



AUSTRALIAN CAPITAL TERRITORY

Environment Protection (Amendment) Act 1999

No. 54 of 1999

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No. 54 of 1999

An Act to amend the *Environment Protection Act 1997* and for related purposes

[Notified in ACT Gazette S54: 17 September 1999]

The Legislative Assembly for the Australian Capital Territory enacts as follows:

1. Short title

This Act may be cited as the *Environment Protection (Amendment) Act 1999*.

2. Commencement

(1) Sections 1, 2 and 3 commence on the day on which this Act is notified in the *Gazette*.

(2) The remaining provisions commence on a day, or respective days, fixed by the Minister by notice in the *Gazette*.

(3) If a provision mentioned in subsection (2) has not commenced within 6 months beginning on the day this Act is notified in the *Gazette*, it commences, by force of this subsection, on the first day after that period.

3. Principal Act

In this Act, “Principal Act” means the *Environment Protection Act 1997*.¹

4. Objects

Section 3 of the Principal Act is amended—

- (a) by inserting in subsection (1) “particular” before “objects”;
- (b) by omitting from paragraph (1) (p) “and” (last occurring);
- (c) by inserting after paragraph (1) (p) the following paragraph:
 - “(pa) to ensure that contaminated land is managed having regard to human health and the environment;”;
- (d) by adding at the end of paragraph (1) (q) “and”; and
- (e) by inserting after paragraph (1) (q) the following paragraph:
 - (qa) to establish a process for investigating and, where appropriate, remediating land areas where contamination is causing or is likely to cause—
 - (i) a significant risk of harm to human health; or
 - (ii) a significant risk of material environmental harm or serious environmental harm;”.

5. Interpretation

Section 4 of the Principal Act is amended—

- (a) by inserting the following definitions:
 - “ ‘appropriate person’ means the appropriate person ascertained in accordance with subsection 91I (2);
 - ‘contaminated’ or ‘contamination’, in relation to land, means, subject to subsections (2) and (3), the presence in, on or under land, or a building or structure on land, of a substance at a concentration above the concentration at which the substance is normally present in, on or under land, or a building or structure on land, in the same locality, being a presence that causes, or is likely to cause either or both of the following:
 - (a) a risk of harm to human health;
 - (b) a risk of environmental harm;

‘financial controller’ means a receiver, manager or other person who has possession or control of land for the purpose of realising part or all of the value of the land in order to discharge an obligation secured over the land;

‘land’ includes water on or below the surface of land and the bed of such water;

‘National Capital Plan’ means the National Capital Plan under Part III of the *Australian Capital Territory (Planning and Land Management) Act 1988* of the Commonwealth;

‘notional lessee’, in relation to land, means a person who has vested rights with respect to the land that—

- (a) carry an entitlement to have the lease transferred to that person; or
- (b) enable the person to dispose of or otherwise deal with the land;

so that the person is able to benefit from the value of the lease, or a substantial part of it, by the transfer, disposal or dealing, and includes a mortgagee in possession of the land the subject of the lease, but does not include—

- (c) a person having security over the lease;
- (d) a person who is a legal personal representative of a person who was the lessee of the land immediately before the appointment of the representative took effect or who was a lessee of the land immediately before his or her death;
- (e) the Public Trustee by virtue of the operation of section 19 of the *Public Trustee Act 1985*; or
- (f) a person who would otherwise be a notional lessee if—
 - (i) the person has some security of the lease; and

- (ii) the person, or a financial controller appointed by the person, has entered into a contract to sell the land for the purpose of realising all or part of the value of the land in order to discharge an obligation so secured;

‘register’ means the register kept under section 21A;

‘remediation’, in relation to contaminated land, includes—

- (a) preparing a long-term management plan (if any) for the land;
- (b) removing, dispersing, destroying, reducing, mitigating or containing the contamination of the land; and
- (c) eliminating or reducing any hazard arising from the contamination of the land (including by preventing the entry of persons or animals on the land);

‘site audit statement’ means a written statement of the findings of an environmental audit conducted by an auditor for the purposes of Division 5 of Part IX for assessment for, or remediation of, contaminated land;”;
and

- (b) by adding at the end the following subsections:

“(2) For the purposes of this Act, land is not contaminated land merely because in any surface water standing or running on the land a substance is present in a concentration above the concentration at which the substance is normally present in, on or under land, or a building or structure on land, in the same locality.

