



CONTAMINATED LAND ACT 1991

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Queensland



Contaminated Land Act 1991

Act No. 96 of 1991

An Act to facilitate the management of contaminated land and for related purposes

[Assented to 11 December 1991]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows.

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Contaminated Land Act 1991*.

Commencement

2. This Act commences on a day to be fixed by proclamation.

Objects of Act

3. The objects of this Act include—
 - (a) to define contaminated land; and
 - (b) to prevent further contamination of land; and
 - (c) to identify all contaminated land in Queensland; and
 - (d) to establish a register of contaminated land; and
 - (e) to have information on contaminated land available to the public; and
 - (f) to enable assessment and, if necessary, remediation of contaminated land in Queensland to ensure the land does not present a hazard to human health or the environment; and
 - (g) to provide a mechanism for a site specific solution for each contaminated site based on a scientific assessment of the risk to health and the environment; and
 - (h) to provide, in appropriate cases, for recovery of costs of investigation and remediation of land from those who caused the contamination and from others; and
 - (i) to ensure that any restrictions on future use of contaminated land are maintained; and
 - (j) to provide for an advisory council to advise on policy issues.

Definitions

4. In this Act—

“approved” means approved for the time being by the Director;

“authorised person” means the Director or a person appointed under section 28;

“confirmed site” means a parcel of land classified under section 23 as a confirmed site;

“contaminated land” means land, a building or structure on land, or matter in or on land, that, in the opinion of the Director is affected by a hazardous substance so that it is, or causes other land, water or air to be, a hazard to human health or the environment;

“Director” means the Director of the Bureau of Emergency Services;

“discharge” includes escape in any way;

“former site” means a parcel of land classified under section 23 as a former site;

“hazardous substance” means a substance that because of its quantity, concentration, acute or chronic toxic effects, carcinogenicity, teratogenicity, mutagenicity, corrosiveness, flammability, or physical, chemical or infectious characteristics, may pose a hazard to human health or the environment when improperly treated, stored, disposed of or otherwise managed;

“land contamination” means any action that results in land becoming contaminated land;

“local authority” means—

- (a) a Local Authority within the meaning of the *Local Government Act 1936*; or
- (b) the Brisbane City Council; or
- (c) an Aboriginal Council within the meaning of the *Community Services (Aborigines) Act 1984*; or
- (d) an Island Council within the meaning of the *Community Services (Torres Strait) Act 1984*;

“occupier”, in relation to a place, includes the person in actual occupation or control of the place or, if there is no person in actual occupation or control, the owner;

“owner”, in relation to a place, means the person who has the freehold estate in the land or is entitled to possession of the land;

“possible site” means a parcel of land classified under section 23 as a possible site;

“probable site” means a parcel of land classified under section 23 as a probable site;

“released site” means a parcel of land classified under section 23 as a released site;

“restricted site” means a parcel of land classified under section 23 as a restricted site;

“waste” means a solid, gas or liquid, with or without matter in suspension or solution in it, (including sewage, household refuse, and materials used or produced in manufacturing processes, mining, agriculture, commerce or a trade, business or calling) that is capable of causing land contamination.

Act binds the Crown

5. This Act binds the Crown in all its capacities.

PART 2—ADMINISTRATION

Administration of Act

6.(1) Subject to the Minister, the Director administers this Act.

(2) The Minister may enter into arrangements with—

- (a) a Minister of the Commonwealth, another State or a Territory;
or
- (b) a University or Institute; or

- (c) another body or person;

with respect to an investigation, study or research that the Minister considers necessary or desirable for the purposes of this Act.

Application of Act

7. This Act applies to all land, other than land—

- (a) on which a radioactive substance, within the meaning of the *Radioactive Substances Act 1958*, is stored or used under that Act; or
- (b) that is the subject of a subsisting—
- (i) mining claim; or
 - (ii) exploration permit; or
 - (iii) mining lease; or
 - (iv) mineral development licence; or
 - (v) other authority;

under the *Mineral Resources Act 1989* that provides for the rectification or remediation of the land to the extent that contamination of the land is, or is to be, remediated under that Act; or

- (c) that is the subject of a subsisting—
- (i) lease; or
 - (ii) licence; or
 - (iii) permit;

under the *Petroleum Act 1923* that provides for the rectification or remediation of the land to the extent that contamination of the land is, or is to be, remediated under that Act.

Advisory Council

8. The Minister may establish an Advisory Council to carry out the functions set out in section 9.

Functions of Advisory Council

9.(1) The Advisory Council may, of its own motion or at the request of the Minister, consider and make recommendations to the Minister for—

- (a) the prevention, abatement or mitigation of land contamination; and
- (b) the preservation, restoration and enhancement of the quality of land that is, or may become, contaminated land.

(2) The Advisory Council may invite persons and organisations to make submissions to it relating to its functions.

Proceedings at Advisory Council meetings

10.(1) With the approval of the Minister, the Advisory Council is to meet at such times and places as it considers necessary to make recommendations to the Minister on matters relating to the administration of this Act.

(2) Subject to any regulation relating to the proceedings of the Advisory Council, the Advisory Council may regulate its proceedings as it considers appropriate.

(3) The Advisory Council is to cause full and accurate minutes to be kept of the proceedings of its meetings.

Committees

11. With the approval of the Minister, the Advisory Council may appoint advisory or technical committees to advise it on matters within the scope of its functions.

Allowances, etc.

12. Each member of the Advisory Council and each member of a committee appointed under section 11 is entitled to such allowances and fees, if any, as the Governor in Council may from time to time determine.

PART 3—PREVENTION OF LAND CONTAMINATION

Prohibition of land contamination

13.(1) A person must not cause land to become contaminated land.

(2) A person who contravenes subsection (1) commits an offence against this Act and is liable to—

- (a) a maximum penalty of 1000 penalty units; and
- (b) a maximum daily penalty of 100 penalty units for each day the offence continues after conviction or after service by the Director of notice of contravention of this section.

(3) Subsection (1) does not apply to anything done with the express authority of the Director or that is expressly authorised to be done by an Act.

Sites for disposal of hazardous substances

14.(1) The Minister may authorise the acquisition of land required for the disposal of hazardous substances.

