

Queensland



**ENVIRONMENTAL AND
OTHER LEGISLATION
AMENDMENT BILL 1997**

Queensland



ENVIRONMENTAL AND OTHER LEGISLATION AMENDMENT BILL 1997

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1997

A BILL

FOR

**An Act to amend certain Acts administered by the Minister for the
Environment and for other purposes**

*Environmental and Other Legislation
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The Parliament of Queensland enacts—

1

PART 1—PRELIMINARY

2

Short title

3

Clause **1.** This Act may be cited as the *Environmental and Other Legislation Amendment Act 1997*.

4

5

Commencement

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

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**PART 2—AMENDMENT OF ENVIRONMENTAL
PROTECTION ACT 1994**

8

9

Act amended

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Clause **3.** This part amends the *Environmental Protection Act 1994*.

11

Amendment of s 20 (Effect of Act on other Acts)

12

Clause **4.** Section 20(2), ‘• *Pollution of Waters by Oil Act 1973*’—
omit, insert—

13

14

‘• *Transport Operations (Marine Pollution) Act 1995*’.

15

Amendment of s 35 (Application date)

16

Clause **5.(1)** Section 35(1)(b)—

17

renumber as section 35(1)(d).

18

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	(2) Section 35(1)(a)—	1
	<i>omit, insert—</i>	2
	‘(a) an application for an environmental authority; or	3
	(b) an amendment of a licence or level 1 approval; or	4
	(c) a transfer of a licence; or.’.	5
	(3) Section 35(2), ‘licence’—	6
	<i>omit, insert—</i>	7
	‘environmental authority’.	8
	 Replacement of s 39 (Level 1 environmentally relevant activities to be licensed)	 9 10
Clause	6. Section 39—	11
	<i>omit, insert—</i>	12
	‘Licence or approval required to carry out level 1 environmentally relevant activities	13 14
	‘39.(1) A person must not carry out a level 1 environmentally relevant activity without a licence or a level 1 approval.	15 16
	Maximum penalty—400 penalty units.	17
	‘(2) Subsection (1) has effect subject to section 61A. ¹ ’.	18
	 Amendment of s 40 (Approvals required to carry out certain level 2 environmentally relevant activities)	 19 20
Clause	7. Section 40, ‘an approval’—	21
	<i>omit, insert—</i>	22
	‘a level 2 approval’.	23

¹ Section 61A (Special provisions for environmental authorities to carry out new environmentally relevant activities)

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Amendment of s 41 (Application for environmental authority)		1
Clause	8. Section 41—	2
	<i>insert—</i>	3
	‘(2) An application for a level 1 approval for a level 1 environmentally relevant activity may be made only by a person who—	4 5
	(a) has held a licence (other than a provisional licence) to carry out the activity for 2 years or more; and	6 7
	(b) has not contravened the conditions of the licence in the 2 years immediately before the application is made; and	8 9
	(c) is not the holder of an environmental management program approval for the activity or subject to an environmental protection order in carrying out the activity. ² ’.	10 11 12
 Amendment of s 44 (Criteria for deciding application)		 13
Clause	9. Section 44—	14
	<i>insert—</i>	15
	‘(2) Also, if the application is for a level 1 approval for a level 1 environmentally relevant activity, the administering authority may grant the application only if it is satisfied the risk of environmental harm from the activity is insignificant because of—	16 17 18 19
	(a) any applicable cleaner production techniques used by the licensee; and	20 21
	(b) any applicable waste minimisation practices used by the licensee; and	22 23

² Section 44(2) sets out the criteria the administering authority must consider in deciding an application for a level 1 approval.. The administering authority may grant the application only if it is satisfied the risk of environmental harm from the activity carried out by the licensee is insignificant. In particular, section 44(2)(d) provides that the administering authority must be satisfied the licensee’s implementation of best practice environmental management techniques has resulted in levels of environmental protection over and above the levels required by the conditions of the licence.

*Environmental and Other Legislation
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| | (c) contingency plans the licensee has developed to manage abnormal or emergency situations that may arise in carrying out the activity; and | 1
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3 |
| | (d) the licensee's implementation of best practice environmental management techniques has resulted in levels of environmental protection over and above the levels required by the conditions of the licence; and | 4
5
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7 |
| | (e) the licensee's compliance with the general environmental duty.' | 8 |

	Amendment of s 45 (Grant of application for environmental authority)	9 10
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| Clause | 10.(1) Section 45(1)—
<i>insert—</i>
'(e) if the authority is a level 1 approval—cancel the applicant's licence.' | 11
12
13
14 |
| | (2) Section 45(3), 'An'—
<i>omit, insert—</i>
'A level 2'. | 15
16
17 |
| | (3) Section 45—
<i>insert—</i>
'(3A) A level 1 approval takes effect from the day stated in it.' | 18
19
20 |

	Amendment of s 46 (Conditions of environmental authority)	21
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| Clause | 11. Section 46—
<i>insert—</i>
'(5) Also, for a level 1 approval, the conditions must include the conditions to which the licence held by the applicant for the environmentally relevant activity immediately before the issue of the approval was subject.
'(6) Any additional conditions of a level 1 approval (other than conditions mentioned in subsection (2)) must not be more stringent than the conditions | 22
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imposed under the licence for the activity held by the person immediately before the issue of the approval.’. 1
2

Amendment of s 50 (Amendment of licence by administering authority) 3
4

Clause **12.** Section 50(3)(d), ‘holder’— 5
omit, insert— 6
‘licensee’. 7

Amendment of s 60 (Procedure for suspension or cancellation) 8

Clause **13.(1)** Section 60(7)(a), ‘holder’— 9
omit, insert— 10
‘licensee’. 11
(2) Section 60(8), ‘a person’— 12
omit, insert— 13
‘the licensee’. 14

Insertion of new ch 3, pt 4, div 4A 15

Clause **14.** After section 60— 16
insert— 17
‘Division 4A—Amendment, suspension and cancellation of level 1 approvals 18
19

‘Subdivision 1—Amendment of level 1 approvals 20

‘Amendment of level 1 approval on application of approval holder 21

‘60A.(1) The holder of a level 1 approval may apply to the administering authority for an amendment of the approval. 22
23

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- ‘(2) The application must— 1
- (a) be made to the administering authority in the approved form; and 2
 - (b) be supported by enough information to enable the authority to 3
decide the application. 4
- ‘(3) The administering authority must decide the application within 5
28 days after the application date. 6
- ‘(4) In deciding whether to grant or refuse the application, the 7
administering authority must consider the standard criteria. 8
- ‘(5) If the administering authority is satisfied the amendment is necessary 9
or desirable, the authority must grant the application. 10
- ‘(6) If the administering authority is not satisfied the amendment is 11
necessary or desirable, it must, within 10 days after making its decision, 12
give written notice to the applicant of its decision. 13
- ‘(7) The notice must state— 14
- (a) the reasons for the decision; and 15
 - (b) that the applicant may apply for a review of, and appeal against, 16
the decision within 14 days after receipt of the notice.³ 17
- ‘Amendment of level 1 approval by administering authority 18**
- ‘60B.(1) The administering authority may amend a level 1 approval at 19
any time if— 20
- (a) the approval holder agrees to the amendment; or 21
 - (b) the authority considers it necessary or desirable because— 22
 - (i) the administering authority is satisfied the risk of 23
environmental harm from the environmentally relevant 24
activity carried out under the approval is no longer 25
insignificant because the grounds in section 44(2)⁴ no longer 26

³ Sections 202 and 204 provide for a review of, and appeal against, a decision to refuse an application to amend an approval.

⁴ Section 44 (Criteria for deciding application)

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- apply; or
- (ii) of a contravention of this Act by the approval holder; or
- (iii) the approval was issued because of a materially false or misleading representation or declaration (made either orally or in writing); or
- (iv) of the approval of an environmental protection policy or the approval of the amendment of an environmental protection policy; or
- (v) of another circumstance prescribed under a regulation.
- ‘(2) If the administering authority considers it necessary or desirable to amend a level 1 approval under subsection (1)(b), the authority must give the approval holder a written notice under this section.
- ‘(3) The notice must—
- (a) state the proposed amendment and the grounds for the amendment; and
- (b) outline the facts and circumstances forming the basis for the grounds; and
- (c) invite the approval holder to make written representations to the administering authority to show why the approval should not be amended; and
- (d) state the term (at least 30 days after the notice is given to the approval holder) within which the representations must be made.
- ‘(4) After the end of the term stated in the notice, the administering authority must consider the representations properly made by the approval holder.
- ‘(5) The administering authority may amend the approval if it is satisfied the amendment is necessary or desirable.
- ‘(6) If the administering authority is not satisfied the amendment is necessary or desirable, it must promptly give written notice to the approval holder of its decision.

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‘Procedure for amending level 1 approval	1
‘60C.(1) This section applies if the administering authority—	2
(a) grants an application to amend a level 1 approval; or	3
(b) decides to amend a level 1 approval.	4
‘(2) The administering authority must amend the approval and give the approval holder—	5
(a) a copy of the amended approval; and	6
(b) for a decision to amend the approval—a notice stating—	7
(i) the reasons for the decision; and	8
(ii) that the approval holder may apply for a review of, and appeal against, the decision with 14 days after receipt of the notice. ⁵	9
(b) for a decision to amend the approval—a notice stating—	10
(i) the reasons for the decision; and	11
(ii) that the approval holder may apply for a review of, and appeal against, the decision with 14 days after receipt of the notice. ⁵	12
‘(3) The amended approval takes effect from the day after the review date.	13
	14
 <i>‘Subdivision 2—Suspension and cancellation of level 1 approvals</i>	 15
 ‘Level 1 approval may be suspended or cancelled	 16
‘60D. The administering authority may suspend a level 1 approval issued by it, or cancel a level 1 approval issued by it and issue a licence in its place, on the following grounds—	17
(a) the administering authority is satisfied risk of environmental harm from the environmentally relevant activity carried out under the approval is no longer insignificant because the grounds in section 44(2) ⁶ no longer apply;	18
(b) the approval holder has been convicted of an offence against this Act;	19
(a) the administering authority is satisfied risk of environmental harm from the environmentally relevant activity carried out under the approval is no longer insignificant because the grounds in section 44(2) ⁶ no longer apply;	20
(b) the approval holder has been convicted of an offence against this Act;	21
(a) the administering authority is satisfied risk of environmental harm from the environmentally relevant activity carried out under the approval is no longer insignificant because the grounds in section 44(2) ⁶ no longer apply;	22
(b) the approval holder has been convicted of an offence against this Act;	23
(a) the administering authority is satisfied risk of environmental harm from the environmentally relevant activity carried out under the approval is no longer insignificant because the grounds in section 44(2) ⁶ no longer apply;	24
(b) the approval holder has been convicted of an offence against this Act;	25

⁵ Sections 202 and 204 provide for a review of, and appeal against, a decision to amend a level 1 approval.