“(3) For the purposes of this Act, land may be contaminated land even if it became contaminated partly or entirely by the migration of contaminants into, onto or under the land from other land.”.

6. Limitation of application in respect of certain people and things

Section 8 of the Principal Act is amended by omitting from paragraph (1) (b) “*Aircraft*” and substituting “*Air*”.

7. Inspection of documents

Section 19 of the Principal Act is amended—

- (a) by inserting after paragraph (1) (h) the following paragraph:
“(ha) the list of auditors approved under section 75;”; and
- (b) by inserting after paragraph (1) (k) the following paragraphs:
 - “(ka) an order for assessment under section 91C;
 - “(kb) an assessment under paragraph 91C (4) (a);
 - “(kc) an environmental audit under paragraph 91C (4) (b);
 - “(kd) a remediation order under section 91D;
 - “(ke) an environmental audit under paragraph 91D (4) (b);
 - “(kf) the register;”.

8. Exclusion of material

Section 21 of the Principal Act is amended—

- (a) by inserting after paragraph (1) (d) the following paragraph:
“(da) the making of an order under section 91C or 91D;”;
- (b) by omitting from paragraph (1) (f) “or” (last occurring);
- (c) by adding at the end of paragraph (1) (g) “or”;
- (d) by inserting after paragraph (1) (g) the following paragraph:
“(ga) the conduct of an activity to which section 159A applies;”;
- (e) by inserting in subsection (1) “who provided the document, or a person whose interests are affected by the provision of the document,” after “person” (second occurring); and
- (f) by omitting from paragraph (1) (j) “a person” and substituting “the person”.

9. Insertion

After section 21 of the Principal Act the following Division is inserted in Part II:

“Division 3—Register of contaminated sites

“21A. Register of contaminated sites

- “(1) The Authority shall keep a register of contaminated sites.**

“(2) The register—

- (a) may be in electronic form; and
- (b) shall comprise particulars of land in relation to an order under subsection 91C (1), 91D (1) or 125 (1A).

“(3) As soon as practicable after making an order under subsection 91C (1), 91D (1) or 125 (1A), the Authority shall give written notice of the making of the order and the entry in the register of particulars of contaminated sites to—

- (a) the Australian Capital Territory Planning Authority; and
- (b) if the land is in a Designated Area—the National Capital Authority.

“(4) The Authority shall make an entry in the register—

- (a) for an order under subsection 91D (1)—if satisfied that the remediation of the land has been conducted as mentioned in paragraph 91D (4) (a); and
- (b) for an order under subsection 125 (1A)—if the Authority is no longer satisfied as referred to in that subsection, or the order is revoked, whichever occurs first.

“(5) The Authority shall remove an entry from the register for an order under subsection 91C (1) within 60 days after receipt of an audit of assessment under section 91C in relation to that entry unless the Authority has, within that period, made an order under subsection 91D (1) or 125 (1A).

“(6) In this section—

‘Designated Area’ see *Australian Capital Territory (Planning and Land Management) Act 1988* of the Commonwealth, section 4, definition of ‘Designated Area’.

“21B. Notification of making of certain entries in register

“(1) If the Authority makes an entry in the register under paragraph 21A (2) (b) or subsection 21A (4) or removes an entry under subsection 21A (5), the Authority shall—

- (a) notify the making of the entry or removal in the *Gazette* within 10 working days beginning after the day the entry was made; and
- (b) publish a copy of the notice in a daily newspaper.

“(2) A notice under subsection (1) shall state the places at which a copy of any of the following documents may be inspected or obtained:

- (a) an order under subsection 91C (1);
- (b) an assessment under paragraph 91C (4) (a);
- (c) an environmental audit under paragraph 91C (4) (b);
- (d) an order under subsection 91D (1);
- (e) an environmental audit under paragraph 91D (4) (b).”.