(2) If a person—

- (a) delivers contaminated soil or a hazardous substance that—
 - (i) is removed from land within a local authority Area; and
 - (ii) is delivered to a place operated by, or on behalf of, the local authority; and
 - (iii) is of a standard determined by the Director, after consultation with the local authority, as suitable for disposal at such a place; and
- (b) pays the charges (if any) normally payable by persons depositing such soil or substances at the place; and
- (c) complies with all reasonable directions by the operator of the place for the deposit of the soil or substances;

the local authority, and the operator of the place, must not prevent or refuse

to allow the deposit of the soil or substance at the place.

Maximum penalty—100 penalty units.

(3) A person must not dispose of contaminated soil or a hazardous substance other than at a place approved by the Director.

Maximum penalty—100 penalty units.

(4) A person must not use contaminated soil, a hazardous substance or other contaminated matter from contaminated land without the prior approval of the Director.

Maximum penalty—100 penalty units.

Services in emergencies

15. The Minister may authorise the establishment of services to assist in the management of hazardous substances in emergency situations.

Special powers of authorised persons where imminent danger

16.(1) Despite anything to the contrary in this Act, an authorised person who reasonably believes that there is, or is likely to be, imminent danger of death or injury to persons or grave risk to the environment because—

- (a) hazardous substances have been or are being discharged; or
- (b) a condition of contaminated land is likely to arise; or
- (c) a hazardous substance appears to have been abandoned or dumped; or
- (d) the way in which a hazardous substance is being handled;

the authorised person may give to any person such directions, either orally or in writing, as the authorised person considers appropriate to remove, disperse, destroy, dispose of, abate, neutralise or treat any hazardous substance.

(2) If a person, who is not the person who caused or permitted the situation described in subsection (1) to arise, incurs costs in complying with a direction under subsection (1), the Director must reimburse the costs to the person.

(3) If the Director has reimbursed costs under subsection (2), the Director may recover the costs from a person who caused or permitted the situation described in subsection (1) to arise in a court of competent jurisdiction as a debt due to the State.

(4) A person to whom an authorised person gives a direction under this section must not, without reasonable excuse, fail to comply with the direction.

Maximum penalty for a contravention of this subsection—100 penalty units.

PART 4—REQUIREMENTS FOR CONTROL OF CONTAMINATED LAND

Notification of contamination

17.(1) An owner or occupier of land or other person who, before the commencement of this section, caused or permitted likely land contamination must notify the Director of the existence, or likely existence, of the contaminated land within—

- (a) a year of the commencement; or
- (b) 30 days of becoming aware of, or of the likelihood of, the contaminated land;

whichever is the later.

Maximum penalty—50 penalty units.

(2) An owner, occupier or other person who causes or permits land contamination, or causes or permits likely land contamination, after the commencement of this section, must notify the Director of the existence of the contaminated land within 30 days of becoming aware of, or of the likelihood of, the contaminated land.

Maximum penalty—100 penalty units.

(3) An owner or occupier of land who becomes aware that the land is, or is likely to be, contaminated must notify the Director within—

- (a) a year of the commencement of this section; or
- (b) 30 days of becoming aware;

whichever is the later.

Maximum penalty—50 penalty units.

(4) A local authority, Government department or other statutory authority must notify the Director of land within its jurisdiction that is, or is likely to be, contaminated, within—

- (a) a year of the commencement of this section; or
- (b) 30 days of its becoming aware of, or of the likelihood of, the contaminated land;

whichever is the later.

Maximum penalty—50 penalty units.

(5) For the purposes of subsection (4), land that is being, or has been, used for a prescribed purpose is taken to be land that is, or is likely to be, contaminated.

(6) Subsections (1), (2), (3) and (4) do not require notification of, or of the likelihood of, the particular contamination, of land if the Director already has notification.

(7) A person must not—

- (a) make a statement relating to alleged contamination of land that the person knows is false or misleading in a material particular; or
- (b) omit from a statement made in relation to the alleged contamination of land anything without which the statement is, to the person's knowledge, misleading in a material particular.

Maximum penalty—200 penalty units.

(8) A notification under this section must—

- (a) be in writing; and
- (b) contain relevant particulars required by the Director.

Investigations on direction of Director

18. The Director may from time to time direct an authorised person to carry out such inspection, investigation and enquiry as the Director considers appropriate for the purposes of this Act.

Assessment of sites

19.(1) If the Director suspects, on reasonable grounds, that a place may be contaminated land that was contaminated before commencement of this section, the Director may by written notice—

- (a) to a person whom the Director suspects has caused or permitted the contamination of the land; or
- (b) to the owner of the land; or
- (c) if—
 - (i) the Director reasonably believes that the contamination arose because of an approval or action of a local authority that the local authority should have known would result in contamination of the land; or
 - (ii) the land has been recorded in the Contaminated Sites Register as a restricted site and, after the recording, a local authority has given approval for the use of, or activity on, the land contrary to the restriction; or
 - (iii) the land has been recorded in the Contaminated Sites Register and after the recording—
 - (A) the land is being, or has been, used for a purpose prescribed for the purposes of section 17(5); and
 - (B) the local authority has permitted a use of, or activity on, the land;

that results in a hazard to human health or the environment;

to the local authority;

direct the person, owner or local authority, as the case may be, to provide to the Director a site investigation report.

(2) If the Director suspects, on reasonable grounds, that a place is contaminated land that was contaminated after commencement of this

section, the Director may by written notice—

- (a) to a person whom the Director suspects has caused or permitted the contamination of the land; or
- (b) if—
 - (i) when the land was acquired by the owner, the land was recorded in the Contaminated Sites Register as a confirmed site, restricted site or probable site; or
 - (ii) the contamination happened after the acquisition of the land by the owner;

to the owner; or

- (c) if—
 - (i) the Director reasonably believes that the suspected contamination arose because of an approval or action of a local authority that the local authority should have known would result in contamination of the land; or
 - (ii) the land has been recorded in the Contaminated Sites Register as a restricted site and, after the recording, a local authority has given approval for the use of, or activity on, the land contrary to the restriction; or
 - (iii) the land has been recorded in the Contaminated Sites Register and after the recording—
 - (A) the land is being, or has been, used for a purpose prescribed for the purposes of section 17(5); and
 - (B) the local authority has permitted a use of, or activity on, the land;

that results in a hazard to human health or the environment;

to the local authority;

direct the person, owner or local authority, as the case may be, to provide to the Director a site investigation report.

