) failing to disclose information that the person knows is materially relevant;

(b) who is not accredited as an auditor must not advertise, or otherwise hold out or imply, that he or she is accredited as an auditor;

(c) must not forge, or fraudulently alter or use, an authority referred to in section 70; or

(d) must not allow an authority given to the person under section 70 to be used by another person.

Penalty: $125 000.

72. No action may be taken with respect to accreditation

No action or other proceeding for damages lies against the State, the Minister, the CEO or any other person acting under this Act for any loss or injury directly or indirectly suffered as a result of the accreditation, or the suspension or cancellation of, or refusal to renew, the accreditation, of a person under this Act.

Division 2 — Mandatory auditor's reports

73. Certification of mandatory auditor's reports

A mandatory auditor's report is not to be accepted under this Act or the EP Act unless the report is in compliance with the regulations and is accompanied by —

(a) a statement identifying, and signed by, the person who commissioned the report to the effect that the person —

(i) has not provided information to the auditor that the person knows is false or misleading in a material particular;

(ii) has not provided information with reckless disregard as to whether or not the information is false or misleading in a material particular; and

(iii) has disclosed to the auditor all information that the person knows is materially relevant;

and

(b) a statement identifying, and signed by, the auditor to the effect that the report is accurate, and that the auditor —

(i) has not provided any information in the report that the auditor knows is false or misleading in a material particular;

(ii) has not provided information in the report with reckless disregard as to whether or not the information is false or misleading in a material particular; and

(iii) has disclosed in the report all information that the auditor knows is materially relevant.

74. Offences relating to mandatory auditor's reports

(1) A person must not —

(a) provide information to an auditor in connection with a mandatory auditor's report, that the person knows is false or misleading in a material particular;

(b) provide information to an auditor in connection with a mandatory auditor's report that is false or misleading in a material particular with reckless disregard as to whether or not the information was false or misleading in a material particular; or

(c) commission from an auditor a mandatory auditor's report and fail to disclose to the auditor all information in connection with the report that the person knows is materially relevant to the report.

(2) An auditor must not —

(a) provide information in a mandatory auditor's report that the auditor knows is false or misleading in a material particular;

(b) provide information in a mandatory auditor's report that is false or misleading in a material particular with reckless disregard as to whether or not the information is false or misleading in a material particular; or

(c) fail to disclose all information in a mandatory auditor's report that the auditor knows is materially relevant to the report.

Penalty: $250 000.

75. Self-incriminatory information not exempt

A person is not excused from providing, or failing to disclose, information when required to do so under section 74 on the ground that to do so might tend to incriminate the person or make the person liable to a penalty and this Part applies to any such information that is supplied, whether or not the information might incriminate the person.

76. Use of information

Any information in a mandatory auditor's report, or in documentation supplied to the CEO in connection with the report, may be taken into consideration and used for the purposes of this Act.

Part 8 — Appeals

Division 1 — Appeals from decisions of the committee

77. Appeals as to responsibility for remediation and exemption certificates

(1) A party aggrieved by a decision of the committee referred to in section 40, 55(6) or 67 may appeal to the Supreme Court on a question of law within 21 days after the notice or certificate was given.

(2) An appeal is to be made in accordance with the rules of court of the Supreme Court.

(3) The Supreme Court may, in a particular case, extend the time within which an appeal may be commenced under subsection (1).

(4) No appeal lies against a decision of the committee under section 40, 55(6) or 67 except on a question of law.

(4a) No appeal lies against a decision of the committee under section 65(5).

(5) Pending the determination of an appeal a decision, certificate or notice continues to have effect subject to any decision of the Supreme Court to the contrary.

[Section 77 amended: No. 40 of 2005 s. 11.]

78. Supreme Court to hear and determine appeals on questions of law

(1) The Supreme Court is to hear and determine the question of law arising on the appeal and, as the Court sees fit, is to —

(a) affirm the decision appealed against;

(b) substitute or vary the decision appealed against; or

(c) remit the decision to the committee for reconsideration, together with the Court's opinion on the question of law.

(2) Subject to subsection (3), the Supreme Court may make such order as to costs as it thinks fit in relation to an appeal to the Supreme Court under this section.

(3) The committee and any member of the committee is not to be liable for any costs of the appeal other than costs incurred by the committee or the member.