10. Insertion

After section 23 of the Principal Act the following section is inserted in Part III:

“23A. Duty to notify existence of contaminated land

“(1) A lessee or occupier of land shall notify the Authority in writing as soon as practicable after becoming aware that land of which he or she is the lessee or occupier is contaminated in such a way as to present, or to be likely to present—

- (a) a significant risk of harm to human health; or
- (b) a risk of material environmental harm or serious environmental harm.

“(2) A person shall not, without reasonable excuse, contravene subsection (1).

Penalty:

- (a) for a natural person—50 penalty units;
- (b) for a body corporate—250 penalty units.”.

11. Insertion

Before Division 1 of Part VIII of the Principal Act the following Division is inserted:

“Division 1A—Interpretation

“41A. Interpretation

In this Part—

‘environmental authorisation’ includes an authorisation that is declared under section 67A to be a recognised environmental authorisation to which Division 2 applies;”.

12. Insertion

Before section 67 of the Principal Act the following section is inserted in Division 1 of Part VIII:

“67A. Recognised environmental authorisations

“(1) The Minister may, by instrument, declare a licence, authorisation, permit, notice or approval issued, granted or given under a law of a State or another Territory to conduct an activity of the kind specified in clause 2 of Schedule 1 to be a recognised environmental authorisation to which this Division applies.

“(2) A declaration under subsection (1) is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.”.

13. Certain auditors to be approved

Section 75 of the Principal Act is amended—

- (a) by omitting from subsection (3) all the words after “list” and substituting “of approved auditors whom it is satisfied meet the requirements of subsection (2)”; and
- (b) by adding at the end the following subsection:

“(6) A condition applying to a person whose name appears on a list of auditors maintained under a corresponding law of a State or another Territory applies to that person when conducting an audit under this Act.”.

14. Authority may require an environmental audit

Section 76 of the Principal Act is amended by inserting after subsection (1) the following subsections:

“(1A) The Authority may, by written notice, require a person to commission an environmental audit of contaminated land.

“(1B) An auditor shall not carry out an audit for the purposes of subsection (1A) if he or she carried out an assessment or remediation of the land to which the audit relates.”.

15. Insertion

After section 76 of the Principal Act the following sections are inserted:

“76A. Requests for auditor’s statements

“(1) An auditor shall, within 7 working days of receiving a request under this or another Act to carry out an audit of contaminated land, give to the Authority a statement specifying—

- (a) the name of the person making the request;
- (b) the location of the land to which the audit relates; and
- (c) an estimation of the time within which the audit will be completed.

“(2) An auditor shall, within 15 working days after completing an audit, give to the Authority a copy of the site audit statement.

“76B. Annual returns—auditors

“(1) An auditor shall, within 20 working days after the end of each financial year, give to the Authority a report about each audit of contaminated land carried out under this Act or another Act during that year.

“(2) A report under this section shall be in a form approved by the Authority.”.

16. Insertion

After section 91 of the Principal Act the following Divisions are inserted in Part IX:

“Division 5—Assessment and remediation

“91A. Interpretation

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

‘approved use’, in relation to land, means use—

- (a) that is consistent with the National Capital Plan or the Territory Plan, as the case requires; and
- (b) in the case of leased land—that is permitted by the lease;

‘national environment protection measure’ means a national environment protection measure made under subsection 13 (1) of the *National Environment Protection Council Act 1994*, as in force from time to time;

‘substance’ includes matter or thing.

“(2) For the purposes of sections 91C, 91D and 91G, an environmental audit for assessment or remediation of contaminated land is an audit by an auditor—

- (a) that relates to an assessment or remediation carried out (whether under this Act or otherwise) in respect of actual or possible contamination of land; and
- (b) that is conducted for the purposes of determining any 1 or more of the following:
 - (i) the nature and extent of the assessment or remediation undertaken, as the case requires;
 - (ii) the nature and extent of any contamination or remaining contamination of the land;
 - (iii) what further assessment or remediation, as the case requires, is necessary before the land is suitable for any specified use or range of uses.