⁶ Section 44 (Criteria for deciding application)

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- (c) the approval was issued because of a materially false or misleading representation or declaration (made either orally or in writing). 1
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‘Procedure for suspension or cancellation 4

‘60E.(1) If the administering authority considers a ground exists to suspend the approval, or cancel the approval and issue a licence in its place, (the “**proposed action**”), the authority must give the approval holder written notice that— 5
6
7
8

- (a) states the proposed action; and 9
(b) states the grounds for the proposed action; and 10
(c) outlines the facts and circumstances forming the basis for the grounds; and 11
12
(d) if the proposed action is suspension of the approval—states the proposed suspension period; and 13
14
(e) invites the approval holder to show, within a stated time of at least 30 days, why the proposed action should not be taken. 15
16

‘(2) If, after considering all written representations made within the stated time, the administering authority still considers a ground to take the proposed action exists, the authority may— 17
18
19

- (a) if the proposed action was to suspend the approval for a stated period—suspend the approval for not longer than the proposed suspension period; or 20
21
22
(b) if the proposed action was to cancel the approval and issue a licence in its place— 23
24
(i) cancel the approval and issue a licence subject to the relevant conditions the administering authority is required to impose under an applicable environmental protection policy and any other conditions the authority considers necessary or desirable; or 25
26
27
28
29
(ii) suspend it for a period. 30

‘(3) The administering authority must— 31

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- (a) inform the approval holder of the decision by written notice; and 1
- (b) if the administering authority decides to cancel the approval and 2
issue a licence in its place— 3
- (i) issue an appropriate licence in the form approved by the 4
chief executive; and 5
- (ii) insert it in the appropriate register. 6
- ‘(4) The notice must be given within 10 days after the administering 7
authority makes its decision. 8
- ‘(5) If the administering authority decides to suspend the approval or 9
cancel the approval and issue a licence in its place, the notice must— 10
- (a) state the reasons for the decision; and 11
- (b) state that the approval holder may apply for a review of, or appeal 12
against, the decision within 14 days after receipt of the notice;⁷ 13
and 14
- (c) for a decision to cancel the approval—be accompanied by a copy 15
of the licence issued to the approval holder in place of the 16
approval. 17
- ‘(6) The administering authority must record particulars of the 18
suspension or cancellation on the approval. 19
- ‘(7) The decision takes effect on— 20
- (a) for a decision to suspend the approval—the later of— 21
- (i) the day when the notice is given to the approval holder; or 22
- (ii) the day of effect stated in the notice; or 23
- (b) for a decision to cancel the approval and issue a licence in its 24
place—the day after the review date. 25
- ‘(8) However, if the approval is suspended or cancelled because of the 26
conviction of the approval holder for an offence— 27
- (a) the suspension or cancellation does not take effect until— 28

⁷ Sections 202 and 204 provide for a review of, and appeal against, a decision to suspend or cancel a level 1 approval.

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- (i) the end of the time to appeal against the conviction; and 1
- (ii) if the appeal is made against the conviction—the appeal is 2
finally decided; and 3
- (b) the suspension or cancellation has no effect if the conviction is 4
quashed on appeal.’. 5

Amendment of s 70 (Offence to contravene condition of environmental authority) 6
7

Clause **15.(1)** Section 70(1), penalty— 8
omit, insert— 9

‘Maximum penalty— 10

- (a) for a licence or a level 1 approval—2 000 penalty units or 2 years 11
imprisonment; or 12
- (b) for a level 2 approval—300 penalty units.’. 13

(2) Section 70(2), penalty— 14
omit, insert— 15

‘Maximum penalty— 16

- (a) for a licence or a level 1 approval—1 665 penalty units; or 17
- (b) for a level 2 approval—250 penalty units.’. 18

Amendment of s 115 (When financial assurance may be required) 19

Clause **16.(1)** Section 115(1), after ‘program’— 20
insert— 21

‘or site management plan’. 22

(2) Section 115(2)— 23
omit, insert— 24

‘**(2)** However, the administering authority may impose a condition 25
requiring a financial assurance to be given only if it is satisfied the condition 26
is justified having regard to— 27

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- | | | |
|--|---|----------------|
| | (a) for a licence or an approval of an environmental management program— | 1
2 |
| | (i) the degree of risk of environmental harm being caused by the activity carried out, or to be carried out, under the licence or program; and | 3
4
5 |
| | (ii) the likelihood of action being required to rehabilitate or restore the environment because of environmental harm being caused by the activity; and | 6
7
8 |
| | (iii) the environmental record of the licensee or holder; and | 9 |
| | (b) for an approval of a site management plan— | 10 |
| | (i) the degree of risk of serious environmental harm being caused as a result of the hazardous contaminant contaminating the land; and | 11
12
13 |
| | (ii) the likelihood of action being required to rehabilitate or restore the land because of serious environmental harm being caused by the hazardous contaminant; and | 14
15
16 |
| | (iii) the environmental record of the holder.’. | 17 |

	Amendment of s 116 (Person may show cause why financial assurance should not be required)	18 19
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|--------|---|----------------|
| Clause | 17.(1) Section 116(1), after ‘management program’—
<i>insert—</i>
‘or site management plan’. | 20
21
22 |
| | (2) Section 116(1), after ‘the program’—
<i>insert—</i>
‘or plan’. | 23
24
25 |

	Amendment of s 117 (Application for amendment or discharge of financial assurance)	26 27
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- | | | |
|--------|-------------------------------|----|
| Clause | 18.(1) Section 117(1)— | 28 |
|--------|-------------------------------|----|

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<i>omit, insert—</i>	1
‘117.(1) This section applies to the following persons—	2
(a) the holder of a licence subject to the condition that financial assurance be given;	3 4
(b) the holder of a level 1 approval if, immediately before the approval was issued, the person was the holder of a licence subject to the condition that financial assurance be given;	5 6 7
(c) the holder of an environmental management program approval subject to the condition that financial assurance be given;	8 9
(d) the holder of a site management plan approval subject to the condition that financial assurance be given.	10 11
‘(1A) The person may apply in writing to the administering authority to have the assurance amended or discharged.’.	12 13
(2) Section 117(3)—	14
<i>omit, insert—</i>	15
‘(3) The administering authority must—	16
(a) for an application made by the holder of a level 1 approval—discharge the financial assurance for the licence held by the holder immediately before the issue of the approval; and	17 18 19
(b) for any other application—decide the application within 28 days after receiving it and give written notice to the applicant of its decision.	20 21 22
‘(4) If the decision is to refuse the application, the notice must state—	23
(a) the reasons for the decision; and	24
(b) that the applicant may apply for a review of, and appeal against, the decision within 14 days after receipt of the notice. ⁸ ’.	25 26

⁸ Sections 202 and 204 provide for a review of, and appeal against, a decision to refuse to amend or discharge a financial assurance.

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	Amendment of s 118 (Claims on financial assurance)	1
Clause	19.(1) Section 118(1)—	2
	<i>omit, insert—</i>	3
	‘118.(1) This section applies if the administering authority incurs costs or expenses in taking action to—	4
		5
	(a) prevent or minimise environmental harm or rehabilitate or restore the environment, in relation to the carrying out of an activity under a licence or an environmental management program approval for which financial assurance has been given; or	6
		7
		8
		9
	(b) carry out work to remediate land managed under a site management plan approval for which financial assurance has been given.’.	10
		11
		12
	(2) Section 118(7), after ‘program’—	13
	<i>insert—</i>	14
	‘or site management plan’.	15
	 Amendment of s 118B (Waste removal etc. by private contractors)	 16
Clause	20.(1) Section 118B—	17
	<i>insert—</i>	18
	‘(2A) The fee charged by a local government for an approval must not be more than the maximum fee prescribed under a regulation for the approval.	19
		20
	‘(2B) Also, a local government must not charge a fee if waste management works to be performed under the approval consist only of transporting waste through its area.’.	21
		22
		23
	(2) Section 118B—	24
	<i>insert—</i>	25
	‘(5A) However, the local government must not impose conditions on the approval if the approval is for waste management works that are an environmentally relevant activity.’.	26
		27
		28
	(3) Section 118B—	29

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insert—

‘(9) This section does not apply to waste management works carried out under a mining authority for the exclusive purpose of dealing with waste generated by activities carried out under the authority.’.

Insertion of new ch 3, pt 9B

Clause **21.** After section 118B—

insert—

‘PART 9B—CONTAMINATED LAND

‘Division 1—Interpretation

‘Definitions for pt 9B

‘118C. In this part—

“owner”, of land, see section 118D.

“repealed Act” means the *Contaminated Land Act 1991* as in force immediately before the commencement of this part.

‘Meaning of “owner” for pt 9B

‘118D.(1) In this part, the “owner” of land is—

- (a) for freehold land—the person recorded in the freehold land register as the person entitled to the fee simple interest in the land; or
- (b) for land held under a lease, licence or permit under an Act—the person who holds the lease, licence or permit; or
- (c) for trust land under the *Land Act 1994*—the trustees of the land; or
- (d) for Aboriginal land under the *Aboriginal Land Act 1991*—the persons to whom the land has been transferred or granted; or

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(e) for Torres Strait Islander land under the <i>Torres Strait Islander Land Act 1991</i> —the persons to whom the land has been transferred or granted; or	1 2 3
(f) for land for which there is a native title holder under the <i>Native Title Act 1993</i> (Cwlth)—the native title holder.	4 5
‘(2) Also, a mortgagee of land is the owner of the land if—	6
(a) the mortgagee is acting as a mortgagee in possession of the land and has the exclusive management and control of the land; or	7 8
(b) the mortgagee, or a person appointed by the mortgagee, is in possession of the land and has the exclusive management and control of the land.	9 10 11
‘ <i>Division 2—Inclusion of land on environmental management register</i>	12
‘ Owner or occupier of land to notify administering authority	13
‘118E.(1) If the owner or occupier of land becomes aware a notifiable activity is being carried out on the land, the owner or occupier must, within 30 days after becoming aware the activity is being carried out, give notice to the administering authority in the approved form.	14 15 16 17
Maximum penalty—50 penalty units.	18
‘(2) If the owner or occupier of land becomes aware the land has been, or is being, contaminated by a contaminant the owner or occupier knows is a hazardous contaminant, the owner or occupier must, within 30 days after becoming aware the land has been, or is being, contaminated, give notice to the administering authority in the approved form.	19 20 21 22 23
Maximum penalty—100 penalty units.	24
‘(3) However, the owner or occupier of land does not commit an offence against subsection (1) or (2) if the administering authority has already been given notice about the activity or contamination.	25 26 27

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‘Local government to notify administering authority

‘118F.(1) If a local government becomes aware a notifiable activity has been, or is being, carried out on land in its area, the local government must, within 30 days after becoming aware of the activity having been, or being, carried out give notice to the administering authority in the approved form.

‘(2) If a local government becomes aware that land in its area has been, or is being, contaminated by a contaminant the local government knows is a hazardous contaminant, the local government must, within 30 days after becoming aware the land has been, or is being, contaminated, give notice to the administering authority in the approved form.

‘(3) However, subsection (1) or (2) does not apply if the administering authority has already been given notice about the activity or contamination.

‘Notice to be given to owner of land

‘118G.(1) This section applies if—

- (a) the administering authority is given notice by an occupier of land (other than the land’s owner) that a notifiable activity is being carried out on the land; or
- (b) the administering authority is given notice by a local government that a notifiable activity has been, or is being, carried out on land in its area; or
- (c) the administering authority otherwise reasonably believes that a notifiable activity has been, or is being, carried out on land; or
- (d) the administering authority has conducted a preliminary investigation of land and the authority reasonably believes the land is contaminated land; or
- (e) the administering authority is given a report by the occupier of land or another person about an investigation of the land conducted or commissioned by the occupier or other person and the administering authority reasonably believes the land is contaminated land.

Example of paragraph (c)—

The department in which the *Mineral Resources Act 1989* is administered gives

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the administering authority notice that hazardous mine wastes have been stored on the land. 1
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‘(2) The administering authority must, within the time that is reasonable in the circumstances, give written notice about the activity or contamination to the owner of the land. 3
4
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‘(3) However, the administering authority is not required to give a notice to the owner of the land if the land has already been investigated and the administering authority is satisfied the land is not contaminated land. 6
7
8

‘(4) The notice must— 9

(a) inform the owner that the administering authority believes the land has been, or is being, used for a notifiable activity or is contaminated land; and 10
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(b) state the grounds on which the administering authority believes the land has been, or is being, used for a notifiable activity or is contaminated land; and 13
14
15

(c) inform the owner that the administering authority is considering including particulars of the land in the environmental management register; and 16
17
18

(d) if an investigation of the land has been conducted—be accompanied by a copy of the report prepared about the investigation; and 19
20
21

(e) invite submissions from the owner about whether or not the land has been, or is being used, for a notifiable activity or is contaminated land; and 22
23
24

(f) state the day (at least 30 days after the day the notice is given) by which submissions may be made to the administering authority; and 25
26
27

(g) state that any submissions made to the administering authority must be accompanied by a statutory declaration by the owner declaring that the owner— 28
29
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(i) has not knowingly included any false or misleading information in the submission; and 31
32

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- (ii) has given all relevant information to the administering authority. 1
2

‘Decision about including land in environmental management register 3

‘**118H.(1)** The administering authority must, after considering any submissions made by the land’s owner, decide whether the land has been, or is being, used for a notifiable activity or is contaminated land. 4
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‘(2) Subsection (1) does not limit the matters the administering authority may consider in making the decision. 7
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‘(3) If the administering authority decides the land has been, or is being, used for a notifiable activity or is contaminated land, the administering authority must record particulars of the land in the environmental management register. 9
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‘(4) However, the administering authority is not required to record particulars of land that has been used for a notifiable activity in the environmental management register if— 13
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(a) the land is no longer being used for a notifiable activity; and 16

(b) the land has been investigated and the administering authority is satisfied the land is not contaminated land. 17
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‘(5) The administering authority must, within 10 days after making a decision, give written notice of the decision to— 19
20

(a) the owner of the land; and 21

(b) the local government for the area in which the land is situated. 22

‘(6) The notice must state the reasons for the decision. 23

‘(7) Also, if particulars of the land are recorded in the environmental management register, the notice to the owner must state that the owner may apply for a review of, and appeal against, the decision within 14 days after receipt of the notice.⁹ 24
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⁹ Sections 202 and 204 provide for a review of, and appeal against, a decision to record particulars of the land in the environmental management register.