(3) A site investigation report must be—

- (a) prepared by a person of prescribed professional standing; and
- (b) in a form approved by the Director.

(4) If a site investigation report is not provided as directed in a notice given under subsection (1) or (2), the Director may—

- (a) cause a site inspection report to be prepared; and
- (b) by written notice, direct the person to whom the notice had been given to pay to the Director the cost of the preparation; and
- (c) recover from the person to whom the notice mentioned in paragraph (b) has been given, the amount set out in the notice in a court of competent jurisdiction as a debt due and owing to the State.

(5) Despite subsections (1) and (2), the Director may, at any time, cause a site investigation report to be prepared in relation to land suspected by the Director of being contaminated land.

(6) A person is not required to—

- (a) comply with a notice under subsection (1) or (2); or
- (b) pay the costs of the preparation of a site investigation report prepared under subsection (4);

if, on appeal by the person, the Planning and Environment Court makes an order that it is satisfied that—

- (c) the person caused the contamination while acting in accordance with lawful and accepted practices at the time; or
- (d) the contamination was caused before the commencement of this section and it would not be fair and reasonable for the person to be required to comply with the notice or pay the costs; or
- (e) the person is unable to pay the costs of obtaining the report;

but the person must pay such part of the costs (if any) as the Planning and Environment Court by order determines the person should pay.

(7) If the Director is not able to recover the costs of the preparation of a site investigation report prepared under subsection (4) or (5), the costs must be paid by—

- (a) the local authority in which Area the land is situated; and
- (b) the department;

in the shares agreed by the Minister and the local authority or, failing agreement, directed by the Minister.

(8) A person who fails to comply with a notice under subsection (1) or (2) commits an offence against this Act.

Maximum penalty—100 penalty units.

(9) A court that convicts a person of an offence against subsection (8) may, as well as the penalty imposed, order the offender to pay the costs, or part of the costs, of preparation of an appropriate site contamination report prepared, or to be prepared, under subsection (4).

Notice to remediate contaminated land

20.(1) If contaminated land has been contaminated before commencement of this section, the Director may by written notice—

- (a) to a person whom the Director suspects of having caused or permitted the contamination of the land; or
- (b) to the owner of the land; or
- (c) if—
 - (i) the contamination appears to have arisen because of action taken under an approval of a local authority that the local authority should have known would result in contamination of the land; or
 - (ii) the land has been recorded in the Contaminated Sites Register as a restricted site and, after the recording, the local authority has given approval for the use of, or activity on, the land contrary to the restriction; or
 - (iii) the land has been recorded in the Contaminated Sites Register and after the recording—
 - (A) the land is being, or has been, used for a purpose prescribed for the purposes of section 17(5); and
 - (B) the local authority has permitted a use of, or activity on, the land;

that results in a hazard to human health or the environment;

to the local authority;

direct the person, owner or local authority, as the case may be, to take the remediation measures set out in the notice.

(2) If contaminated land has been contaminated after commencement of this section, the Director may by written notice—

(a) to a person whom the Director suspects of having caused or permitted the contamination of the land; or

(b) if—

(i) when the land was acquired by the owner, the land was recorded in the Contaminated Sites Register as a confirmed site, restricted site or probable site; or

(ii) the contamination happened after the acquisition of the land by the owner;

to the owner; or

(c) if—

(i) the contamination appears to have arisen because of action taken under an approval of a local authority that the local authority should have known would result in contamination of the land; or

(ii) the land has been recorded in the Contaminated Sites Register as a restricted site and, after the recording, the local authority has given approval for the use of, or activity on, the land contrary to the restriction; or

(iii) the land has been recorded in the Contaminated Sites Register and after the recording—

(A) the land is being, or has been, used for a purpose prescribed for the purposes of section 17(5); and

(B) the local authority has permitted a use of, or activity on, the land;

that results in a hazard to human health or the environment;

the local authority;

direct the person, owner or local authority, as the case may be, to take the remediation measures specified in the notice.

(3) A person is not required to comply with a notice under subsection (1) or (2) if, on appeal by the person, the Planning and Environment Court makes an order that it is satisfied that—

- (a) the person caused the contamination while acting in accordance with lawful and accepted practices at the time; or
- (b) the contamination was caused before the commencement of this section and it would not be fair and reasonable for the person to be required to comply with the notice; or
- (c) the person is unable to pay the costs of the remediation measures;

but the person must pay such part of the costs (if any) as the Planning and Environment Court by order determines the person should pay.

(4) A person who fails to comply with a notice under subsection (1) or (2) commits an offence against this Act.

Maximum penalty—1000 penalty units.

(5) A court that convicts a person of an offence against subsection (4) may, as well as the penalty imposed, order the offender to pay the costs, or part of the costs, of the remediation measures taken in relation to the site under section 21.

(6) The Director may set out in the notice conditions, requirements, restrictions, performance standards and levels that the Director considers appropriate, including—

- (a) a condition or requirement that things set out in the notice are to be done to the satisfaction of the Director; and
- (b) a condition or requirement that things set out in the notice are to be done immediately or on a day or within or over a period specified in the notice; and
- (c) a condition or requirement that remediation measures are to be carried out in stages by a day or within or over a period set out in the notice; and
- (d) a condition or requirement that a measurement, recording, sample, report, plan, drawing, document, calculation, test, analysis, or thing must be lodged with, or approved by, the Director before a remediation measure or thing set out in the notice is carried out.

(7) The Director may recover reasonable costs incurred by the State in issuing a notice under subsection (1) or (2) from the person to whom the notice is issued in any court of competent jurisdiction as a debt due to the State.

(8) For the purposes of subsection (7), reasonable costs include labour, administrative and overhead costs determined on such basis as the Director considers appropriate.

Power to remediate contaminated land

21.(1) If—

- (a) a hazardous substance has been or is being discharged; or
- (b) a condition of contaminated land is likely to arise; or
- (c) a hazardous substance appears to have been abandoned or dumped; or
- (d) a condition of contamination of land has been confirmed; or
- (e) a notice under section 20 is not complied with;

the Director may cause such remediation of the site to be conducted as the Director considers necessary.