“91B. Assessment of risk of harm

“(1) For the purposes of this Division, to assess whether land is contaminated with 1 or more substances in such a way as to present, or to be likely to present a significant risk of harm to human health, or a risk of material environmental harm or serious environmental harm, the Authority shall include a consideration of all of the following matters in the assessment:

- (a) whether the contamination of the land has already caused harm;
- (b) whether the substances are toxic, persistent or bioaccumulative or are present in large quantities or high concentrations or occur in combinations;
- (c) whether there are routes by which the substances may proceed from the source of the contamination to human beings or other aspects of the environment;
- (d) whether the uses to which the land and land adjoining it are currently being put are such as to increase the risk of harm;
- (e) whether the use of the land and land adjoining it, being a use permitted by the lease to which the land is subject, is such as to increase the risk of harm;

- (f) whether the substances have migrated or are likely to migrate from the land (whether because of the nature of the substances or the nature of the land);
- (g) any environment protection policy made by the Authority on contamination and remediation;
- (h) any relevant national environment protection measure.

“(2) Subject to subsection (3), land may be regarded at any particular time as being contaminated in such a way as to present a significant risk of harm even if the harm could come into existence only in certain circumstances of occupation or use of the land and those circumstances do not exist at that time.

“(3) Land shall be regarded in the manner referred to in subsection (2), if the circumstances are reasonably foreseeable, and consistent with the approved use of the land, at that time.

“91C. Order to assess whether land contaminated

“(1) If the Authority has reasonable grounds for believing that land is contaminated in such a way as to cause, or be likely to cause, either a significant risk of harm to human health or a significant risk of material environmental harm or serious environmental harm, or both, the Authority may—

- (a) by notice in writing served on the appropriate person, order the appropriate person to conduct an assessment of the land; or
- (b) itself conduct the assessment.

“(2) An order under subsection (1) shall—

- (a) be in writing; and
- (b) specify—
 - (i) the person to whom the order relates;
 - (ii) the land to which the order relates;
 - (iii) the period within which the assessment is to be conducted;
 - (iv) the nature of the contamination that the Authority has reasonable grounds for believing is causing, or is likely to cause, a significant risk of harm to human health or a significant risk of material environmental harm or serious environmental harm;
 - (v) the action that the person subject to the order shall take in assessing and reporting; and

- (vi) such other requirements as the Authority considers appropriate having regard to the nature and extent of the contamination and the physical attributes of the land.

“(3) The action that may be required to be taken under subparagraph (2) (b) (v) includes, but is not limited to, the following:

- (a) that the person serve notice of the order on the occupiers of land access to which is necessary for the person to carry out the assessment and, if an occupier is not the lessee of that land—serve notice on the lessee;
- (b) that the person make progress reports to the Authority on the assessment;
- (c) that the person advertise and conduct meetings to give progress reports to the public, and to receive public comment, on the assessment.

“(4) A person to whom an order is given under subsection (1) shall—

- (a) conduct the assessment—
 - (i) within the period specified in an order under subsection (1);
 - (ii) in accordance with the prescribed standards and procedures for carrying out an assessment, including standards and procedures specified in a relevant national environment protection measure; and
 - (iii) otherwise in accordance with the terms of the order; and
- (b) commission an environmental audit of the assessment by an auditor approved under section 75.

“(5) In preparing a report of an audit for the purposes of this section, the auditor commissioned to conduct the assessment shall have regard to—

- (a) the provisions of this Act and the regulations;
- (b) the permitted and approved uses of the land to which the assessment relates;
- (c) the degree or extent of contamination;
- (d) any relevant environmental protection policies; and
- (e) any relevant national environment protection measures.

“(6) For the purposes of paragraph (4) (b), the person to whom the order is given shall submit the name of an auditor to the Authority for approval within 10 working days of the date of the order.

“(7) Notwithstanding section 75, the Authority shall not approve an auditor for the purposes of this section unless the auditor meets the prescribed criteria.

“(8) A person who, without reasonable excuse, contravenes subsection (4) is guilty of an offence.

Penalty:

- (a) for a natural person—50 penalty units;
- (b) for a body corporate—250 penalty units.