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‘Division 3—Investigation of land on environmental management register

‘Voluntary submission of report about investigation

‘118I.(1) A person may, at any time, conduct or commission an investigation of land (a **“site investigation”**) for which particulars are recorded in the environmental management register to scientifically assess whether the land is contaminated in a way that is a risk to human health or another part of the environment and submit a report about the investigation to the administering authority.¹⁰

‘(2) However, if the person intending to conduct or commission the site investigation and submit the report is not the land’s owner, the person must obtain the owner’s consent before beginning the investigation.

‘Administering authority may require site investigation

‘118J.(1) This section applies if the administering authority is satisfied—

- (a) after a preliminary investigation, particulars of land are recorded in the environmental management register because the land is contaminated land; and
- (b) the hazardous contaminant contaminating the land is in a concentration that has the potential to cause serious or material environmental harm; and
- (c) a person, animal or another part of the environment may be exposed to the hazardous contaminant.

‘(2) The administering authority may require a site investigation to be conducted or commissioned by—

- (a) if the person who released the contaminant is known and can be located—the person; or
- (b) the local government for the area in which the land is located; or

¹⁰ Under section 118O, a site investigation may be conducted only by a person who is a member of an organisation prescribed under a regulation for that section and has qualifications and experience relevant to the site investigation.

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- (c) the owner of the land. 1
- ‘(3) However, the administering authority may require the local 2
government to conduct or commission the investigation only if 3
subsection (2)(a) does not apply and— 4
- (a) the administering authority reasonably believes— 5
- (i) the land has been contaminated because the local government 6
gave approval for the use of, or an activity to be carried out 7
on, the land; and 8
- (ii) in giving the approval the local government did not comply 9
with the requirements under any Act in relation to the 10
approval; and 11
- (iii) the local government should have known the land would be 12
contaminated because of the approval; or 13
- (b) under the repealed Act, particulars of the land were recorded in the 14
contaminated sites register as a restricted site and, after the 15
recording, the local government gave approval for the use of, or 16
an activity to be carried out on, the land contrary to the restriction; 17
or 18
- (c) under the repealed Act, particulars of the land were recorded in the 19
contaminated sites register or, under this Act, particulars of the 20
land are recorded in the environmental management register or 21
contaminated land register, and— 22
- (i) after the recording, the local government approved the land 23
be used for a use or activity that was or is inconsistent with 24
particulars of the land being recorded in the register; and 25
- (ii) the use or activity has caused environmental harm to human 26
health or another part of the environment. 27
- ‘(4) Also, the administering authority may require the owner of the land 28
to conduct or commission the investigation only if subsection (2)(a) and (3) 29
do not apply and— 30
- (a) the administering authority reasonably believes the land was 31
contaminated before the commencement of the repealed Act; or 32
- (b) when the land was acquired by the owner, particulars of the land 33

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were recorded—

- (i) under the repealed Act, in the contaminated sites register as a confirmed site, restricted site or probable site; or
- (ii) under this Act, in the environmental management register or the contaminated land register; or
- (c) the contamination happened after the owner acquired the land.

‘(5) However, the administering authority must not require the owner of the land to conduct or commission an investigation under subsection (4)(a) or (b) if the owner is a mortgagee under section 118D(2).

‘(6) Also, the administering authority must not require an investigation to be conducted or commissioned if the land is subject to a site management plan for the contamination and the conditions of the plan are being complied with.

‘(7) The recipient of a notice to conduct or commission a site investigation must comply with the requirement unless the administering authority waives the requirement.¹¹

Maximum penalty—100 penalty units.

‘Notice to conduct or commission site investigation

‘**118K.(1)** A requirement to conduct or commission a site investigation must be made by written notice to the person (the “**recipient**”) required to conduct or commission the site investigation.

‘(2) If the recipient is not the land’s owner, the administering authority must also give a copy of the notice to the owner.

‘(3) The notice must—

- (a) state the grounds on which the requirement is made; and
- (b) outline the facts and circumstances forming the basis for the grounds; and
- (c) state the matters relevant for the site investigation; and

¹¹ Under section 118L, the administering authority may, in certain circumstances, waive the requirement to conduct or commission a site investigation.

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- (d) state the day (at least a reasonable period after the notice is given) by which a report on the site investigation must be submitted to the administering authority; and 1
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- (e) state that the recipient or the land's owner may apply for a review of, and appeal against, the decision within 14 days after receipt of the notice.¹² 4
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‘Waiver of requirement to conduct or commission site investigation’ 7

‘**118L.(1)** A recipient may apply to the administering authority for it to waive the requirement for the recipient to conduct or commission a site investigation. 8
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‘**(2)** The application must— 11

- (a) be made to the administering authority in the approved form; and 12
- (b) be supported by enough information to enable the authority to decide the application. 13
14

‘**(3)** The administering authority must decide the application within 28 days after receiving it. 15
16

‘**(4)** The administering authority may waive the requirement to conduct or commission a site investigation only if it is satisfied— 17
18

- (a) conducting or commissioning the investigation would cause the recipient financial hardship; or 19
20
- (b) if the recipient is the land's owner—the owner's rights in relation to the land do not include exercising control over environmental management of the land. 21
22
23

‘**(5)** The administering authority must, within 10 days after making a decision, give written notice of the decision to the recipient. 24
25

‘**(6)** The notice to the recipient must state— 26

- (a) the reasons for the decision; and 27
- (b) if the decision is to refuse the application—that the recipient may 28

¹² Sections 202 and 204 provide for a review of, and appeal against, a decision to require a site investigation.

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apply for a review of, and appeal against, the decision within
14 days after receipt of the notice.¹³

‘Failure to make decision on waiver of site investigation taken to be refusal

‘118M. If the administering authority fails to make a decision about an application for it to waive the requirement for the recipient to conduct or commission a site investigation within the time it is required to make a decision on the application, the failure is taken to be a decision by the authority to refuse the application at the end of the time.

‘Procedure to be followed if recipient is not owner

‘118N.(1) This section applies if the recipient of a notice to conduct or commission a site investigation of land is not the land’s owner.

‘(2) The recipient, or person conducting the site investigation for the recipient (the **“investigator”**), may enter the land to conduct the investigation only—

- (a) with the consent of the owner and occupier of the land; or
- (b) if the recipient or investigator has given at least 7 days written notice to the owner and occupier.

‘(3) The notice must inform the owner and any occupier of—

- (a) the intention to enter the land; and
- (b) the purpose of the entry; and
- (c) the days and times when the entry is to be made.

‘(4) In conducting the site investigation, the recipient or investigator must take all reasonable steps to ensure the recipient or investigator causes as little inconvenience, and does as little damage, as is practicable in the circumstances.

‘(5) Nothing in this section authorises the recipient or investigator to enter

¹³ Sections 202 and 204 provide for a review of, and appeal against, a decision to require a site investigation.

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- a structure, or part of a structure, used for residential purposes. 1
- ‘(6) If a person incurs loss or damage because of the site investigation 2
conducted by the recipient or investigator, the person is entitled to be paid by 3
the recipient or investigator the reasonable compensation because of the loss 4
or damage that is agreed between the recipient or investigator and the 5
person, or failing agreement, decided by a court having jurisdiction for the 6
recovery of amounts up to the amount of compensation claimed. 7
- ‘(7) The court may make the order about costs it considers just. 8
- ‘Who must conduct site investigation 9**
- ‘118O. A site investigation must be conducted by a person who— 10
- (a) is a member of an organisation prescribed under a regulation for 11
this section; and 12
- (b) has qualifications and experience relevant to the site investigation. 13
- ‘Fee for consideration of report about site investigation 14**
- ‘118P. A person who submits a report about a site investigation to the 15
administering authority for consideration must pay the authority the fee 16
prescribed under a regulation. 17
- ‘Declarations to accompany report 18**
- ‘118Q.(1) A site investigation report submitted to the administering 19
authority must be accompanied by a statutory declaration by— 20
- (a) if the report— 21
- (i) is submitted to comply with a notice given to a person by the 22
administering authority—the recipient; or 23
- (ii) is voluntarily submitted by a person—the person; and 24
- (b) the investigator. 25
- ‘(2) The recipient’s or other person’s declaration must be made— 26
- (a) if the recipient or other person is an individual—by the recipient 27

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- or other person; or
- (b) if the recipient or other person is a corporation—by an executive officer of the corporation.
- ‘(3) The recipient’s or other person’s declaration must state that the recipient or other person—
- (a) has not knowingly given any false or misleading information to the investigator; and
- (b) has given all relevant information to the investigator.
- ‘(4) A declaration by the investigator must—
- (a) state his or her qualifications and experience relevant to the investigation; and
- (b) state that he or she has not knowingly included any false, misleading or incomplete information in the report; and
- (c) state that he or she has not knowingly failed to reveal any relevant information or document to the administering authority; and
- (d) certify that—
- (i) the report addresses the relevant matters for the investigation and is factually correct; and
- (ii) the opinions expressed in it are honestly and reasonably held.
- ‘Administering authority to consider and act on site investigation report**
- ‘118R.(1) The administering authority must, within 28 days after being given the site investigation report, consider the report and decide whether the land is contaminated land.
- ‘(2) After making its decision, the administering authority may—
- (a) if the administering authority is satisfied the land is not contaminated land—remove particulars of the land from the environmental management register; or
- (b) if the administering authority is satisfied the land is contaminated land but can be used for stated uses with further

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- management—leave particulars of the land on the environmental management register and prepare, or require another person to prepare, a site management plan for the land; or 1
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- (c) if the administering authority is satisfied the land is contaminated land and action needs to be taken to remediate the land to prevent serious environmental harm to a person, animal or another part of the environment—record particulars of the land in the contaminated land register; or 4
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- (d) in any other case—leave particulars of the land on the environmental management register. 9
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- ‘(3) The administering authority must, within 10 days after making its decision, give written notice of the decision to— 11
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- (a) the land’s owner; and 13
- (b) if a person other than the land’s owner submitted the report—the other person; and 14
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- (c) if the decision is to remove particulars of the land from the environmental management register—the local government for the area in which the land is located; and 16
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- (d) if the decision is to record particulars of the land in the contaminated land register— 19
20
- (i) the local government for the area in which the land is located; 21
and 22
- (ii) any registered mortgagee of the land. 23
- ‘(4) The notice must state— 24
- (a) the reasons for the decision; and 25
- (b) for a notice to the land’s owner about a decision under subsection (2)(b) to (d)—that the owner may apply for a review of, and appeal against the decision, within 30 days after receipt of the notice.¹⁴ 26
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¹⁴ Sections 202 and 204 provide for a review of, and appeal against, a decision to record, or continue to record, particulars of land on the environmental management register or contaminated land register.

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‘(5) Also, if the administering authority removes particulars of the land from the environmental management register, the notice to the following persons must be accompanied by a suitability statement for the land—

- (a) the land’s owner;
- (b) if a person other than the land’s owner submitted the report—the other person.