(2) Before remediation of a site is carried out under subsection (1), the Director must give written notice to the occupier and to the owner of the land setting out—

- (a) that remediation work is to be carried out; and
- (b) the nature of the work to be carried out; and
- (c) the likely times when the work is to be carried out; and
- (d) if the nature of the work necessitates that persons not be on the land— the day and times when persons must not be on the land.

(3) All persons carrying out remediation of a site on behalf of the Director may enter the land and do all things necessary to effect the remediation.

(4) If a person is on land at a time set out in a notice under subsection (2)(d), a police officer, at the request of an authorised person, may, using such force as is reasonable and necessary—

- (a) remove the person from the land; and
- (b) take all reasonable measures to ensure that the person does not enter the land during the times set out in the notice.

(5) The Director may by written notice to—

- (a) the person whose action caused the Director to take the action; or
- (b) the owner of the place on which anything mentioned in subsection (1) has happened; or
- (c) the local authority whose action or approval resulted in the contamination of the land;

direct the person, owner or local authority, as the case may be, to pay to the Director, within a specified time (not less than 21 days from the giving of the notice) a specified amount that represents the reasonable costs incurred by the State in taking action under subsection (1).

(6) For the purposes of subsection (5), reasonable costs include labour, administrative and overhead costs (determined on such basis as the Director considers appropriate) incurred because of or attributable to any action taken by the Director under subsection (1).

(7) If a person or local authority does not comply with the notice within the specified time, the Director may recover from the person or authority the amount unpaid by action in a court of competent jurisdiction as a debt due to the State.

(8) If action is taken on behalf of the Director to execute against property to recover costs under this section, the Director is entitled, in priority to all others, other than—

- (a) a local authority in relation to unpaid rates and charges; or
- (b) a registered mortgagee under a mortgage that was lodged for registration before particulars of the classification of the land as a contaminated site were recorded in the Contaminated Sites Register;

to payment of the unpaid amount from the proceeds of the sale of the property.

(9) If the Director is not able to recover under subsection (5) the costs of remediation measures taken in relation to contaminated land, the costs must be paid by—

- (a) the local authority in which Area the land is situated; and
- (b) the department;

in the shares agreed by the Minister and the local authority or, failing

agreement, directed by the Minister.

Validation report

22.(1) If action has been taken under this Act to remediate a contaminated site—

- (a) the person who caused the land to be contaminated; or
- (b) the owner; or
- (c) the local authority;

may, and, if directed by written notice by the Director, must, provide a validation report in relation to the site to the Director in a form approved by the Director.

(2) A validation report must be prepared by a person of a prescribed professional standing.

(3) The validation report must be assessed by the Director and a site contamination report in a form approved by the Director is to be provided to the person, owner or local authority providing the report.

Classification of sites

23.(1) The Director may, at any time, classify land as—

- (a) a possible site; or
- (b) a probable site; or
- (c) a confirmed site; or
- (d) a restricted site; or
- (e) a former site; or
- (f) a released site.

(2) As soon as practicable after classifying land under subsection (1), the Director must cause—

- (a) the prescribed particulars in relation to the land to be recorded in the Contaminated Sites Register; and

(b) written notice of the classification to be given to the relevant local authority.

(3) As soon as practicable after classifying land under subsection (1) (other than as a possible site), the Director must cause written notice of a classification of land to be given to the owner of the land.

(4) Land may be classified as a possible site if—

- (a) the land, or its locality, is reported to be contaminated; or
 - (b) a use of the land may have caused the land to be contaminated;
- but the land has not been given any other classification under subsection (1).

(5) Land may be classified as a probable site if a current or past use of, or activity on, the land is a prescribed use or the sort of use or activity that is known to have caused, or may have caused, land to become contaminated land.

(6) Land may be classified as a confirmed site if, an assessment by the Director demonstrates a level of contamination that, in the opinion of the Director, represents a health or environmental hazard.

(7) Land may be classified as a restricted site if—

- (a) the level of contamination of the land is, in the opinion of the Director, such that it might permit a limited use or on-site activity; and
- (b) the limited use or on-site activity of the land is specified in the classification.

(8) Land may be classified as a former site if—

- (a) it was previously classified as a probable site, confirmed site or restricted site; and
- (b) following action taken to remediate the land, on investigation by the Director, the Director is satisfied that the land is no longer, contaminated land.

(9) Land may be classified as a released site if—

- (a) the land has been classified as a possible site or a probable site; and

- (b) on investigation by the Director, the Director is satisfied that the land is not contaminated land.

Contaminated Sites Register

24.(1)A Contaminated Sites Register is to be maintained in the department.

(2) There must be recorded in the register relevant particulars approved from time to time by the Director relating to land classified under section 23.

(3) A person is entitled, on payment of the prescribed fee and during ordinary office hours, to—

- (a) inspect; and
- (b) obtain a copy of;

any part of the Contaminated Sites Register other than the part that relates to possible sites.

Records to be maintained by Registrar of Titles and other registrars

25.(1) In relation to land classified under section 23 as probable sites, confirmed sites and restricted sites and recorded in the Contaminated Sites Register, the Director must give written notification to the Registrar of Titles or other relevant person charged with recording interests in land that the land has been classified under this Act.

(2) The Registrar of Titles or a person charged with recording interests in land is to maintain records that the land set out in an appropriate notification has been classified and that particulars of the classification are available from the Contaminated Sites Register.

(3) On land ceasing to be classified as a site mentioned in subsection (1), the Director must give written notification to the Registrar of Titles or other relevant person charged with recording interests in land that the land is no longer to be recorded as classified under this Act.

(4) The Registrar of Titles or a person charged with recording interests in land is to remove particulars of the land set out in the appropriate notification from the records maintained under subsection (2).

Restriction on use of restricted sites

26.(1) A person must not use a restricted site contrary to a restriction specified in the classification of the site.

Maximum penalty—100 penalty units.

(2) A local authority must not, through an approval or other authorisation under any Act, facilitate the use of or activity on, a restricted site contrary to a restriction specified in the classification of the site.