Division 2 — Other appeals

79. Lodging of appeals under section 18 or 52

(1) An appeal under section 18 or 52 is instituted by lodging written notice of the appeal to the committee setting out the grounds and facts on which the appellant relies.

(2) Notice of an appeal referred to in subsection (1) is to be lodged within 21 days after the day on which —

(a) the appellant is given the notice or certificate which gave rise to the appeal; or

(b) in respect of a person on whom a notice is binding in accordance with section 48 or 54, the notice became binding on the person,

or such later time as may be specified in that notice or certificate.

(3) Pending the determination of an appeal —

(a) a classification, decision, certificate or notice in respect of which the appeal is made continues to have effect, unless otherwise specified in paragraph (b); and

(b) an investigation notice or clean up notice, or a requirement of such a notice, in respect of which the appeal is made is suspended,

subject to any written decision of the committee to the contrary.

80. Preliminary action in respect of certain appeals

When an appeal is lodged, the committee —

(a) is to request the CEO, and if the committee thinks it necessary to do so, the Authority to report to the committee on the appeal; and

(b) may request the CEO to consider the appeal and to consult the appellant and any other appropriate person to determine whether or not the point at issue in the appeal can be resolved and report to the committee on the appeal.

81. Reports under section 80

(1) On receiving a request under —

(a) section 80(a), the CEO and, if the request extends to the Authority, the Authority are to report on the relevant appeal to the committee;

(b) section 80(b), the CEO is to carry out the consideration and consultation concerned and report to the committee on the results of that consideration and consultation.

(2) The CEO, or the Authority, is not to make a recommendation in a report that conflicts with an approved policy or with any standard prescribed by or under the EP Act.

82. Decision of committee

(1) On receiving a report or reports referred to in section 80 in respect of an appeal the committee, subject to subsection (2), may —

(a) affirm the classification, decision or requirement appealed against;

(b) substitute or vary the classification, decision or requirement appealed against; or

(c) set aside the classification, decision or requirement and make a decision or substitute a requirement, notice or classification that the committee thinks just.

(2) The decision of the appeal committee under this section is final and without appeal.

83. Implementation by CEO of decisions on appeal

(1) The CEO is to give effect to the outcome of an appeal under this Part as soon as is practicable.

(2) The CEO is to ensure that details of a decision by the committee under this Part are published in the manner prescribed.

Part 9 — Enforcement

84. Who can take proceedings for offences

(1) Proceedings for an offence against this Act are to be instituted by the CEO or a person authorised to do so by the CEO.

(2) An authorisation under subsection (1) may be given generally or in relation to a specified offence or specified offences.

(3) If a prosecution notice alleging an offence under this Act purports to be made or sworn by a person authorised to take proceedings for offences of that kind, it is to be presumed, in the absence of proof to the contrary, that the prosecution notice was made or sworn by such a person.

[Section 84 amended: No. 84 of 2004 s. 80.]

85. Time for bringing prosecutions

(1) A prosecution for an offence under this Act must be commenced within 2 years after the date on which the offence is alleged to have been committed.

(2) Despite subsection (1), if a prosecution notice alleging an offence under this Act specifies the day on which evidence of the alleged offence first came to the attention of a person authorised to institute the prosecution under section 84 —

(a) the prosecution may be commenced within 24 months after that day; and

(b) the prosecution notice need not contain particulars of the day on which the offence is alleged to have been committed.

(3) The day on which evidence first came to the attention of a person authorised to institute a prosecution under section 84 is the day specified in the prosecution notice, unless the contrary is shown.

[Section 85 amended: No. 59 of 2004 s. 141; No. 84 of 2004 s. 80.]

86. Evidentiary provisions

(1) In proceedings for an offence under this Act, an averment in a prosecution notice that —

(a) a specified notice under this Act was given, or was given to a specified person or at a specified time;

(b) specified land comprises, or at a specified time comprised, all, or part, of a site, classified as of a specified category;

(c) a specified person is, or at a specified time was, the owner or occupier of specified land;

(d) a specified person is, or at a specified time was, the person responsible for remediation of a specified site, or the person responsible for remediation of that site to a specified extent; and

(e) a specified certificate is a certificate of contamination audit under section 63,

is to be taken to have been proved unless the contrary is shown.

(2) In subsection (1) —

specified means specified in the prosecution notice.

[Section 86 amended: No. 84 of 2004 s. 80.]