“91D. Order to remediate land

“(1) If the Authority has reasonable grounds for believing that the land to which the audit relates is contaminated in such a way as to cause, or be likely to cause, either a significant risk of harm to human health or a significant risk of material environmental harm or serious environmental harm, or both, the Authority may—

- (a) by notice in writing served on an appropriate person, order the appropriate person to remediate the land; or
- (b) itself conduct the remediation.

“(2) An order under subsection (1) shall—

- (a) be in writing; and
- (b) specify—
 - (i) the person or persons to whom the order relates;
 - (ii) the land to which the order relates;
 - (iii) the period within which the remediation is to be conducted;
 - (iv) the nature of the contamination that the Authority has reasonable grounds for believing is causing, or is likely to cause, a significant risk of harm to human health or a significant risk of material environmental harm or serious environmental harm;
 - (v) the action that the person subject to the order shall take in remediating and reporting; and
 - (vi) such other requirements as the Authority considers appropriate having regard to the nature and extent of the contamination and the physical attributes of the land.

“(3) The action that may be required to be taken under subparagraph (2) (b) (v) includes, but is not limited to, the following actions:

- (a) that the person serve notice of the order on the occupiers of land access to which is necessary for the person to carry out the remediation and, if an occupier is not the lessee of that land—serve notice on the lessee;
- (b) that the person make progress reports to the Authority on the remediation;
- (c) that the person advertise and conduct meetings to give progress reports to the public, and to receive public comment, on the remediation.

“(4) A person to whom an order is given under subsection (1) shall—

- (a) conduct the remediation—
 - (i) within the period specified in an order under subsection (1);
 - (ii) in accordance with the prescribed standards and procedures for carrying out remediation, including standards and procedures specified in a relevant national environment protection measure; and
 - (iii) otherwise in accordance with the terms of the order; and
- (b) commission an environmental audit of the remediation by an auditor approved under section 75.

“(5) In preparing a report of an audit for the purposes of this section, the auditor commissioned to conduct the remediation shall have regard to—

- (a) the provisions of this Act and the regulations;
- (b) the permitted and approved uses of the land to which the assessment relates;
- (c) the degree or extent of contamination;
- (d) any relevant environmental protection policies; and
- (e) any relevant national environment protection measures.

“(6) For the purposes of paragraph (4) (b), the person to whom the order is given shall submit the name of an auditor to the Authority for approval within 10 working days of the date of the order.

“(7) Notwithstanding section 75, the Authority shall not approve an auditor for the purposes of this section unless the auditor meets the prescribed criteria.

“(8) The lessee of land to whom an order is given under subsection (1) shall not, without the consent of the Authority, transfer or sublet the land while the order is in force.

“(9) A person who, without reasonable excuse, contravenes subsection (4) is guilty of an offence.

Penalty:

- (a) for a natural person—200 penalty units;
- (b) for a body corporate—1,000 penalty units.

“91E. Notification of certain persons about orders for assessment or remediation

“(1) The Authority shall, by written notice, notify the occupier and, if the occupier is not the lessee, the lessee, of land adjacent to land to which subsection 91C (1) or 91D (1) relates—

- (a) that notice of an assessment or remediation of the land has been given to the appropriate person; or
- (b) that the Authority is carrying out the requirements of an assessment order or remediation order in relation to the land.

“(2) A notice under subsection (1) shall—

- (a) invite the person to whom notice is given to make written submissions to the Authority within 21 days beginning the day after the day the person received the notice; and
- (b) state the places at which a copy of any of the following documents may be inspected:
 - (i) a report of the outcome of an assessment under subsection 91C (1);
 - (ii) a progress report on the assessment under subsection 91C (3);
 - (iii) an assessment under paragraph 91C (4) (a);
 - (iv) an audit under paragraph 91C (4) (b);
 - (v) a report of the outcome of an assessment under subsection 91D (1);
 - (vi) a progress report on the assessment under subsection 91D (3);
 - (vii) an audit under paragraph 91C (4) (b).