Maximum penalty—100 penalty units.

Notice of classification of land before disposal

27.(1) Before a person disposes (whether or not for a price) of land that is a probable site, a confirmed site or a restricted site to another person, the person must give written notice to the other person setting out—

- (a) the classification of the land; and
- (b) particulars of any current, or unsatisfied, notices given under this Act in relation to the land.

(2) Subsection (1) does not apply to the transfer or disposition of land to a person as a beneficiary of a deceased estate.

PART 5—AUTHORISED PERSONS**Authorised persons**

28.(1) The Director may authorise a person, or a class of persons, to exercise—

- (a) all the powers conferred by this Act on an authorised person; or
- (b) any powers conferred by this Act on an authorised person.

(2) The Director may cause an identity card to be issued to an authorised person.

(3) The identity card must—

- (a) contain a recent photograph of the authorised person; and
- (b) be in a form approved by the Director.

(4) A person who ceases to be an authorised person must, as soon as practicable, return his or her identity card to the Director.

Maximum penalty—10 penalty units.

(5) An authorised person may hold an appointment under this Act in conjunction with any other position in the public service or a local authority.

Authorised person to produce identity card

29. An authorised person is not entitled to exercise powers under this Act in relation to another person unless the authorised person first produces the authorised person's identity card for inspection by the person.

Entry and search—monitoring compliance

30.(1) Subject to subsection (2), an authorised person, for the purpose of finding out whether—

- (a) land is contaminated land; or
- (b) a substance is a hazardous substance likely to contaminate land; or
- (c) any waste or hazardous substance is being, or is likely to be, discharged or deposited; or
- (d) the requirements of this Act are being complied with;

may—

- (e) enter any place; and
- (f) exercise the powers set out in section 32.

(2) An authorised person must not enter a place, or exercise a power under subsection (1), unless—

- (a) the place is a place where a substance suspected to be a hazardous substance is stored, processed, treated or handled for industrial or commercial purposes; or

- (b) an authorised person is of the opinion that there is, or is suspected to be, a hazardous substance stored, processed, treated or handled at the place that is likely to cause imminent danger of death or injury to persons or grave risk to the environment; or
- (c) the occupier of the place (if any) consents to the entry or boarding or exercise of the power; or
- (d) a warrant under section 33 authorises the entry or exercise of the power.

(3) An authorised person must not exercise a power set out in section 32(1)(b) or (c) unless—

- (a) the occupier of the land consents; or
- (b) the occupier of the land, or, if there is no known occupier, the person who appears from the appropriate records to be the owner of the land has been given written notice, not less than 7 days before the proposed exercise of the power, setting out—
 - (i) the land to be entered; and
 - (ii) the action to be taken; and
 - (iii) the name and occupation of the person to exercise the power.

(4) If the Director believes, on reasonable grounds, that it is necessary to act immediately, and the notice sets out that fact, 7 days notice need not be given.

Entry and search—evidence of offences

31.(1) Subject to subsection (3), if an authorised person has reasonable grounds for suspecting that there is in or on a place a particular thing (in this section called “**the evidence**”) that may afford evidence of the commission of an offence against this Act, the authorised person may—

- (a) enter the place; and
- (b) exercise the powers set out in section 32.

(2) If an authorised person enters or boards the place and finds the evidence, the following provisions have effect—

- (a) the authorised person may seize the evidence;

- (b) the authorised person may keep the evidence for 60 days or, if a prosecution for an offence against this Act in the commission of which the evidence may have been used or otherwise involved is instituted within that period, until the completion of the proceeding for the offence and of any appeal from the decision in relation to the proceeding;
- (c) if the evidence is a document—while the authorised person has possession of the document, the authorised person may take extracts from and make copies of the document, but must allow the document to be inspected at any reasonable time by a person who would be entitled to inspect it if it were not in the authorised person's possession.

(3) An authorised person must not enter the place or exercise a power under subsection (1) unless—

- (a) the occupier (if any) of the place consents to the entry or exercise of the power; or
- (b) a warrant under section 34 that was issued in relation to the evidence authorises the entry or exercise of the power.

(4) If, in the course of searching the place under subsection (1) under a warrant under section 34, an authorised person—

- (a) finds a thing that the authorised person believes, on reasonable grounds to be—
 - (i) a thing (other than the evidence) that will afford evidence of the commission of the offence mentioned in subsection (1); or
 - (ii) a thing that will afford evidence of the commission of another offence against this Act; and
- (b) the authorised person believes, on reasonable grounds, that it is necessary to seize the thing to prevent—
 - (i) its concealment, loss or destruction; or
 - (ii) its use in committing, continuing or repeating the offence mentioned in subsection (1), or the other offence, as the case may be;

subsection (2) applies to the thing as if it were the evidence.

(5) An authorised person who seizes or damages anything under this section must give written notice of particulars of the thing or damage.

(6) The notice must be given to—

- (a) if anything is seized—the person from whom the thing was seized; or
- (b) if damage is caused to anything—the person who appears to the authorised person to be the owner.

General powers of authorised person in relation to places

32. The powers an authorised person may exercise under section 30(1)(b) or 31(1)(b) in relation to a place are as follows—

- (a) to search any part of the place;
- (b) to take and remove samples of soil, water or another substance;
- (c) to make studies to assess whether land is contaminated, or is likely to be contaminated by any substance—
 - (i) discharged; or
 - (ii) being discharged; or
 - (iii) likely to be discharged;on the land and to monitor the effect of any such discharge;
- (d) to do all things necessary to exercise the powers mentioned in paragraph (b);
- (e) to inspect, examine or capture images of anything in or on the place;
- (f) to take extracts from, and make copies of, any documents in or on the place;
- (g) to take into or onto the place such equipment and materials as the authorised person requires for the purpose of exercising any powers in relation to the place.

Monitoring warrants

33.(1) An authorised person may apply to a Magistrate for a warrant under this section in relation to a particular place.

(2) Subject to subsection (3), the Magistrate may issue the warrant if the Magistrate is satisfied, by information on oath, that it is reasonably necessary that the authorised person should have access to the place for the purpose of finding out whether the requirements of this Act are being complied with.