‘Administering authority may require another report or additional information

‘118S.(1) If the administering authority is satisfied the site investigation report does not adequately address the relevant matters for the site investigation to which the report relates, it may require the recipient or other person who submitted the report to conduct or commission another site investigation and submit a report on the investigation to it.

‘(2) If the administering authority is satisfied additional relevant information is required about a site investigation report, it may require further information to be given to it by—

- (a) if the report is submitted to comply with a notice given to a person by the administering authority—the recipient; or
- (b) if the report is voluntarily submitted by a person—the person.

‘(3) A requirement under subsection (2) must be made by written notice given to the recipient or other person.

‘(4) The notice must—

- (a) state the grounds on which the requirement is made; and
- (b) outline the facts and circumstances forming the basis for the grounds; and
- (c) state the relevant matters for the information required; and
- (d) state the day (at least a reasonable period after the notice is given) by which the information must be given to the administering authority and
- (e) state that the recipient or other person may apply for a review of,

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and appeal against, the requirement within 14 days after receipt of the notice.¹⁵

‘Owner of land to be given copy of report

‘118T. If the person who submitted the report is not the land’s owner, the person must, within 10 days after giving the administering authority a site investigation report or relevant additional information, give a copy of the report or information to the owner.

Maximum penalty—10 penalty units.

‘Cost of site investigation and report

‘118U. The recipient or other person who submitted the report must meet the following costs—

- (a) the costs of conducting or commissioning the site investigation and report; and
- (b) the costs of giving additional relevant information about the report required by the administering authority.

‘Extensions of time for decisions on submission of site investigation report

‘118V.(1) The administering authority may decide to extend the time it is required to consider and make a decision about a site investigation report if—

- (a) it has required additional relevant information about the report; or
- (b) it is satisfied there are special circumstances for extending the time.

(2) If the administering authority extends the time, it must give written notice of the extension to the recipient or other person who submitted the report.

¹⁵ Sections 202 and 204 provide for a review of, and appeal against, a decision to require additional information.

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- (3) The notice must— 1
- (a) state that the recipient or other person may apply for a review of, 2
and appeal against, the requirement within 14 days after receipt of 3
the notice; and 4
- (b) be given before the extension starts.¹⁶ 5

‘Failure to make decision on site investigation report taken to be refusal 6
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‘118W. If the administering authority fails to make a decision about a site 8
investigation report within the time it is required to make a decision on the 9
report, the failure is taken to be a decision by the authority to leave 10
particulars of the land to which the report relates in the environmental 11
management register. 12

‘Division 4—Remediation of land 13

‘Voluntary remediation of contaminated land 14

‘118X.(1) A person may, after submitting a site investigation report, 15
conduct or commission work to remediate land for which particulars are 16
recorded in the environmental management register or contaminated land 17
register and submit a report (a “**validation report**”) about the work to the 18
administering authority. 19

‘(2) However, if the person intending to carry out the work and submit 20
the validation report is not the land’s owner, the person must obtain the 21
owner’s consent before beginning the work. 22

‘Administering authority may require remediation of contaminated land 23
24

‘118Y.(1) The administering authority may require the following persons 25

¹⁶ Sections 202 and 204 provide for a review of, and appeal against, a decision to extend the time for considering and making a decision about a site investigation report.

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- to conduct or commission work to remediate land for which particulars are recorded in the contaminated land register and submit a validation report about the work to the administering authority—
- (a) if the person who released the hazardous contaminant contaminating the land is known and can be located—the person;
 - (b) the local government for the area in which the land is located;
 - (c) the owner of the land.
- ‘(2) However, the administering authority may require the local government to conduct or commission work to remediate the land only if subsection (1)(a) does not apply and—
- (a) the administering authority reasonably believes—
 - (i) the land has been contaminated because the local government gave approval for the use of, or an activity to be carried out on, the land; and
 - (ii) in giving the approval the local government failed to comply with the requirements under any Act in relation to the approval; and
 - (iii) the local government should have known the approval would result in the land being contaminated; or
 - (b) under the repealed Act, particulars of the land were recorded in the contaminated sites register as a restricted site and, after the recording, the local government gave approval for the use of, or an activity on, the land contrary to the restriction; or
 - (c) under the repealed Act, particulars of the land were recorded in the contaminated sites register or, under this Act, particulars of the land are recorded in the environmental management register or contaminated land register, and—
 - (i) after the recording, the local government permitted the land to be used for a use or activity that was inconsistent with the particulars of the land being recorded in the register; and
 - (ii) the use or activity has caused environmental harm to human health or another part of the environment.

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- ‘(3) Also, the administering authority may require the owner of the land to conduct or commission work to remediate the land only if subsection (1)(a) and (2) do not apply and—
- (a) the land was affected by the hazardous contaminant before the commencement of the repealed Act; or
 - (b) when the land was acquired by the owner, particulars of the land were recorded—
 - (i) under the repealed Act, in the contaminated sites register as a confirmed site, restricted site or probable site; or
 - (ii) under this Act, in the environmental management register or the contaminated land register; or
 - (c) the contamination happened after the owner acquired the land.
- ‘(4) However, the administering authority must not require the owner of the land to conduct or commission work to remediate the land under subsection (3)(a) or (b) if the owner is a mortgagee under section 118D(2).
- ‘(5) A requirement to conduct or commission work to remediate land must—
- (a) be in the form of a written notice (a “**remediation notice**”); and
 - (b) state the person (the “**recipient**”) to whom it is issued; and
 - (c) state the work to be conducted or commissioned by the recipient to remediate the land; and
 - (d) give the recipient approval to remove and dispose of soil from the land and state any conditions applicable to the removal and disposal; and
 - (e) state that the recipient must give a validation report to the administering authority within the time (not less than 30 days after completing the work to be carried out) stated in the notice; and
 - (f) state that the recipient or the land’s owner may apply for a review of, or appeal against, the decision to issue the notice within

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14 days after receipt of the notice; and¹⁷

(g) be served on the recipient and the land’s owner.

‘(6) Also, the remediation notice may include a requirement to prepare and submit to the administering authority for approval a site management plan for the land.

‘(7) The recipient must comply with the notice unless the recipient is granted a waiver under section 118Z.¹⁸

Maximum penalty—1 000 penalty units.

‘Waiver of requirement to remediate land

‘**118Z.(1)** A recipient may apply to the administering authority for it to waive the requirement for the recipient to conduct or commission work to remediate contaminated land.

‘(2) The application must—

(a) be made to the administering authority in the approved form; and

(b) be supported by enough information to enable the authority to decide the application.

‘(3) The administering authority must decide the application within 28 days after receiving it.

‘(4) The administering authority may waive the requirement for the recipient to conduct or commission work to remediate the land only if it is satisfied—

(a) conducting or commissioning the remediation would cause the recipient financial hardship; or

(b) the contamination happened while the recipient was carrying out an activity that is lawful apart from this Act and the recipient complied with the general environmental duty; or

¹⁷ Sections 202 and 204 provide for a review of, and appeal against, a decision to require work to be conducted or commissioned to remediate contaminated land.

¹⁸ Section 118Z (Waiver of requirement to remediate land)

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- (c) the contamination happened before the commencement of the repealed Act and it would not be reasonable in the circumstances for the recipient to conduct or commission the work to remediate the land; or 1
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- (d) if the recipient is the land’s owner—the owner’s rights in relation to the land do not include exercising control over environmental management of the land. 5
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- ‘(5) The administering authority must, within 10 days after making a decision, give written notice of the decision to the recipient 8
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- ‘(6) The notice to the recipient must state— 10
- (a) the reasons for the decision; and 11
- (c) if the decision is to refuse the application—that the recipient may apply for a review of, and appeal against, the decision within 14 days after receipt of the notice.¹⁹ 12
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- ‘Failure to make decision on remediation taken to be refusal 15**
- ‘**118ZA.** If the administering authority fails to make a decision about an application for it to waive, wholly or partially, the requirement for the recipient to conduct or commission work to remediate contaminated land within the time it is required to make a decision on the application, the failure is taken to be a decision by the authority to refuse the application at the end of the time. 16
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- ‘Procedure to be followed if recipient is not owner 22**
- ‘**118ZB.(1)** This section applies if the recipient of a notice to conduct or commission work to remediate contaminated land is not the land’s owner. 23
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- ‘(2) The recipient, or person conducting the work for the recipient (the “contractor”), may enter the land to conduct the work only— 25
26
- (a) with the consent of the owner and occupier of the land; or 27

¹⁹ Sections 202 and 204 provide for a review of, and appeal against, a decision to refuse an application to waive the requirement to conduct or commission work to remediate contaminated land.

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- (b) if the recipient or contractor has given at least 7 days written notice to the owner and occupier. 1
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- ‘(3) The notice must inform the owner and occupier of— 3
- (a) the intention to enter the land; and 4
- (b) the purpose of the entry; and 5
- (c) the days and times when the entry is to be made. 6
- ‘(4) In conducting the work, the recipient or contractor must take all reasonable steps to ensure the recipient or contractor causes as little inconvenience, and does as little damage, as is practicable in the circumstances. 7
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- ‘(5) Nothing in this section authorises the recipient or contractor to enter a structure, or part of a structure, used for residential purposes. 11
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- ‘(6) If a person incurs loss or damage because of the work conducted by the recipient or contractor, the person is entitled to be paid by the recipient or contractor the reasonable compensation because of the loss or damage that is agreed between the recipient or contractor and the person, or failing agreement, decided by a court having jurisdiction for the recovery of amounts up to the amount of compensation claimed. 13
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- ‘(7) The court may make the order about costs it considers just. 19
- ‘Who must prepare validation report 20**
- ‘118ZC.(1) The validation report must be prepared by a person who— 21
- (a) is a member of an organisation prescribed under a regulation for this section; and 22
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- (b) has qualifications and experience relevant to the preparation of the validation report. 24
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- ‘(2) The validation report given to the administering authority must be accompanied by— 26
27
- (a) the prescribed fee; and 28
- (b) a statutory declaration by the person who prepared the report. 29
- ‘(3) The declaration must— 30

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- (a) state the person’s qualifications and experience relevant to the validation report; and 1
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- (b) state that the person has not knowingly included any false, misleading or incomplete information in the report; and 3
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- (c) state that the person has not failed to reveal any relevant information or document to the administering authority; and 5
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- (d) certify that— 7
- (i) the report addresses the relevant matters for the report and is factually correct; and 8
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- (ii) the opinions expressed in it are honestly and reasonably held. 10
- ‘Administering authority to consider and act on validation report 11**
- ‘118ZD.(1)** The administering authority must, within 28 days after being given the validation report, consider the report and decide whether the land is still contaminated land. 12
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- ‘(2)** After making its decision, the administering authority may, for land for which particulars are recorded in the environmental management register— 15
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- (a) if the administering authority is satisfied the land is no longer contaminated land—remove particulars of the land from the environmental management register; or 18
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- (b) if the administering authority is satisfied the land has been partially remediated but is still contaminated land that requires further management—leave particulars of the land in the environmental management register and prepare, or require another person to prepare, a site management plan for the land; or 21
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- (c) in any other case—leave particulars of the land on the environmental management register. 26
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- ‘(3)** Also, the administering authority may, for land for which particulars are recorded in the contaminated land register— 28
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- (a) if the administering authority is satisfied the land is no longer contaminated land—remove particulars of the land from the 30
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- contaminated land register; or
- (b) if the administering authority is satisfied the land has been partially remediated but it is still contaminated land that requires further management—record particulars of the land in the environmental management register and prepare, or require another person to prepare, a site management plan for the land; or
- (c) in any other case—leave particulars of the land on the contaminated land register.
- ‘Notice to be given of decision made about validation report**
- ‘118ZE.(1)** The administering authority must, within 10 days after making its decision give written notice of the decision to—
- (a) the land’s owner; and
- (b) if a person other than the land’s owner submitted the report—the other person; and
- (c) if the decision is to record particulars of the land in, or remove particulars of the land from, the environmental management register or contaminated land register—the local government for the area in which the land is located; and
- (d) if the decision is about land for which particulars are recorded in the contaminated land register—any registered mortgagee of the land.
- ‘(2)** The notice must state—
- (a) the reasons for the decision; and
- (b) if the decision is to record, or to continue to record, particulars of the land in the environmental management register or contaminated land register—that the land’s owner may apply for a review of, and appeal against, the decision within 14 days after receipt of the notice.²⁰

²⁰ Sections 202 and 204 provide for a review of, and appeal against, a decision to record, or to continue to record, particulars of contaminated land in the register.