87. Daily penalties

(1) Without limiting section 71 of the *Interpretation Act 1984*, where an offence is committed by a person by reason of the contravention of a provision of this Act under which the person is required or directed to do any act or thing, or to refrain from doing any act or thing, that offence is to be taken to have continued so long as the act or thing so required or directed remains undone, or continues to be done, as the case may be.

(2) In addition to a penalty specified for an offence, a person convicted of an offence is liable to a daily penalty not exceeding the daily penalty specified for the offence for each day or part of a day during which the offence continues after written notice of the alleged offence has been given by the CEO to the offender.

(3) In addition to a penalty specified for an offence, a person convicted of an offence is liable to a daily penalty not exceeding the daily penalty specified for the offence for each day or part of a day during which the offence continues after the offender is convicted.

88. Attempt, incitement and accessory after the fact

(1) Section 555A of *The Criminal Code* applies to an offence under this Act as if it were a simple offence under that Code.

(2) A person who becomes an accessory after the fact to an offence under this Act (the ***principal offence***) within the meaning of section 10 of *The Criminal Code*, commits an offence and is liable on conviction to the penalty to which a person convicted of the principal offence is liable.

89. Inspectors, authorised officers and analysts

(1) An inspector appointed under section 88 of the EP Act may also be appointed under that section for the purposes of this Act.

(2) For the purposes of this Act, an inspector has all the functions that the inspector has under the EP Act, and for those purposes any relevant reference in the EP Act to "this Act" is to be read and construed as if it were a reference to this Act.

(3) In addition to the functions of an inspector under the EP Act, an inspector may at any time, and with any assistance the inspector may require, enter any land —

(a) in respect of which a notice has been given under Part 4 and on that land may do any act or thing, including the collection and removal of samples, records or other

things, which in the opinion of the inspector is necessary to be done for determining whether or not there has been compliance with or contravention of any notice given under Part 4; and

(b) which is, or was, classified as *contaminated — remediation required* and on that land may do any act or thing, including the collection and removal of samples, records or other things, which in the opinion of the inspector is necessary or will be relevant to determining responsibility for remediation.

(4) An authorised person appointed under section 87 of the EP Act may also be appointed under that section for the purposes of this Act.

(5) For the purposes of this Act, an authorised person has all the functions that the person has under the EP Act, and for those purposes any relevant reference in the EP Act to "this Act" is to be read and construed as if it were a reference to this Act.

(6) An analyst appointed under section 94 of the EP Act may also be appointed under that section for the purposes of this Act.

90. Additional powers available to the court

The provisions of Part VIA Division 4 of the EP Act apply to and in relation to this Act as if —

(a) a reference in those provisions to "this Division" were a reference to this Part; and

(b) a reference in those sections to "this Act" were a reference to this Act.

Part 10 — General

91. Delegation

Sections 18 and 20 of the EP Act apply to and in relation to this Act as if a reference in those sections to "this Act" were a reference to this Act.

92. Other provisions of EP Act apply

Sections 115, 116A, 117, 118, 118A, 120 and 121 of the EP Act apply to and in relation to this Act as if —

(a) a reference in those sections to "this Act" were a reference to this Act; and

(b) a reference in section 118A to "Tier 1 offences and Tier 2 offences" were a reference to an offence under a provision of this Act listed in the Table.

Table

s. 10(11)	s. 11(3) and (9)
s. 12(6)	s. 30(6)
s. 43(1)	s. 54(2) and (5)
s. 68(1)	s. 74(1)
s. 93(3)	s. 94
s. 95(1)	s. 96(3)

[Section 92 amended: No. 40 of 2020 s. 115(2); No. 9 of 2023 s. 43.]

93. CEO may request information on wells

(1) If the CEO is of the opinion that underground water in an area may be contaminated, the CEO may, by written notice given to

an owner or occupier of land situated within the area, require the provision of information as to —

(a) the existence of a well on that land; or

(b) the taking of underground water from under that land.

(2) In subsection (1) —

well means an opening in the ground made or used to obtain underground water.

(3) A person from whom information is required under subsection (1) must supply that information in writing to the CEO within the time specified in the notice.

Penalty: $50 000, and a daily penalty of $10 000.