(3) If the Magistrate requires further information concerning the grounds on which the issue of the warrant is being sought, the Magistrate must not issue the warrant unless the authorised person or some other person has given the information to the Magistrate in the form (either orally or by affidavit) that the Magistrate requires.

(4) The warrant must—

- (a) authorise the authorised person, with such assistance and by such force as is necessary and reasonable—
 - (i) to enter the place; and
 - (ii) to exercise the powers set out in section 32; and
- (b) state whether the entry is authorised to be made at any time of the day or night or during specified hours of the day or night; and
- (c) specify the day (not more than 6 months after the issue of the warrant) on which the warrant ceases to have effect; and
- (d) state the purpose for which the warrant is issued.

Offence related warrants

34.(1) An authorised person may apply to a Magistrate for a warrant under this section in relation to a particular place.

(2) Subject to subsection (3), the Magistrate may issue the warrant if the Magistrate is satisfied, by information on oath, that there are reasonable grounds for suspecting that there is, or there may be within the next 72 hours, in or on the place a particular thing (in this section called “**the evidence**”) that may afford evidence of the commission of an offence against this Act.

(3) If the Magistrate requires further information concerning the grounds on which the issue of the warrant is being sought, the Magistrate must not issue the warrant unless the authorised person or some other

person has given the information to the Magistrate in the form (either orally or by affidavit) that the Magistrate requires.

(4) The warrant must—

- (a) authorise the authorised person, with such assistance and by such force as is necessary and reasonable—
 - (i) to enter the place; and
 - (ii) to exercise the powers set out in section 32; and
 - (iii) to seize the evidence; and
- (b) state whether the entry is authorised to be made at any time of the day or night or during specified hours of the day or night; and
- (c) specify the day (not more than 7 days after the issue of the warrant) on which the warrant ceases to have effect; and
- (d) state the purposes for which the warrant is issued.

Grant of warrant by telephone

35.(1) If, because of circumstances of urgency, an authorised person considers it necessary to do so, the authorised person may, under this section, apply by telephone for a warrant under section 34.

(2) Before applying for the warrant, the authorised person must prepare an information of the kind mentioned in section 34(2) that sets out the grounds on which the issue of the warrant is sought.

(3) If it is necessary to do so, an authorised person may apply for the warrant before the information has been sworn.

(4) If the Magistrate is satisfied—

- (a) after having considered the terms of the information; and
- (b) after having received such further information (if any) as the Magistrate requires concerning the grounds on which the issue of the warrant is being sought;

that there are reasonable grounds for issuing the warrant, the Magistrate may, under section 34, complete and sign such warrant as the Magistrate would issue under that section if the application had been made under that section.

(5) If the Magistrate completes and signs the warrant—

- (a) the Magistrate must—
 - (i) tell the authorised person what the terms of the warrant are; and
 - (ii) tell the authorised person the date on which and the time at which the warrant was signed; and
 - (iii) record on the warrant the reasons for granting the warrant; and
- (b) the authorised person must—
 - (i) complete a form of warrant in the same terms as the warrant completed and signed by the Magistrate; and
 - (ii) write on the form of warrant the name of the Magistrate and the date on which and the time at which the Magistrate signed the warrant.

(6) The authorised person must also, not later than the day after the day of expiry or execution of the warrant (whichever is the earlier), send to the Magistrate—

- (a) the form of warrant completed by the authorised person; and
- (b) the information mentioned in subsection (2), which must have been duly sworn.

(7) When the Magistrate receives the documents mentioned in subsection (6), the Magistrate must—

- (a) attach them to the warrant that the Magistrate completed and signed; and
- (b) deal with them in the way in which the Magistrate would have dealt with the information if the application for the warrant had been made under section 34.

(8) A form of warrant duly completed by the authorised person under subsection (5) is authority for any entry, search, seizure or other exercise of a power that the warrant signed by the Magistrate authorises.

(9) If—

- (a) it is material, in a proceeding, for a court to be satisfied that an entry, search, seizure or other exercise of power was authorised by this section; and

- (b) the warrant completed and signed by the Magistrate authorising the exercise of power is not produced in evidence;

the court must assume, unless the contrary is proved, that the exercise of power was not authorised by such a warrant.

Production to authorised person of reports etc.

36.(1) An authorised person may, by written notice, require—

- (a) the occupier of a place on or from which—
 - (i) a hazardous substance has been, is being or is likely to be discharged; or
 - (ii) a hazardous substance is stored, processed, treated or otherwise handled;to produce to the authorised officer any reports, books, plans, maps or documents relating to—
 - (iii) the discharge from the place of any hazardous substance; or
 - (iv) the storage, processing, treatment or handling of any hazardous substance or data from any monitoring equipment or program; and
- (b) a person to produce to the authorised person any reports, books, plans, maps or documents in the custody or possession of the person relating to any apparatus, equipment or works used for—
 - (i) the discharge, emission or deposit of any hazardous substance; or
 - (ii) the storage, processing, treatment or handling of any hazardous substance;

within a specified time (not less than 10 days from the giving of the notice).

(2) An authorised person may take copies of any reports, books, plans, maps or documents produced under this section.

(3) A person given a notice under subsection (1) must comply with the notice.

Maximum penalty—50 penalty units.

Authorised person may require name and address

37.(1) An authorised person who finds a person committing, or finds a person that the authorised person reasonably suspects of having committed, an offence against this Act may require the person to state the person's name and address and, if the authorised person has reasonable grounds to believe that the name or address given is false, may require evidence of its correctness.

(2) A person who is required under subsection (1) to state the person's name or address must not, without reasonable excuse—

- (a) fail to comply with the requirement; or
- (b) state a false name or address.

Maximum penalty—50 penalty units.

(3) A person who is required under subsection (1) to give evidence of the correctness of a name or address must not, without reasonable excuse, fail to give the evidence or give false evidence.

Maximum penalty—50 penalty units.

(4) If—

- (a) an authorised person makes a requirement under subsection (1) on a suspicion of a person having committed an offence; and
- (b) the person is not proved to have committed the suspected offence;

the person is not guilty of an offence under this section.

Obstruction etc. of authorised persons

38. A person must not, without reasonable excuse, obstruct, hinder or resist an authorised person in the exercise of a power under this Act.