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- ‘(3) Also, if the administering authority removes particulars of the land from the environmental management register or contaminated land register, the notice to the following persons must be accompanied by a suitability statement—
- (a) the land’s owner;
 - (b) if a person other than the land’s owner submitted the report—the other person.
- ‘Administering authority may require another report or additional information**
- ‘118ZF.(1) If the administering authority is satisfied the validation report does not adequately address the relevant matters for the remediation works to which it relates, it may require the recipient or other person who submitted the report to carry out or commission additional remediation works and submit a validation report about the additional work to it.
- ‘(2) If the administering authority is satisfied additional relevant information is required about the validation report, it may require the person who submitted the report to give it the information.
- ‘(3) A requirement for further information must be made by written notice given to the person.
- ‘(4) The notice must—
- (a) state the grounds on which the requirement is made; and
 - (b) outline the facts and circumstances forming the basis for the grounds; and
 - (c) state the relevant matters for the information required; and
 - (d) state the day (at least a reasonable period after the notice is given) by which the information must be given to the administering authority; and
 - (e) state that the person may apply for a review of, and appeal

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against, the requirement within 14 days after receipt of the notice.²¹

‘Extensions of time for consideration of validation report

‘118ZG.(1) The administering authority may decide to extend the time in which it is required to consider and make a decision about a validation report if—

- (a) it has required additional information about the report; or
- (b) it is satisfied there are special circumstances for extending the time.

‘(2) If the administering authority extends the time, it must give written notice of the extension and the reasons for the extension to the person who submitted the report and, if the person is not the land’s owner, the owner.

‘(3) The notice must—

- (a) state that the person who submitted the report or the land’s owner may apply for a review of, and appeal against, the requirement within 14 days after receipt of the notice; and²²
- (b) be given before the extension starts.

‘Failure to make decision on validation report taken to be refusal

‘118ZH. If the administering authority fails to make a decision about a validation report within the time it is required to make a decision about the report the failure is taken to be a decision by the authority to leave the particulars on the environmental management register or the contaminated land register at the end of the time.

²¹ Sections 202 and 204 provide for a review of, and appeal against, a decision to require additional information.

²² Sections 202 and 204 provide for a review of, and appeal against, a decision to extend the time for deciding whether to approve the report.

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‘Division 5—Site management plans

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‘Subdivision 1—Preliminary

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‘What is a site management plan

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‘**118ZL.(1)** A site management plan is a plan used to manage land for which particulars are recorded in the environmental management register because the land is contaminated land.

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‘(2) A site management plan is used to manage the environmental harm that may be caused by the hazardous contaminant contaminating the land by applying conditions to the use or development of, or activities carried out on, the land.

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‘Content of site management plan

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‘**118ZJ.** A site management plan must—

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(a) state the objectives to be achieved and maintained under the plan; and

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(b) state how the objectives are to be achieved and maintained; and

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(c) make provision for monitoring and reporting compliance with the plan.

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‘Subdivision 2—Procedure for approval of site management plan

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‘Voluntary submission of draft site management plan

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‘**118ZK.(1)** A person may, after submitting a site investigation report, submit to the administering authority for approval a draft site management plan for land for which particulars are recorded in the environmental management register.

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‘(2) However, if the person intending to submit the draft plan for approval is not the land’s owner, the person must obtain the owner’s consent before submitting it.

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‘Application for approval of site management plan

‘118ZL. An application for the approval of a site management plan must—

- (a) be made to the administering authority in the approved form; and
- (b) be supported by enough information to enable the administering authority to decide the application, including, for example—
 - (i) a report on the scientific investigation of the contamination of the land; and
 - (ii) relevant information about the likely risks to the environment from the hazardous contaminant contaminating the land; and
 - (iii) details of the measures proposed to be taken to manage the risk of serious environmental harm being caused to persons, animals or another part of the environment by the hazardous contaminant; and
- (c) if the application is made by a person other than the land’s owner—be accompanied by a statement from the owner agreeing to the draft plan; and
- (d) be accompanied by the prescribed fee.

‘Administering authority may prepare or require site management plan

‘118ZM.(1) This section applies if—

- (a) particulars of land are recorded in the environmental management register or contaminated land register; and
- (b) the land is contaminated land; and
- (c) a site investigation of the land has been conducted; and
- (d) the contamination may be managed by applying conditions to the use or development of, or activities carried out on, the land.

‘(2) The administering authority may—

- (a) prepare a site management plan for the land; or

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| (b) require a draft site management plan to be prepared or commissioned, and submitted to it for approval, by— | 1
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| (i) if the person who released the contaminant is known and can be located—the person; or | 3
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| (ii) the local government for the area in which the land is located; or | 5
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| (iii) the owner of the land. | 7 |
| ‘(3) However, the administering authority may require the local government to prepare or commission the plan only if subsection (2)(b)(i) does not apply and— | 8
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| (a) the administering authority reasonably believes— | 11 |
| (i) the land has been contaminated because the local government gave approval for the use of, or an activity to be carried out on the land; and | 12
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| (ii) in giving the approval the local government did not comply with the requirements under any Act in relation to the approval; and | 15
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| (iii) the local government should have known the land would be contaminated because of the approval; or | 18
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| (b) under the repealed Act, particulars of the land were recorded in the contaminated sites register as a restricted site and, after the recording, the local government gave approval for the use of, or an activity to be carried out on, the land contrary to the restriction; or | 20
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| (c) under the repealed Act, particulars of the land were recorded in the contaminated sites register or, under this Act, particulars are recorded in the environmental management register, and— | 25
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| (i) after the recording, the local government approved the land be used for a use or activity that was or is inconsistent with particulars of the land being recorded in the register; and | 28
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| (ii) the use or activity has caused environmental harm to human health or another part of the environment. | 31
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‘(4) Also, the administering authority may require the owner of the land to prepare or commission the plan only if subsections (2)(b)(i) and (3) do not apply and—

- (a) the administering authority reasonably believes the land was contaminated before the commencement of the repealed Act; or
- (b) when the land was acquired by the owner, particulars of the land were recorded—
 - (i) under the repealed Act, in the register as a confirmed site, restricted site or probable site; or
 - (ii) under this Act, in the environmental management register; or
- (c) the contamination happened after the owner acquired the land.

‘(5) However, the administering authority must not require the owner of the land to prepare or commission a plan under subsection (4)(a) or (b) if the owner is a mortgagee mentioned in section 118D(2).

‘(6) The recipient of a notice to prepare or commission a site management plan must comply with the requirement.

Maximum penalty—100 penalty units.

‘Requirement to prepare draft site management plan

‘118ZN.(1) A requirement to prepare or commission a draft site management plan for contaminated land must be made by written notice given to the person required to prepare or commission the plan (the “recipient”).

‘(2) If the person is not the owner of the land, the administering authority must also give a copy of the notice to the owner.

- ‘(3) The notice must state—
- (a) the grounds on which the requirement is made; and
 - (b) the matters to be addressed by the plan; and
 - (c) for a notice to the recipient—the day (at least a reasonable period after the notice is given) by which the plan must be prepared and submitted to the administering authority; and

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- (d) that the recipient or land’s owner may apply for a review of, and appeal against, the decision within 14 days of receipt of the notice.²³

‘Waiver of requirement to prepare or commission site management plan

‘118ZO.(1) A recipient may apply to the administering authority for it to waive the requirement for the recipient to prepare or commission a site management plan for contaminated land.

‘(2) The application must—

- (a) be made to the administering authority in the approved form; and
- (b) be supported by enough information to enable the authority to decide the application.

‘(3) The administering authority must decide the application within 28 days after receiving it.

‘(4) The administering authority may waive the requirement to prepare or commission a site management plan only if it is satisfied—

- (a) preparing or commissioning the plan would cause the recipient financial hardship; or
- (b) if the recipient is the land’s owner—the owner’s rights in relation to the land do not include exercising control over environmental management of the land.

‘(5) The administering authority must, within 10 days after making a decision, give written notice of the decision to the recipient.

‘(6) The notice to the recipient must state—

- (a) the reasons for the decision; and
- (b) if the decision is to refuse the application—that the recipient may

²³ Sections 202 and 204 provide for a review of, and appeal against, a decision to require a site management plan to be prepared.

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apply for a review of, and appeal against, the decision within
14 days after receipt of the notice.²⁴

**‘Failure to make decision on waiver of site management plan taken to
be refusal**

‘118ZP. If the administering authority fails to make a decision about an
application for it to waive the requirement for the recipient to prepare or
commission a site management plan within the time it is required to make a
decision on the application, the failure is taken to be a decision by the
authority to refuse the application at the end of the time.

‘Procedure to be followed if recipient is not owner

‘118ZQ.(1) This section applies if the recipient of a notice to prepare or
commission a draft site management plan for land is not the land’s owner.

‘(2) The recipient, or person preparing the plan for the recipient (the
“consultant”), may enter the land to prepare the site management plan
only—

- (a) with the consent of the owner and occupier of the land; or
- (b) if the recipient or consultant has given at least 7 days written
notice to the owner and occupier.

‘(3) The notice must inform the owner and occupier of—

- (a) the intention to enter the land; and
- (b) the purpose of the entry; and
- (c) the days and times when the entry is to be made.

‘(4) In preparing the plan, the recipient or consultant must take all
reasonable steps to ensure the recipient or consultant causes as little
inconvenience, and does as little damage, as is practicable in the
circumstances.

²⁴ Sections 202 and 204 provide for a review of, and appeal against, a decision to
refuse an application for waiver of the requirement to prepare a site management
plan.

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- ‘(5) Nothing in this section authorises the recipient or consultant to enter a structure, or part of a structure, used for residential purposes. 1
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- ‘(6) If a person incurs loss or damage because of the entry of the land by the recipient or consultant to prepare a site management plan, the person is entitled to be paid by the recipient or consultant the reasonable compensation because of the loss or damage that is agreed between the recipient or consultant and the person, or failing agreement, decided by a court having jurisdiction for the recovery of amounts up to the amount of compensation claimed. 3
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- ‘(7) The court may make the order about costs it considers just. 10
- ‘Who must prepare draft site management plan 11**
- ‘118ZR.** A site management plan must be prepared by a person who— 12
- (a) is a member of an organisation prescribed under a regulation for this section; and 13
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- (b) has qualifications and experience relevant to the preparation of the site management plan. 15
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- ‘Administering authority may require another site management plan or additional information 17
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- ‘118ZS.(1)** If the administering authority is satisfied the draft site management plan does not adequately address the relevant matters for the plan, it may require the recipient or other person who submitted the plan to prepare or commission another site management plan. 19
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- ‘(2) Also, the administering authority may require— 23
- (a) a recipient or other person who submits a draft site management plan to it to give it additional information about the plan; or²⁵ 24
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- (b) any information included in the draft plan, or any additional information required under paragraph (a), to be verified by statutory declaration. 26
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²⁵ Sections 202 and 204 provide for a review of, and appeal against, a decision to require additional information.