94. False or misleading information

A person —

(a) in making a report under section 11 or 12;

(b) in making a request for a summary of records under section 21;

(ba) in making a written submission to the committee under section 37(e);

(c) in making a disclosure statement under section 64, a disclosure under section 68 or in connection with a request for a certificate of contamination audit under section 62; or

(d) in purporting to comply with a requirement made by or under this Act to provide information to the CEO or to the committee,

must not —

(e) make a statement which the person knows is false or misleading in a material particular;

(f) make a statement which is false or misleading in a material particular, with reckless disregard as to whether or not the statement is false or misleading in a material particular;

(g) provide, or cause to be provided, information that the person knows is false or misleading in a material particular;

(h) provide, or cause to be provided, information that is false or misleading in a material particular, with reckless disregard as to whether the information is false or misleading in a material particular; or

(i) fail to disclose, or cause a failure to disclose, all information that the person knows is materially relevant.

Penalty: $125 000, and a daily penalty of $25 000.

[Section 94 amended: No. 40 of 2005 s. 12.]

95. Victimisation

(1) A person who for a reason described in subsection (2) —

(a) prejudices, or threatens to prejudice, the safety or career of another person;

(b) intimidates or harasses, or threatens to intimidate or harass, another person; or

(c) takes, or threatens to take, detrimental action against another person,

commits an offence.

Penalty: $125 000, and a daily penalty of $25 000.

(2) The reasons referred to in subsection (1) are that the other person or a member of the other person's family —

(a) has made, or will or may in the future make, a report under section 11 or 12;

(b) has furnished, is furnishing, or will or may in the future furnish, information or assistance —

(i) in the course of, or for the purpose of, an inspection or investigation under this Act; or

(ii) to the CEO for a purpose relating to the administration of this Act;

or

(c) has made, or will or may in the future make, an appropriate disclosure of information that tends to show that another person —

(i) is, has been, or proposes to be involved in an offence under this Act; or

(ii) is a person responsible for remediation.

(3) In subsection (1) —

detrimental action includes action causing, comprising or involving —

(a) damage or loss;

(b) adverse discrimination, disadvantage, or adverse treatment in relation to a person's career, profession, employment, trade or business; or

(c) a reprisal.

(4) For the purposes of this section, a reference to an appropriate disclosure of information is a reference to a disclosure of information if, and only if, the disclosure is made in good faith and with an honest and reasonable belief that the information is of sufficient significance to justify its disclosure so that its truth may be investigated.

96. Confidentiality

(1) Other than as is necessary for the administration of this Act, nothing in this Act authorises access to, or the disclosure of, any information or document which would, or is likely to, reveal or

lead to the revelation of, the identity of any person who made a report under section 11 or 12.

(2) These persons are subject to a duty of confidentiality —

(a) a person who is or was the CEO;

(b) people who are or were engaged or employed in the administration or enforcement of this Act; and

(c) other people —

(i) to whom information or records are disclosed under this Act; or

(ii) who gain access (properly or improperly) to information obtained under this Act.

(3) A person subject to a duty of confidentiality must not record, disclose, or make use of information obtained under this Act except —

(a) for a purpose related to the administration or enforcement of this Act;

(b) as required or allowed by this Act or another written law that specifically or by necessary implication overrides this duty of confidentiality;

(c) as authorised by the person, or persons, to whose affairs the information relates;

(d) for the purposes of the investigation of any suspected offence or any judicial proceedings, or a report of judicial proceedings, arising out of this Act or the EP Act;

(e) in a statistical or other form that could not reasonably be expected to lead to the identification of any person to whose affairs it relates; or

(f) in other circumstances in which its disclosure is permitted by the regulations.

Penalty: $125 000, and a daily penalty of $25 000.

97. Guidelines

(1) The CEO may from time to time make, amend or revoke guidelines with respect to —

(a) the assessment, management and reporting of contaminated sites;

(b) the identification and classification of contaminated sites; and

(c) community consultation regarding contaminated sites.

(2) The CEO is to ensure that a copy of the guidelines, in an up to date form —

(a) is available for inspection by members of the public during office hours free of charge; and

(b) is made available to members of the public in any manner the CEO thinks fit.

(3) If there is an inconsistency between a guideline and a regulation, the regulation prevails to the extent of that inconsistency.

(4) The CEO is to cause to be published in the *Gazette* notice of the making, amendment or revocation of guidelines, but notices under this subsection need not include the text of guidelines or the amendments.