Maximum penalty—50 penalty units.

False or misleading statements

39. A person must not—

- (a) make a statement to an authorised person that the person knows

is false or misleading in a material particular; or

- (b) omit from a statement made to an authorised person any matter or thing without which the statement is, to the knowledge of the person, misleading in a material particular; or
- (c) give to an authorised person a document containing information that the person knows is false, misleading or incomplete in a material particular without—
 - (i) indicating to the authorised person that the document is false, misleading or incomplete and the respect in which the document is false, misleading or incomplete; and
 - (ii) providing correct information to the authorised person if the person has, or can reasonably obtain, the correct information.

Maximum penalty—50 penalty units.

PART 6—APPEALS

Appeal against decision of Director or Minister

40.(1) If the Director—

- (a) gives a notice under section 19(1) or (2) directing a site investigation report to be provided; or
- (b) gives a notice under section 19(4)(c) directing the payment of costs of providing a site investigation report; or
- (c) gives a notice under section 20(1) or (2) directing the taking of remediation measures; or
- (d) gives a notice under section 20(6) setting out a condition, requirement, restriction or performance standard or level; or
- (e) gives a notice under section 21(2) of remediation to be carried out by the Director; or
- (f) gives a notice under section 21(5) directing the payment of costs; or

- (g) gives a notice under section 22(1) directing a validation report to be provided; or
- (h) gives notice under section 23(2) of the classification of land;

the person or local authority to whom the notice is given may appeal to the Planning and Environment Court (in this section called the “**Court**”) against the notice.

(2) If the Minister gives a direction under section 19(7) or 21(9), the local authority concerned may appeal to the Court against the direction.

(3) Jurisdiction is conferred on the Court to hear and determine appeals made to it under this Act.

(4) An appeal is to be instituted by written notice of appeal lodged with the Court within 40 days from the giving of the notice or direction, or such longer period as the Court may, in a particular case, allow.

(5) The grounds of appeal are to be clearly set out in the notice of appeal.

(6) The appellant must, within 7 days of lodging a notice of appeal, serve a copy of the notice on the Director or the Minister, as the case may be.

Conduct of appeal

41.(1) The institution and conduct of the appeal under section 40 is to be made—

- (a) as prescribed and in accordance with the *Local Government (Planning and Environment) Act 1990* and the Rules of Court made under that Act in relation to such appeals; and
- (b) to the extent that the Act or the Rules do not provide, as directed by a Judge constituting the Court.

(2) In the appeal, the Director is entitled to appear and be heard, either personally or represented by an officer of the department or by counsel or solicitor.

(3) Section 7.6 of the *Local Government (Planning and Environment) Act 1990* applies to an appeal under this Act.

Decision on appeal

42.(1) On appeal, the Court may—

- (a) affirm the notice or direction; or
- (b) set aside the notice or direction; or
- (c) substitute its own notice or direction for that appealed against; or
- (d) amend the notice or direction as it considers appropriate.

(2) A substituted notice or direction and a notice or direction as amended under subsection (1)(c) or (d) takes effect as if it were a notice or direction of the Director or the Minister, as the case may be.

(3) A notice or direction made on appeal by the Court is to be given effect by all persons concerned.

PART 7—GENERAL PROVISIONS**Attempts to commit offences**

43. A person must not attempt to commit an offence against this Act.

Maximum penalty—the penalty prescribed for the offence attempted.

Daily penalty

44. A person who is convicted of an offence against section 14(2), (3) or (4), 16(1), 20(4), 36(1) or 38 is, as well as the penalty prescribed for the offence, liable to a maximum penalty of 5 penalty units for each day the offence continues after—

- (a) conviction of the offence; or
- (b) the giving of a written notice by the Director to the person alleging the offence and stating that an offender is liable, on conviction, to a penalty for each day the offence continues after the giving of the notice;

whichever first happens.

Offence to destroy signs

45. A person must not destroy, pull down, injure, deface or interfere with any notice, order or copy of a provision of this Act or of a regulation displayed on the direction of the Minister or the Director for the purposes of this Act.

Maximum penalty—10 penalty units.

Proceedings for offences

46.(1) A prosecution for an offence against this Act is to be by way of summary proceedings under the *Justices Act 1886*.

(2) A prosecution for an offence against section 13 or 26 may be commenced within a year after the Director gains knowledge of the offence.

Occupier not to obstruct owner carrying out functions

47.(1) An occupier of land that is the subject of a notice under this Act must not, without reasonable excuse, obstruct, hinder or resist the owner of the land in complying with the notice.

Maximum penalty—100 penalty units.

(2) On application by an owner of land, a Magistrate, if satisfied that it is necessary for certain action to be taken to comply with the notice, may by written order require the occupier to permit the owner, and persons acting on behalf of the owner, to enter the land and take the action at the times specified in the order.

(3) The occupier of the land must comply with the order.

Maximum penalty—100 penalty units.

(4) An owner of land who is obstructed or hindered by an occupier of the land from complying with a notice under this Act is not liable for the failure to comply with the notice caused by the obstruction or hindrance if the owner shows that—

- (a) the owner had taken all reasonable steps to comply with the notice; and
- (b) if appropriate, had taken action under subsection (2).

Notice to obstructing occupier to comply with notice

48.(1) If the Director is satisfied that an owner of land has been unable to comply with a notice under this Act because of being obstructed or hindered by the occupier of the land, the Director may give to the occupier a notice that could have been given to the owner.

(2) The provisions of this Act that apply to the owner of land apply to an occupier given a notice under subsection (1) as if the occupier were the owner.

Occupier of land to supply information on request

49.(1) The Director may, at any time, by written notice given to the occupier of a place from which a hazardous substance is being, is suspected or is likely to be, discharged on to land require the occupier to give to the Director, within a specified time (not less than 14 days from the giving of the notice), information on the substance and on—

- (a) the plant in or on the place; and
- (b) any trade, industry or process carried on at the place;

relevant to the substance or discharge.

(2) A person given a notice under subsection (1) must comply with the notice.

Maximum penalty—100 penalty units.