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- ‘Administering authority to consider draft site management plan** 1
- ‘118ZT. The administering authority must decide whether to approve a 2
draft site management plan submitted to it within 28 days after the day it is 3
given the plan. 4
- ‘Approval of draft site management plan** 5
- ‘118ZU.(1) This section applies if the administering authority— 6
- (a) approves a draft site management plan for contaminated land as 7
amended at the request of, or with the agreement of, the 8
administering authority; or 9
 - (b) approves a draft site management plan for contaminated land as 10
submitted; or 11
 - (c) prepares a site management plan for contaminated land. 12
- ‘(2) The administering authority must, within 10 days after the approval 13
or preparation— 14
- (a) record the details of the plan in the environmental management 15
register; and 16
 - (b) for a plan approved by the administering authority—give to the 17
person who submitted the plan and, if the plan is submitted by a 18
person other than the land’s owner, the owner— 19
 - (i) a certificate of approval for the plan; and 20
 - (ii) written notice of the approval; and 21
 - (iii) a suitability statement for the land; and 22
 - (c) for a plan prepared by the administering authority— 23
 - (i) give to the owner written notice of the preparation of the 24
plan; and 25
 - (ii) a suitability statement for the land. 26
- ‘(3) A notice given under subsection (2)(c) must— 27
- (a) state the reasons for the imposition of the site management plan; 28
and 29

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- (b) be accompanied by a copy of the site management plan; and 1
- (c) state that the owner may apply for a review of, and appeal against, 2
the decision within 14 days after receipt of the notice.²⁶ 3

‘(4) Also, if the administering authority approves or prepares a site 4
management plan for land, the administering authority must, within 10 days 5
of the approval or preparation, give a copy of the plan to the local 6
government for the area in which the land is located. 7

‘Refusal to approve draft site management plan 8

‘**118ZV.(1)** If the administering authority refuses to approve a draft site 9
management plan, the authority must, within 10 days after its decision, give 10
written notice to— 11

- (a) the person who submitted the plan; and 12
- (b) if the person who submitted the plan is not the land’s owner—the 13
land’s owner. 14

‘(2) The notice must state— 15

- (a) the reason for the decision; and 16
- (b) that the person or owner may apply for a review of, or appeal 17
against, the decision within 14 days after receipt of the notice.²⁷ 18

**‘Extensions of time for decisions on submission of draft site 19
management plans 20**

‘**118ZW.(1)** The administering authority may decide to extend the time 21
in which it is required to decide whether or not to approve a draft site 22
management plan if— 23

- (a) it has required additional information about the draft plan; or 24
- (b) it is satisfied there are special circumstances for extending the 25

²⁶ Sections 202 and 204 provide for a review of, and appeal against, a decision to prepare a site management plan.

²⁷ Sections 202 and 204 provide for a review of, and appeal against, a refusal to approve a draft site management plan.

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time. 1

‘(2) If the administering authority extends the time, it must give written notice of the extension and the reasons for the extension to the person who submitted the draft plan and, if the person is not the land’s owner, the owner. 2
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‘(3) The notice must— 6

(a) state that the person or owner may apply for a review of, or appeal against, the decision within 14 days after receipt of the notice; and²⁸ 7
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(b) be given before the extension starts. 10

‘Failure to approve draft site management plan taken to be refusal 11

‘118ZX. If the administering authority fails to decide whether to approve or refuse a draft site management plan within the time it is required to make a decision on the plan, the failure is taken to be a decision by the authority to refuse to approve the plan at the end of the time. 12
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‘Subdivision 3—Compliance with site management plan 16

‘Offence to contravene site management plan 17

‘118ZY.(1) A person must not wilfully contravene a site management plan. 18
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Maximum penalty—1 665 penalty units or 2 years imprisonment. 20

‘(2) A person must not contravene a site management plan. 21

Maximum penalty—835 penalty units. 22

‘(3) In a proceeding for an offence against subsection (1), if the court is not satisfied the defendant is guilty of the offence charged but is satisfied the defendant is guilty of an offence against subsection (2), the court may find 23
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²⁸ Sections 202 and 204 provide for a review of, and appeal against, a decision to extend the time for deciding whether to approve the plan.

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the defendant guilty of the offence against subsection (2). 1

‘(4) A local government must not, under an approval or other authority 2
under any Act, allow the use or development of, or an activity to be carried 3
out on, land in a way that contravenes a site management plan for the land. 4

‘Subdivision 4—Amendment of site management plan 5

‘Voluntary amendment of site management plans 6

‘118ZZ. Subdivision 2 (other than sections 118ZM to 118ZO and 7
118ZQ)²⁹ applies, with all necessary changes, to the submission by a 8
person of a draft amendment of a site management plan. 9

**‘Administering authority may amend or require amendment of site 10
management plan** 11

‘118ZZA.(1) The administering authority may amend a site management 12
plan for land with the agreement of— 13

(a) the land’s owner; and 14

(b) if the owner is not the occupier of the land—the occupier. 15

‘(2) Also, if the administering authority considers it necessary or 16
desirable, the administering authority may— 17

(a) prepare an amendment of a site management plan; or 18

(b) require a draft amendment of a site management plan to be 19
prepared and submitted to it for approval by— 20

(i) if the person who released the contaminant is known and can 21
be located—the person; or 22

(ii) the local government for the area in which the land is located; 23
or 24

²⁹ Sections 118ZM (Administering authority may prepare or require site management plan), 118ZN (Requirement to prepare draft site management plan), 118ZO (Waiver of requirement to prepare or commission site management plan) and 118ZQ (Procedure to be followed if recipient is not owner)

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(iii) the owner of the land.	1
‘(3) If the administering authority prepares an amendment to a site management plan, or requires an amendment to be prepared, subdivision 2 (other than sections 118ZK, 118ZL and 118ZM(1)) ³⁰ applies, with all necessary changes, to the preparation of the draft amendment.	2 3 4 5
<i>‘Division 6—Notices to be given about land recorded in registers</i>	6
‘Notice to be given about recording of land in contaminated land register	7 8
‘118ZZB.(1) This section applies if—	9
(a) particulars of land are recorded in the contaminated land register; and	10 11
(b) the owner of the land has entered into, or proposes to enter into, an agreement with another person about occupancy of the land.	12 13
‘(2) The owner must—	14
(a) if, at the time the particulars are recorded, the owner has entered into an agreement with another person about occupancy of the land—give the person notice that particulars of the land have been recorded in the register; or	15 16 17 18
(b) if, after the particulars are recorded, the owner proposes to enter into an agreement with another person about occupancy of the land—give notice about the recording of the particulars to the person before entering into the agreement.	19 20 21 22
Maximum penalty—50 penalty units.	23
‘(3) If the owner does not give notice as required under subsection (2), the other person who has entered into the occupancy agreement may terminate the agreement by written notice given to the owner within 10 days after the person becomes aware of the recording.	24 25 26 27

³⁰ Sections 118ZK (Voluntary submission of draft site management plan), 118ZL (Application for approval of site management plan) and 118ZM (Administering authority may prepare or require site management plan)

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- ‘(4) Subsection (3) applies despite anything to the contrary in the agreement. 1
2
- ‘Notice to be given to proposed purchaser of land 3**
- ‘118ZZC.(1) This section applies to the owner of land if— 4**
- (a) particulars of the land are recorded in the environmental 5
management register or contaminated land register; or 6
- (b) the land is the subject of— 7
- (i) a notice under section 118G³¹ informing the owner that the 8
administering authority believes the land has been, or is 9
being, used for a notifiable activity or is contaminated land; 10
or 11
- (ii) a notice to conduct or commission a site investigation; or 12
- (iii) a remediation notice; or 13
- (iv) a notice that the administering authority is preparing, or 14
requiring someone else to prepare, a site management plan 15
for the land; or 16
- (c) the land is the subject of an order under section 138A.³² 17
- ‘(2) If the owner proposes to dispose of the land to someone else (the 18
“buyer”), the owner must, before agreeing to dispose of the land, give 19
written notice to the buyer— 20**
- (a) if particulars of the land are recorded in the environmental 21
management register or contaminated land register—that the 22
particulars have been recorded in the register and, if the land is 23
subject to a site management plan, details of the plan; or 24
- (b) if the owner has been given a notice under this part—that the 25
owner has been given a notice under this part and particulars 26
about the notice; or 27
- (c) if the land is the subject of an order under section 138A—that the 28

³¹ Section 118G (Notice to be given to owner of land)

³² Section 138A (Order to enter land to conduct investigation or perform work)

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- land is the subject of the order and particulars about the order. 1
- Maximum penalty—50 penalty units. 2
- ‘(3) If the owner does not comply with subsection (2), the buyer may 3
rescind the agreement by written notice given to the owner before the 4
completion of the agreement or possession under the agreement, whichever 5
is the earlier. 6
- ‘(4) On rescission of the agreement under subsection (3)— 7
- (a) a person who was paid amounts by the buyer under the 8
agreement must refund the amounts to the buyer; and 9
- (b) the buyer must return to the owner any documents about the 10
disposal (other than the buyer’s copy of the agreement). 11
- ‘(5) Subsections (3) and (4) apply despite anything to the contrary in the 12
agreement. 13

‘Division 7—Miscellaneous 14

‘Registrar to maintain records about contaminated land 15

- ‘118ZZD.(1) The administering authority must, within 10 days after 16
recording particulars of land in the contaminated land register, give the 17
registrar written notice the record has been made. 18
- ‘(2) The registrar must maintain records that show the land stated in the 19
notice is recorded in the contaminated land register. 20
- ‘(3) The registrar must maintain the records in a way that a search of the 21
register maintained by the registrar under any Act relating to the land will 22
show particulars of the land are recorded in the contaminated land register. 23
- ‘(4) The administering authority must, within 10 days after removing 24
particulars of land from the contaminated land register or making another 25
change to the record about the land, give the registrar written notice about 26
the removal or change. 27
- (5) The registrar must, on receipt of a notice under subsection (4)— 28
- (a) for a notice about the removal of land from the contaminated land 29

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register—remove the particulars of the land from the registrar’s records; or	1 2
(b) for a notice about a change to a record about land in the contaminated land register—make the appropriate change to the registrar’s record.	3 4 5
 ‘Offence to destroy etc. signs	 6
‘118ZZE.(1) The administering authority may erect, on contaminated land, a sign regulating access to the land.	7 8
‘(2) However, if the contaminated land is not land for which particulars are recorded on the environmental management register or contaminated land register, the administering authority must, before erecting the sign, give written notice to the owner of the land.	9 10 11 12
‘(3) The notice must—	13
(a) state the reasons for the decision to erect a sign on the land; and	14
(b) that the owner may apply for a review of, and appeal against, the decision within 14 days after receipt of the notice. ³³	15 16
‘(4) A sign erected on contaminated land must be erected—	17
(a) at a place where persons might reasonably be expected to enter the land; and	18 19
(b) in a way that makes the sign visible to persons intending to enter the land.	20 21
‘(5) A person must not enter the land in contravention of the sign unless the person has a reasonable excuse for the entry.	22 23
Maximum penalty—10 penalty units.	24
‘(6) A person must not destroy, damage, mark, deface or in any other way interfere with the sign unless the person has a reasonable excuse for the destruction, damage, marking, defacement or other interference.	25 26 27
Maximum penalty—10 penalty units.	28

³³ Sections 202 and 204 provide for a review of, and appeal against, a decision to erect a sign on contaminated land.

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‘Removal and disposal of contaminated soil

‘118ZZF.(1) A person must not remove and dispose of contaminated soil from land for which particulars are recorded in the environmental management register or contaminated land register without a disposal permit.

Maximum penalty—100 penalty units.

‘(2) An application for a disposal permit must—

- (a) be in the approved form; and
- (b) be supported by enough information to enable the administering authority to decide the application, including, for example, relevant information about the likely risks to the environment and how it is intended to dispose of the contaminated soil; and
- (c) be accompanied by the application fee prescribed under a regulation.

‘(3) The administering authority must decide the application within 14 days after receiving it.

‘(4) In making its decision whether to grant or refuse an application for a disposal permit, or the conditions of the permit, the administering authority must consider the standard criteria.

‘(5) The administering authority must within 10 days after making its decision—

- (a) if the decision is to grant the application—give the applicant the permit; and
- (b) if the decision is to grant the application but impose conditions on the permit—give the applicant the permit and written notice stating—
 - (i) the reasons for the decision; and
 - (ii) that the applicant may apply for a review of, or appeal against, the decision within 14 days after receipt of the

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notice; and³⁴

(c) if the decision is to refuse the application—give the applicant written notice stating—

(i) the reasons for the decision; and

(ii) that the applicant may apply for a review of, or appeal against, the decision within 14 days after receipt of the notice.³⁵

‘(6) If the administering authority fails to make a decision about an application for a disposal permit within the time it is required to make a decision on the application, the failure is taken to be a decision by the authority to refuse the application at the end of the time.