(5) Guidelines are not subsidiary legislation for the purposes of the *Interpretation Act 1984*.

98. Regulations

(1) The Governor may, on the recommendation of the Minister, make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed, for giving effect to the purposes of this Act.

(2) Without limiting subsection (1), regulations may be made under that subsection in respect of the matters set out in Schedule 2.

(3) Section 123(3) of the EP Act applies with respect to regulations made under this Act.

99. Review of Act

(1) The Minister is to carry out a review of the operation and effectiveness of this Act as soon as is practicable after the expiry of 5 years from its commencement.

(2) In the course of that review the Minister is to consider and have regard to —

(a) the effectiveness of the scheme established by this Act in identifying, recording, managing and remediating contaminated sites; and

(b) any other matter that appears to the Minister to be relevant to the operation and effectiveness of this Act.

(3) The Minister is to prepare a report based on the review and, as soon as is practicable after the report is prepared, is to cause it to be laid before each House of Parliament.

*[**100**. Omitted under the Reprints Act 1984 s. 7(4)(e).]*

Schedule 1 — Classification of sites

[s. 13]

Classification	Criterion
Report not substantiated	A report under section 11 or 12 provides no ground to indicate possible contamination of the site
Possibly contaminated — investigation required	There are grounds to indicate possible contamination of the site
Not contaminated — unrestricted use	After investigation, the site is found not to be contaminated
Contaminated — restricted use	The site is contaminated but suitable for restricted use
Remediated for restricted use	The site is contaminated but has been remediated so that it is suitable for restricted use
Contaminated — remediation required	The site is contaminated and remediation is required
Decontaminated	The site has been remediated and is suitable for all uses

Schedule 2 — Matters in respect of which regulations may be made

[s. 98(2)]

Division 1 — General

1. Disclosure statements under section 64, including —
   (a) the form of statements;
   (b) information to be included in the statements; and
   (c) reports to be annexed to the statements.

1A. Providing for notices, reports, approvals or other documents to be given, sent or served under this Act by electronic communication (as defined in the *Electronic Transactions Act 2011* section 5(1)) and providing for the proof of that giving, sending or service.

2. The fees to apply under this Act including, without limiting sections 43 and 45 of the *Interpretation Act 1984*, the following —
   (a) the time at which, or the periods for or during which, fees are to be paid;
   (b) the structure of fees;
   (c) the basis on which a fee is to be calculated;
   (d) interest on unpaid fees;
   (e) penalties for late payment or underpayment of fees;
   (f) recovery of fees;
   (g) refunding of fees.

3. The facts and circumstances to be taken into account by the committee in making a decision under Part 3 Division 3 as to responsibility for remediation.

4. The procedure for applying to the committee to make a decision as to responsibility for remediation, including the information that may be required by the committee, responsibility for the cost of supplying any information and the carrying out of any investigations to provide information.

5. Procedures regarding access to the database and records under sections 19 and 21.

6. Prescribing procedures in respect of appeals under Part 8 Division 2.

[Division 1 amended: No. 34 of 2020 s. 63.]

Division 2 — Auditors and audits

7. Conferring duties on auditors.

8. A scheme for the accreditation of auditors and, without limiting the generality of that scheme —

   (a) applications for accreditation and the assessment of applications;

   (b) renewal of accreditation;

   (c) the provision of advice to the CEO as to accreditation and the renewal of accreditation, including the establishment of a selection panel;

   (d) the qualifications, criteria and practical experience required for accreditation as an auditor;

   (e) monitoring the continuing competence of auditors;

   (f) the circumstances in which accreditation as an auditor is to be cancelled or suspended;

   (g) the imposition and variation of conditions to which an accreditation is subject; and

   (h) fees payable in relation to application and accreditation.

9. Additional circumstances where it is mandatory for an auditor to be engaged or for a mandatory auditor's report to be provided, and the person to whom the report is to be provided.

10. The carrying out by an auditor of any duty conferred on an auditor under this Act or the EP Act.

11. The scope and content of mandatory auditor's reports, including in respect of particular reports or reports made under particular provisions of this Act or the EP Act.

12. The powers and duties of auditors in prescribed circumstances.

13. A scale of maximum fees for services provided by auditors.

[Schedule 3 omitted under the Reprints Act s. 7(4)(e).]