“91F. Certain documents to be available free of charge

The Authority shall—

- (a) make available for inspection by any person free of charge a document mentioned in paragraph 91E (2) (b); and
- (b) on the request of a person, give a copy of a document mentioned in that paragraph to the person free of charge.

“91G. Extension of time

“(1) The Authority may, on application in writing by a person on whom an order is served under subsection 91C (1) or 91D (1) for an extension of the period within which the person shall conduct an assessment or remediation—

- (a) extend or refuse to extend the period; or
- (b) extend the period for a period less than that applied for.

“(2) In determining whether or not to extend the period, the Authority shall have regard to—

- (a) the period of extension for which application is made; and
- (b) whether the contamination is causing, or is likely to cause, a significant risk of harm to human health or a risk of material environmental harm or serious environmental harm.

“91H. Further information

For the purposes of sections 91C and 91D, the Authority may, by notice in writing, require an auditor to furnish to the Authority, either orally or in writing, such further information relating to an assessment or remediation, as the case requires, as is specified in the notice.

“91I. Choice of appropriate person

“(1) For the purposes of subsections 91C (1) and 91D (1), an appropriate person shall be chosen from among the following persons in the following order:

- (a) a person who had principal responsibility for such contamination of the land with the substance (whether or not there were other persons who had responsibility for such contamination of the land with the substance) or, if that is not practicable, the person referred to in paragraph (b);

- (b) a lessee of the land (whether or not the person had any responsibility for such contamination of the land with the substance) or, if that is not practicable, the person referred to in paragraph (c);
- (c) a notional lessee of the land (whether or not the person had any responsibility for such contamination of the land with the substance).

“(2) If there is more than 1 person in the category of appropriate person specified in subsection (1), the Authority may, but is not required to, make more than 1 person in the category the subject of the order.

“(3) For the purposes of this section, the choice of a person is to be regarded as not practicable if—

- (a) the Authority cannot, after reasonable inquiry, ascertain the identity or location of the person; or
- (b) in the opinion of the Authority, the person does not have the resources to comply with the order.

“Division 6—Costs of assessment and remediation

“91J. Interpretation

In this Part—

‘assessment order’ means an order under subsection 91C (1);

‘remediation order’ means an order under subsection 91D (1).

“91K. Recovery of costs associated with assessment or remediation

“(1) If the Authority takes action under paragraph 91C (1) (b) or 91D (1) (b), the Authority may, by written notice, require an appropriate person against whom an order under that section may be made, to pay to the Authority the reasonable costs and expenses incurred by it in taking that action.

“(2) The notice shall specify the date on or before which the amount is to be paid, being a date not less than 20 working days after the date of the notice.

“(3) Where—

- (a) the Authority has given a person a notice under subsection (2);
and

- (b) the person has failed to pay the specified amount on or before the specified date;

so much of the amount as remains unpaid, together with interest calculated at the rate per centum per annum determined under section 165 on the unpaid amount, is a debt due to the Territory by that person.

“91L. Priority for costs where owner insolvent

If the Authority carries out the requirements of an assessment order or remediation order in respect of land disclaimed (by a liquidator or trustee in bankruptcy) as onerous property in the course of proceedings for winding up or bankruptcy, the Authority may recover the cost of carrying out the order together with a rate of interest, at the rate per centum per annum determined under section 165, and reasonable costs and expenses so incurred, in priority to any holder of security over the land.

“91M. Recovery of costs—assessment and remediation

“(1) A person who carries out the requirements of an assessment or remediation under Division 5 in relation to the contamination of land with a substance who was not responsible for the contamination, may recover in a court of competent jurisdiction a portion of the person’s costs in carrying out those requirements from each person who did have such responsibility.

“(2) A person who carries out the requirements of an assessment or remediation under Division 5 in relation to the contamination of land with a substance who was responsible for the contamination, may recover in a court of competent jurisdiction from each other person who had responsibility for the contamination a portion of the first person’s costs in carrying out those requirements.

“(3) A reference in subsections (1) and (2) to the recovery of a portion of a person’s costs shall be read as a reference to the recovery of a portion of the costs that is just and reasonable in the circumstances including the following circumstances:

- (a) the proportion of responsibility of each person for the contamination;
- (b) the reasonable cost of the remediation (if any) carried out by each person in respect of the contamination.