‘(7) A disposal permit takes effect from the day of its issue, or a later day stated in it, and continues in force for the term stated in it.

‘(8) This section does not apply if the person is removing and disposing of the soil under a remediation notice.’

Amendment of s 135 (Entry of place)

Clause **22.(1)** Section 135(1)(a)—

omit, insert—

‘(a) its occupier consents to the entry and, if the entry is for exercising a power under chapter 3, part 9B, its owner consents; or

(2) Section 135(1)—

insert—

‘(f) for land mentioned in chapter 3, part 9B—the entry is authorised by an order under section 138A.³⁶’

³⁴ Sections 202 and 204 provide for a review of, and appeal against, a decision to impose conditions on a disposal permit.

³⁵ Sections 202 and 204 provide for a review of, and appeal against, a decision to refuse an application for a disposal permit.

³⁶ Section 138A (Order to enter land to conduct investigation or perform work)

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(3) Section 135(2), after ‘warrant’— 1
insert— 2
‘or order’. 3

Insertion of new s 136A 4

Clause 23. After section 136— 5
insert— 6

‘Entry of land—preliminary investigation 7

‘**136A.(1)** This section applies if the administering authority believes on 8
reasonable grounds land is contaminated land. 9

Example— 10

The administering authority may, as a result of investigations conducted in an 11
area, become aware contaminated fill has been used in the area. In the 12
circumstances, the administering authority may believes on reasonable grounds 13
individual lots of land in the area are contaminated land. 14

‘(2) An authorised person may, under this section, enter the land to 15
conduct an investigation (a “**preliminary investigation**”) of the land to find 16
out whether the land is contaminated land. 17

‘(3) A power under subsection (2) may be exercised only— 18

(a) with the agreement of the owner and occupier of the land; or 19

(b) if the administering authority has given at least 7 days written 20
notice to the owner and occupier. 21

‘(4) The notice must inform the owner and occupier— 22

(a) the administering authority reasonably believes the land is 23
contaminated land; and 24

(b) an authorised person intends to enter the land; and 25

(c) the purpose of the entry; and 26

(d) the days and times when the entry is to be made. 27

‘(5) In exercising a power under subsection (2), the authorised person 28
must take all reasonable steps to ensure the person causes as little 29

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inconvenience, and does as little damage, as is practicable in the circumstances. 1
2

‘(6) Nothing in this section authorises the authorised person to enter a structure, or part of a structure, used for residential purposes.’. 3
4

Insertion of new s 138A 5

Clause **24.** After section 138— 6

insert— 7

‘Order to enter land to conduct investigation or conduct work 8

‘**138A.(1)** An authorised person may apply to a magistrate for an order to enter contaminated land— 9
10

(a) to conduct a site investigation of the land; or 11

(b) for land particulars of which are recorded in the contaminated land register—to conduct work to remediate the land. 12
13

‘(2) The administering authority must give written notice of the application to— 14
15

(a) the owner of the land; and 16

(b) if the owner is not the occupier of the land—the occupier. 17

‘(3) The application for the order must be sworn and state the grounds on which it is made. 18
19

‘(4) The magistrate may refuse to consider the application until the person gives the magistrate all information the magistrate requires about the application in the way the magistrate requires. 20
21
22

Example— 23

The magistrate may require additional information supporting the application to be given by statutory declaration. 24
25

‘(5) The magistrate may make an order under this section only if the magistrate is satisfied— 26
27

(a) for an order to enter the land and carry out a site investigation— 28

(i) the land is listed in the environmental management register 29

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Amendment of s 140 (General powers for places and vehicles)

- Clause 25. Section 140—
- 21
- insert—*
- 22
- ‘(1A) However, subsection (1)(e) does not apply to an authorised person who enters land to conduct a preliminary investigation or site investigation.’.
- 23
- 24

Amendment of s 148 (Application of division)

- Clause 26. Section 148, heading, ‘division’—
- 25
- 26
- omit, insert—*
- 27
- ‘part’.
- 28

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	Insertion of new s 179A	1
Clause	27. After section 179—	2
	<i>insert—</i>	3
	‘Costs of investigation or remediation to be paid by recipient	4
	‘179A.(1) The amount properly and reasonably incurred by the administering authority in conducting a site investigation, or remediating land, is a debt payable to the administering authority by the recipient of the notice to conduct or commission the investigation or remediate the land.	5 6 7 8
	‘(2) If more than 1 person failed to perform the work, the amount incurred is payable by the persons jointly and severally.	9 10
	‘(3) However, subsection (1) does not apply if the requirement for the recipient to conduct or commission the investigation, or carry out the remediation has been waived by the administering authority.’.	11 12 13
	Amendment of s 180 (Evidentiary provisions)	14
Clause	28.(1) Section 180(5)(d), after ‘licence’—	15
	<i>insert—</i>	16
	‘or level 1 approval’.	17
	(2) Section 180(5)(f)—	18
	<i>omit, insert—</i>	19
	‘(f) a stated document is a copy of a part of, or an extract from, a register kept under this Act;’.	20 21
	Amendment of s 196 (Devolution of powers)	22
Clause	29.(1) Section 196(1)(c)—	23
	<i>omit, insert—</i>	24
	‘(c) another matter under this Act (other than chapter 2 or chapter 3, part 9B).’.	25 26
	(2) Section 196—	27

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insert—

‘(1A) The administration and enforcement of this Act for an environmentally relevant activity carried out in an area below high-watermark forming the boundary of a local government’s area may be devolved to the local government.’.

(3) Section 196—

insert—

‘(2A) If the devolved matter relates to an environmentally relevant activity mentioned in subsection (1A), the local government’s area is, for subsection (2)(c), taken to include the area in which the activity is carried out.’.

Amendment of s 200 (Dissatisfied person)

Clause 30.(1) Section 200(1)(f)—

renumber as section 200(1)(l).

(2) Section 200(1)—

insert—

- ‘(f) if the decision is about recording particulars of land in, or removing particulars of land from, the environmental management register or contaminated land register—the land’s owner; or
- (g) if the decision is about a site investigation of land—the land’s owner, and if another person conducts or commissions the site investigation, the other person; or
- (h) if the decision is about a site management plan for contaminated land—the land’s owner and, if another person prepares or commissions the plan, the other person; or
- (i) if the decision is about the remediation of contaminated land—the land’s owner and, if another person conducts or commission work to remediate the land, the other person; or
- (j) if the decision is about erecting signs on contaminated land—the land’s owner; or

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- (k) if the decision is about a disposal permit—the applicant for the permit; or’. 1
2

Amendment of s 211 (Appeals to be heard with planning appeals) 3

- Clause **31.(1)** Section 211(1)(a), ‘a licence’— 4
omit, insert— 5
‘an environmental authority’. 6
(2) Section 211(1)(b), ‘licence’— 7
omit, insert— 8
‘environmental authority’. 9

Amendment of s 213 (Register) 10

- Clause **32.(1)** Section 213, heading— 11
omit, insert— 12
‘**Registers**’. 13
(2) Section 213— 14
insert— 15
‘**(1A)** Also, the administering authority must, for its administration of 16
matters about contaminated land under chapter 3, part 9B, keep— 17
(a) an environmental management register; and 18
(b) a contaminated land register.’. 19

Amendment of s 214 (Inspection of register) 20

- Clause **33.(1)** Section 214(1), after ‘must’— 21
insert— 22
‘, for a register mentioned in section 213(1)’. 23
(2) Section 214— 24
insert— 25

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‘(3) Also, the administering authority must, on payment of the fee prescribed under a regulation, permit members of the public to obtain extracts from the registers mentioned in section 213(1A).’.

Amendment of s 219 (Codes of practice)

- Clause **34.(1)** Section 219(1), ‘written notice’—
omit, insert—
‘gazette notice’.
- (2) Section 219(2)—
omit.
- (3) Section 219(3)—
renumber as section 219(2).

Amendment of s 220 (Regulation-making power)

- Clause **35.** Section 220(2)(k)—
omit, insert—
‘(k) litter;
(l) the keeping of the environmental management register and contaminated land register, including, for example, the information to be included in the registers and made available to persons searching the registers.’.

Insertion of new ss 237 and 238

- Clause **36.** After section 236—
insert—

‘Transfer of certain land on contaminated sites register to environmental management register

‘**237.(1)** This section applies to land that, immediately before the commencement of this section, was recorded in the contaminated sites

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register under the *Contaminated Land Act 1991* as being classified as a probable site or restricted site. 1
2

‘(2) The administering authority must, on or before the commencement, record particulars of the land in the environmental management register. 3
4

‘(3) Any conditions on the use or management of the land recorded in the contaminated sites register continue to apply to the land as if the conditions were contained in a site management plan prepared for the land under this Act. 5
6
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‘(4) To remove any doubt, it is declared that the owner of land to which this section applies does not have a right of review under section 202, or appeal under section 204, in relation to the recording of particulars of the land in the environmental management register. 9
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11
12

**‘Transfer of certain land on contaminated sites register to contaminated land register 13
14**

‘238.(1) This section applies to land that, immediately before the commencement of this section, was recorded in the contaminated sites register under the *Contaminated Land Act 1991* as being classified as a confirmed site. 15
16
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‘(2) The administering authority must, on or before the commencement, record particulars of the land in the contaminated land register. 19
20

‘(3) To remove any doubt, it is declared that the owner of land to which this section applies does not have a right of review under section 202, or appeal under section 204, in relation to the recording of particulars of the land in the contaminated land register.’. 21
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Amendment of sch 1 (Original decisions) 25

Clause 37. Schedule 1— 26

insert— 27

‘60A Refusal of application to amend level 1 approval

60C(2) Amendment of level 1 approval

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60E(5)(b)	Suspension or cancellation of level 1 approval
118H(7)	Recording particulars of land in the environmental management register
118K(3)	Requirement for site investigation
118L(6)	Refusal of application for waiver of requirement to conduct or commission site investigation and report
118R(4)	Leaving particulars of land on environmental management register
118R(4)	Recording particulars of land in contaminated land register
118S(4)	Requirement for additional information about site investigation and report
118V(3)	Extension of time to make decision about site investigation report
118Y(5)	Requirement to conduct or commission work to remediate contaminated land
118Z(6)	Refusal of application for waiver of requirement to conduct or commission work to remediate contaminated land
118ZE(2)	Leaving particulars of land on environmental management register or contaminated land register or recording particulars of land in environmental management register
118ZF(4)	Requirement for additional information about validation report
118ZG(3)	Extension of time for consideration of validation report
118ZN(3)	Requirement to prepare or commission site management plan

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118ZO(6)	Refusal of application for waiver of requirement to prepare or commission site management plan
118ZS(2)	Requirement for additional information about site management plan
118ZU(3)	Preparation of site management plan by administering authority
118ZV(2)	Refusal to approve draft site management plan
118ZW(3)	Extension of time for decision about approval of draft site management plan
118ZZE(3)	Erection of sign on contaminated land for which particulars are not recorded on the environmental management register or contaminated land register
118ZZF(5)	Imposition of conditions on disposal permit
118ZZF(5)	Refusal of application for disposal permit’.