Notes

This is a compilation of the *Contaminated Sites Act 2003* and includes amendments made by other written laws. For provisions that have come into operation, and for information about any reprints, see the compilation table.

Compilation table

Short title	Number and year	Assent	Commencement
Contaminated Sites Act 2003	60 of 2003	7 Nov 2003	1 Dec 2006 (see s. 2 and *Gazette* 8 Aug 2006 p. 2899)
Courts Legislation Amendment and Repeal Act 2004 s. 141	59 of 2004	23 Nov 2004	1 May 2005 (see s. 2 and *Gazette* 31 Dec 2004 p. 7128)
Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004 s. 80	84 of 2004	16 Dec 2004	2 May 2005 (see s. 2 and *Gazette* 31 Dec 2004 p. 7129 (correction: *Gazette* 7 Jan 2005 p. 53))
Planning and Development (Consequential and Transitional Provisions) Act 2005 s. 15	38 of 2005	12 Dec 2005	9 Apr 2006 (see s. 2 and *Gazette* 21 Mar 2006 p. 1078)
Contaminated Sites Amendment Act 2005	40 of 2005	12 Dec 2005	1 Dec 2006 (see s. 2 and *Gazette* 8 Aug 2006 p. 2899)
Financial Legislation Amendment and Repeal Act 2006 s. 17	77 of 2006	21 Dec 2006	1 Feb 2007 (see s. 2(1) and *Gazette* 19 Jan 2007 p. 137)
Reprint 1: The *Contaminated Sites Act 2003* as at 9 Feb 2007 (includes amendments listed above)			
Public Sector Reform Act 2010 s. 89	39 of 2010	1 Oct 2010	1 Dec 2010 (see s. 2(b) and *Gazette* 5 Nov 2010 p. 5563)
COVID-19 Response and Economic Recovery Omnibus Act 2020 Pt. 5 Div. 2 Subdiv. 1	34 of 2020	11 Sep 2020	12 Sep 2020 (see s. 2(b))
Environmental Protection Amendment Act 2020 s. 115	40 of 2020	19 Nov 2020	3 Feb 2021 (see s. 2(1)(e) and SL 2021/12 cl. 2)
Directors' Liability Reform Act 2023 Pt. 3 Div. 15	9 of 2023	4 Apr 2023	5 Apr 2023 (see s. 2(j))

Short title	Number and year	Assent	Commencement
Statutes (Repeals and Minor Amendments) Act 2025 s. 8	14 of 2025	25 Sep 2025	26 Sep 2025 (see s. 2(b))

Defined terms

[This is a list of terms defined and the provisions where they are defined. The list is not part of the law.]

Defined term	Provision(s)
a hazard	51(1)
Account	60(1)
act	3(1)
affected site	3(1), 3(1)
an act that was done without lawful authority	25(5)
auditor	3(1)
binding	3(1)
CEO	3(1)
CEO of the Health Department	3(1)
certificate of contamination audit	3(1)
classify	3(1)
clean up notice	3(1)
committee	3(1), 33(1)
contaminated	3(1), 4(1)
Crown land	5(2)
database	3(1)
decision as to responsibility for remediation	3(1), 35
detrimental action	95(3)
director	28(7)
engage in conduct	28(7)
EP Act	3(1)
exemption certificate	3(1)
first person	54(1)
guidelines	3(1)
hazard abatement notice	3(1)
insolvent	3(1)
insolvent body corporate	28(7)
interested person	36(3)
investigation notice	3(1)
land	61
management body	5(2)
management plan	3(1)
mandatory auditor's report	3(1)
notice	41
occupier	3(1)
orphan site	3(1), 32(1)
owner	3(1), 5(1)
person responsible	3(1)
principal offence	88(2)

programme ..... 12(7)
records ..... 3(1)
register ..... 58(9)
Registrar ..... 58(9)
relevant time ..... 28(7)
remediation ..... 3(1)
site ..... 3(1)
source site ..... 3(1), 3(1)
specified ..... 10(14), 86(2)
state of mind ..... 28(7)
summary of records ..... 21(2)
well ..... 93(2)

© State of Western Australia 2025.
This work is licensed under a Creative Commons Attribution 4.0 International Licence (CC BY 4.0).
To view relevant information and for a link to a copy of the licence, visit www.legislation.wa.gov.au.
Attribute work as: © State of Western Australia 2025.
By Authority: GEOFF O. LAWN, Government Printer