Secrecy

50.(1) In this section—

“court” includes any tribunal, authority or person having power to require the production of documents or the answering of questions;

“person to whom this section applies” means a person who is or has been—

- (a) the Director; or
- (b) an authorised person; or

- (c) an officer or employee of the department carrying out functions on behalf of the Director;

“produce” includes permit access to;

“protected document” means a document that—

- (a) contains information that concerns a person; and
- (b) is obtained or made by a person to whom this section applies in the course of, or because of, the person’s duty under or in relation to the administration of this Act;

“protected information” means information that—

- (a) concerns a person; and
- (b) is disclosed to, or obtained by, a person to whom this section applies in the course of, or because of, the person’s duties under or in relation to the administration of this Act.

(2) A person to whom this section applies must not—

- (a) make a record of any protected information; or
- (b) whether directly or indirectly, divulge or communicate to a person any protected information concerning another person;

unless the record is made, or the information divulged or communicated—

- (c) under or for the purposes of the administration of this Act; or
- (d) in the performance of duties, as a person to whom this section applies, under or in relation to the administration of this Act.

Maximum penalty—100 penalty units.

(3) Subsection (2) does not prevent a person from divulging or communicating information to the Minister, the Director, an authorised person or an officer or employee of the department carrying out functions on behalf of the Director for the purpose of the administration of this Act.

(4) Subsection (2) does not apply to disclosure of information—

- (a) for the purposes of this Act; or
- (b) with the authorisation of the Minister or the Director; or

- (c) ordered by a court to be disclosed for the purposes of proceedings before it; or
- (d) required by law to be disclosed.

Certain persons liable for offences by bodies corporate

51.(1) If a body corporate is subject to the provisions of this Act, the managing director, manager or other governing officer, by whatever name called, of the body must ensure that the body complies with the provisions.

Maximum penalty—

- (a) if the penalty is prescribed for a contravention of the provision— the penalty; or
- (b) if a penalty is not prescribed for a contravention of the provision—100 penalty units.

(2) It is a defence to a prosecution brought against a person for an offence against subsection (1) to prove—

- (a) that the failure of the body corporate to comply with a provision of this Act, happened without the person's consent or connivance; and
- (b) that the person took all reasonable steps to prevent the failure.

Indemnity

52. An authorised person and a person acting under the direction of an authorised person are indemnified by the State against all actions, proceedings and claims in relation to—

- (a) acts done, or omitted to be done, by the person without negligence under this Act; and
- (b) acts done, or omitted to be done, by the person in good faith and without negligence for the purposes of this Act.

Director not required to act

53. Nothing in this Act is to be read as requiring the Director to give a notice or to carry out—

- (a) remediation of any land; or
- (b) remediation to a standard other than one that the Director considers appropriate.

Delegation

54. The Director may delegate all or any of the powers of the Director under this Act to an officer of the department.

Certain notices and directions to contain statement of right to appeal

55. A notice or direction mentioned in section 40(1), and a direction mentioned in section 40(2), must contain a statement that section 40 confers a right of appeal to the Planning and Environment Court.

Regulations

56.(1) The Governor in Council may make regulations, not inconsistent with this Act, with respect to any matter that—

- (a) is required or permitted to be prescribed by this Act; or
- (b) is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Without limiting subsection (1), regulations may be made with respect to the matters set out in the Schedule including regulating or controlling persons and things in relation to those matters.

(3) A regulation may impose a maximum penalty of not more than 200 penalty units for a contravention of a regulation.

Evidentiary provisions

57.(1) In a proceeding under or for a purpose of this Act—

- (a) it is not necessary to prove the appointment of an authorised person; and
- (b) a signature purporting to be that of the Director, an authorised person or analyst is *prima facie* evidence of the signature it purports to be; and
- (c) the authority of a person authorised by the Director to take any proceedings is presumed unless the contrary is proved; and
- (d) a certificate purporting to be signed by the Director stating that it is a copy of a notice, order or requirement under this Act is *prima facie* evidence of the matter stated in the certificate; and
- (e) a certificate purporting to be signed by the Director stating that it is a copy of a part of a register kept under this Act is *prima facie* evidence of the matter stated in the certificate; and
- (f) a certificate purporting to be signed by the Director that on a day or during a period mentioned in the certificate—
 - (i) a person was or was not a person given a notice under this Act; or
 - (ii) conditions specified in the certificate were attached to a notice given under this Act;is, on its production, *prima facie* evidence of the matters stated in the certificate; and
- (g) the averment in a complaint of the date on which the commission of an offence against this Act came to the knowledge of the Director is *prima facie* evidence of the matter; and
- (h) the production by the prosecutor of a certificate purporting to be signed by an analyst and stating—
 - (i) that the analyst received from the person named in the certificate the sample referred to in the certificate; and
 - (ii) that the analyst analysed the sample on the day and at the place named in the certificate; and
 - (iii) the results of the analysis;

is prima facie evidence of the matters contained in the certificate.

(2) Subsection (1)(h) does not apply if the defendant gives notice to the prosecutor, not less than 7 days before the hearing of the proceeding, that the defendant requires that the analyst be called as a witness.

SCHEDULE

section 56

Subject Matter for Regulations

- 1.** Management and operation of registers under this Act.
- 2.** Fees, charges and costs payable under this Act.
- 3.** Studies to be carried out, and records to be maintained, by occupiers of places.
- 4.** Types, and operation and maintenance, of control equipment to be used in or on places.
- 5.** Assistance, access and facilities to be provided to authorised officers by occupiers of places in relation to examinations, inspections and tests for the purposes of this Act.
- 6.** Methods of taking, preserving and transporting samples and making tests, measurements and analyses for the purposes of this Act.
- 7.** Returns of information, statistics and data relating to land quality and land contamination.
- 8.** Land quality objectives, land management quality plans, land quality criteria and land quality standards.
- 9.** Qualifications of persons operating works or control equipment for the prevention, abatement or mitigation of land contamination.
- 10.** Conditions for the use of, and activities on, contaminated land.
- 11.** Prevention, abatement and mitigation of land contamination caused by the accidental discharge of wastes to land, and methods of removal, dispersal and rendering harmless of discharges.
- 12.** Transport, storage and disposal of hazardous substances or contaminated land.
- 13.** Control of land contamination.