Insertion of new sch 3

Clause **38.** After schedule 2—
insert—

‘SCHEDULE 3

‘NOTIFIABLE ACTIVITIES

schedule 4, dictionary, definition **“notifiable activity”**

1. Abrasive blasting—carrying out abrasive blast cleaning (other than cleaning carried out in fully enclosed booths) or disposing of abrasive blasting material.
2. Aerial spraying—operating premises used for—

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- | | |
|---|----------------------|
| (a) filling and washing out tanks used for aerial spraying; or | 1 |
| (b) washing aircraft used for aerial spraying. | 2 |
| 3. Asbestos manufacture or disposal— | 3 |
| (a) manufacturing asbestos products; or | 4 |
| (b) disposing of unbonded asbestos; or | 5 |
| (c) disposing of more than 5 t of bonded asbestos. | 6 |
| 4. Asphalt or bitumen manufacture—manufacturing asphalt or bitumen, other than at a single-use site used by a mobile asphalt plant. | 7
8 |
| 5. Battery manufacture or recycling—assembling, disassembling, manufacturing or recycling batteries (other than storing batteries for retail sale). | 9
10
11 |
| 6. Chemical manufacture or formulation—manufacturing, blending, mixing or formulating chemicals if— | 12
13 |
| (a) the chemicals are designated dangerous goods under the dangerous goods code; and | 14
15 |
| (b) the facility used to manufacture, blend, mix or formulate the chemicals has a design production capacity of more than 1 t per week. | 16
17
18 |
| 7. Chemical storage (other than petroleum products or oil under item 29)—storing more than 10 t of chemicals (other than compressed or liquefied gases) that are dangerous goods under the dangerous goods code. | 19
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22 |
| 8. Coal fired power station—operating a coal fired power station. | 23 |
| 9. Coal gas works—operating a coal gas works. | 24 |
| 10. Defence establishments or training areas—operating a defence establishment or a training area used for handling ammunition in way that may have caused, or may cause, remnant unexploded ordnance. | 25
26
27 |
| 11. Drum reconditioning or recycling—reconditioning or recycling of metal or plastic drums including storage drums. | 28
29 |
| 12. Dry cleaning—operating a dry cleaning business where— | 30 |
| (a) solvents are stored in underground tanks; or | 31 |

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(b) more than 500 L of halogenated hydrocarbon are stored.	1
13. Electrical transformers—manufacturing, repairing or disposing of electrical transformers.	2 3
14. Engine reconditioning works—carrying out engine reconditioning work at a place where more than 500 L of the following are stored—	4 5
(a) halogenated and non-halogenated hydrocarbon solvents;	6
(b) dangerous goods in class 6.1 under the dangerous goods code;	7
(c) industrial degreasing solutions.	8
15. Explosives production or storage—operating a factory under the <i>Explosives Act 1952</i> .	9 10
16. Fertiliser manufacture—manufacturing agriculture fertiliser (other than the blending, formulation or mixing of fertiliser).	11 12
17. Foundry operations—commercial production of metal products by injecting or pouring molten metal into moulds and associated activities in works having a design capacity of more than 10 t per year.	13 14 15
18. Gun, pistol or rifle range—operating a gun, pistol or rifle range.	16
19. Herbicide or pesticide manufacture—commercially manufacturing, blending, mixing or formulating herbicides or pesticides.	17 18
20. Landfill—disposing of waste (excluding inert construction and demolition waste).	19 20
21. Lime burner—manufacturing cement or lime from limestone material using a kiln and storing wastes from the manufacturing process.	21 22
22. Livestock dip or spray race operations—operating a livestock dip or spray race facility.	23 24
23. Metal treatment or coating—treating or coating metal including, for example, anodising, galvanising, pickling, electroplating, heat treatment using cyanide compounds and spray painting using more than 5 L of paint per week (other than spray painting within a fully enclosed booth).	25 26 27 28 29
24. Mine wastes—	30
(a) storing hazardous mine or exploration wastes, including, for	31

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- | | |
|---|----------------------|
| example, tailings dams, overburden or waste rock dumps containing hazardous contaminants; or | 1
2 |
| (b) exploring for, or mining or processing, minerals in a way that exposes faces, or releases groundwater, containing hazardous contaminants. | 3
4
5 |
| 25. Mineral processing—chemically or physically extracting or processing metalliferous ores. | 6
7 |
| 26. Paint manufacture or formulation—manufacturing or formulating paint where the design capacity of the plant used to manufacture or formulate the paint is more than 10 t per year. | 8
9
10 |
| 27. Pest control—commercially operating premises where— | 11 |
| (a) more than 200 L of pesticide are stored; and | 12 |
| (b) filling or washing of tanks used in pest control operations occurs. | 13 |
| 28. Petroleum or petrochemical industries including— | 14 |
| (a) operating a petrol depot, terminal or refinery; or | 15 |
| (b) operating a facility for the recovery, reprocessing or recycling of petroleum-based materials. | 16
17 |
| 29. Petroleum product or oil storage—storing petroleum products or oil— | 18 |
| (a) in underground tanks with more than 200 L capacity; or | 19 |
| (b) in above ground tanks with— | 20 |
| (i) for petroleum products or oil in class 3 in packaging groups 1 and 2 of the dangerous goods code—more than 2 500 L capacity; or | 21
22
23 |
| (ii) for petroleum products or oil in class 3 in packaging groups 3 of the dangerous goods code—more than 5 000 L capacity; or | 24
25
26 |
| (iii) for petroleum products that are combustible liquids in class C1 or C2 in Australian Standard AS 1940, ‘The storage and handling of flammable and combustible liquids’ published by Standards Australia—more than 25 000 L capacity. | 27
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| 30. Pharmaceutical manufacture—commercially manufacturing, blending, | 31 |

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mixing or formulating pharmaceuticals.	1
31. Printing—commercial printing using—	2
(a) type metal alloys; or	3
(b) printing inks or pigments or etching solutions containing metal; or	4
(c) cast lead drum plates; or	5
(d) a linotype machine with a gas-fired lead melting pot attached; or	6
(e) more than 500 L of halogenated and non-halogenated hydrocarbon solvents.	7 8
32. Railway yards—operating a railway yard including goods-handling yards, workshops and maintenance areas.	9 10
33. Scrap yards—operating a scrap yard including automotive dismantling or wrecking yard or scrap metal yard.	11 12
34. Service stations—operating a commercial service station.	13
35. Smelting or refining—fusing or melting metalliferous metal or refining the metal.	14 15
36. Tannery, fellmongery or hide curing—operating a tannery or fellmongery or hide curing works or commercially finishing leather.	16 17
37. Waste storage, treatment or disposal—storing, treating, reprocessing or disposing of regulated waste (other than at the place it is generated), including operating a nightsoil disposal site or sewage treatment plant where the site or plant has a design capacity that is more than the equivalent of 50 000 persons having sludge drying beds or on-site disposal facilities.	18 19 20 21 22 23
38. Wood treatment and preservation—treating timber for its preservation using chemicals, including, for example, arsenic, borax, chromium, copper or creosote.?’	24 25 26
Amendment of sch 4 (Dictionary)	27
Clause 39.(1) Schedule 4, definition “ approval ”—	28
<i>omit.</i>	29

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(2) Schedule 4—	1
<i>insert—</i>	2
‘ “approval” means an approval under chapter 3, part 4 to carry out a level 1 or level 2 environmentally relevant activity.	3 4
“approved code of practice” means a code of practice approved by the Minister under section 219.	5 6
“contaminated land” means land contaminated by a hazardous contaminant.	7 8
“contaminated land register” means the register kept by the administering authority under section 213(1A)(b)	9 10
“dangerous goods code” means the Australian Code for the Transport of Dangerous Goods by Road and Rail prepared by the Office of Federal Road Safety and published by the Commonwealth. ³⁷	11 12 13
“disposal permit” means a permit under section 118ZZF to remove and dispose of contaminated soil from land for which particulars are recorded in the environmental management register or contaminated land register.	14 15 16 17
“environmental management register” means the register kept by the administering authority under section 213(1A)(a).	18 19
“hazardous contaminant” means a contaminant that, if improperly treated, stored, disposed of or otherwise managed, is likely to cause serious or material environmental harm because of—	20 21 22
(a) its quantity, concentration, acute or chronic toxic effects, carcinogenicity, teratogenicity, mutagenicity, corrosiveness, explosiveness, radioactivity or flammability; or	23 24 25
(b) its physical, chemical or infectious characteristics.	26
“level 1 approval” means an approval under chapter 3, part 4 to carry out a level 1 environmentally relevant activity.	27 28
“level 2 approval” means an approval under chapter 3, part 4 to carry out a	29

³⁷ A copy of the code may be purchased at the Commonwealth Government Bookshop, Adelaide Street, Brisbane.

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level 2 environmentally relevant activity.	1
“mining authority” means—	2
(a) a prospecting permit, mining claim, exploration permit, mineral development licence or mining lease granted under the <i>Mineral Resources Act 1989</i> ; or	3 4 5
(b) a prospecting petroleum permit, authority to prospect, petroleum lease or pipeline licence granted under the <i>Petroleum Act 1923</i> ; or	6 7
(c) a licence, permit, pipeline licence, primary licence, secondary licence or special prospecting authority granted under the <i>Petroleum (Submerged Lands) Act 1982</i> .	8 9 10
“notifiable activity” means an activity in schedule 3.	11
“preliminary investigation” see section 136A.	12
“registrar” means the registrar of titles or another person responsible for keeping a register in relation to dealings in land.	13 14
“remediate” , contaminated land, means—	15
(a) rehabilitate the land; or	16
(b) restore the land; or	17
(c) take other action to prevent or minimise serious environmental harm being caused by the hazardous contaminant contaminating the land.	18 19 20
“remediation notice” see section 118Z(5)(a).	21
“site investigation report” means a report submitted to the administering authority about a site investigation of land for which particulars are recorded in the environmental management register.	22 23 24
“site management plan” means a site management plan approved under chapter 3, part 9B.	25 26
“suitability statement” means—	27
(a) for a decision made about contaminated land after considering site investigation report for the land—a statement issued by the administering authority under section 118S about the uses and activities for which the land is suitable; or	28 29 30 31

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- (b) for a decision made about land after considering a validation report—a statement issued by the administering authority under section 118ZF about the uses and activities for which the land is suitable; or 1
2
3
4
- (c) for the approval of a draft site management plan—a statement issued by the administering authority under section 118ZU about the uses and activities for which the land is suitable under the plan. 5
6
7
8
- “validation report”** see section 118X.’. 9
- (3) Schedule 4, definition **“recipient”**— 10
insert— 11
- ‘(c) for a notice to conduct or commission a site investigation—the person to whom the notice is given; or 12
13
- (d) for a remediation notice—the person to whom the notice is given; or 14
15
- (e) for a notice to prepare or commission a site investigation report—the person to whom the notice is given. 16
17
- (4) Schedule 4, definition **“standard criteria”**, ‘or protection order’— 18
omit, insert— 19
- ‘, protection order or removal permit’. 20
- (5) Schedule 4, definition **“standard criteria”**, paragraphs (g) and (h), ‘or order’— 21
22
omit, insert— 23
- ‘, order or permit’. 24
- (6) Schedule 4, definition **“standard criteria”**, paragraph (j)— 25
omit, insert— 26
- ‘(j) any applicable site management plan; and 27
- (k) any other matter prescribed under a regulation.’. 28

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**PART 3—AMENDMENT OF MINERAL RESOURCES
ACT 1989**

	1
	2
Act amended by pt 3	3
Clause 40. This part amends the <i>Mineral Resources Act 1989</i> .	4
Amendment of s 5 (Definitions)	5
Clause 41. Section 5, definition “ hazardous substance ”—	6
<i>omit, insert—</i>	7
‘ hazardous contaminant ’ has the meaning given by the <i>Environmental Protection Act 1994</i> . ³⁸ .	8
	9
Amendment of s 6 (Meaning of “contaminated land”)	10
Clause 42. Section 6, ‘hazardous substance’—	11
<i>omit, insert—</i>	12
‘hazardous contaminant’.	13

³⁸ The *Environmental Protection Act 1994*, schedule 4 defines “**hazardous contaminant**” as follows—

‘**“mining authority”** means—

- (a) a prospecting permit, mining claim, exploration permit, mineral development licence or mining lease granted under the *Mineral Resources Act 1989*; or
- (b) a prospecting petroleum permit, authority to prospect, petroleum lease or pipeline licence granted under the *Petroleum Act 1923*; or
- (c) a licence, permit, pipeline licence, primary licence, secondary licence or special prospecting authority granted under the *Petroleum (Submerged Lands) Act 1982*.’.

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**PART 4—AMENDMENT OF NATURE
CONSERVATION ACT 1992**

	Act amended by pt 4	1 2 3
Clause	43. This part amends the <i>Nature Conservation Act 1992</i> .	4
	Amendment of s 7 (Definitions)	5
Clause	44. Section 7, definition “ in the wild ”, ‘and unpossessed’— <i>omit.</i>	6 7

PART 5—REPEAL

	Act repealed	8 9
Clause	45. The <i>Contaminated Land Act 1991</i> is repealed.	10 11