“91N. Costs—person responsible for contamination

In any proceedings under section 91M to recover from a person the cost of carrying out an assessment order or remediation order in relation to any land, the person is taken to have responsibility for contamination on that land, unless it is established that the contamination was not caused by the person, if—

- (a) the person carried on activities on the land; and
- (b) activities of the kind carried on generate or consume the same substances as those that caused the contamination or generate or consume substances that may be converted by reacting with each other or by the action of natural processes on the land into substances that are the same as those that caused the contamination.

“91O. Liability for losses

“(1) A person who, with the permission of the occupier of land, enters any land, or does anything else on land, as required by an assessment order or remediation order, is liable to the occupier of the land for any loss suffered by the occupier as a result of the entry or other actions (including any loss suffered by the occupier because of the interruption to the occupier’s business on that land by that entry or those actions).

“(2) A person (other than the lessee of land) who, with the permission of the occupier, enters the land or does anything else on the land, as required by an assessment order or remediation order, is liable to the lessee of the land for any loss suffered by the lessee as a result of the entry or those actions or for any injury to the land caused by that person.

“(3) In addition to any liability that a person may have by virtue of subsection (1) or (2), the person has a duty to meet the reasonable costs and expenses of the lessee and the occupier of land, as the case requires, in providing access to that land as referred to in this section.

“(4) A person has a duty—

- (a) to take reasonable steps—
 - (i) to minimise the loss, and injury, referred to in this section caused by the person’s actions; and
 - (ii) toward restitution in respect of that loss or injury; and
- (c) to compensate the party that suffered the loss, or injury, for which the person is liable to the extent that restitution is not practicable.

“91P. Director of body corporate that is wound-up

“(1) The Supreme Court may make an order under this section only if satisfied, on an application by the Authority, that—

- (a) the person was a director of, or a person concerned in the management of, the body corporate at the time when the assessment order or remediation order was made; and
- (b) there is reason to believe that the body corporate was wound-up as part of a scheme to avoid compliance with the assessment order or remediation order.

“(2) The Supreme Court may order a person to comply with an assessment order or remediation order at the person’s own expense if the person was a director of, or a person concerned in the management of, a body corporate that—

- (a) has been wound-up within 2 years before the Court’s order is made; and
- (b) has failed to comply with the assessment order or remediation order.

“(3) There is reason for belief of the kind referred to in paragraph (1) (b) if—

- (a) the body corporate carried out 1 or more transactions—
 - (i) that were voidable because of section 588FE of the Corporations Law;
 - (ii) that were such that the liquidator of the body corporate had a right to recovery of cash under section 567 of the Corporations Law; or
 - (iii) by which the body corporate incurred a debt in relation to which a person contravened section 588G of the Corporations Law;
- (b) there was (at the time or times when the body corporate entered those transactions or a substantial portion of them) reason to believe that the land was contaminated; and
- (c) in a case to which regulations made for the purposes of this section apply—the prescribed conditions are satisfied.

“(4) The Supreme Court shall not make an order under this section if the person against whom the order would be made satisfies the Court that—

- (a) the person exercised due diligence to prevent the body corporate from avoiding compliance with the assessment order or remediation order;
- (b) the person could not reasonably have been expected to be aware of a scheme to avoid compliance with the assessment order or remediation order; or
- (c) the person was not in a position to influence the conduct of the body corporate in relation to that scheme.

“(5) The fact that the relevant assessment order or remediation order was partially complied with by the body corporate does not exclude the possibility that there is reason to form the belief referred to in subsection (3).

“(6) For the purposes of this section, the fact that steps are taken to wind-up a body corporate before the Authority makes an assessment order or remediation order in respect of the body corporate does not preclude the Supreme Court from finding that there is reason to believe that the body corporate was wound-up as part of a scheme to avoid compliance with the order.

“91Q. Director of body corporate that disposed of land

“(1) The Supreme Court may order a person to comply with an assessment order or remediation order at the person’s own expense if—

- (a) the person was a director of, or a person concerned in the management of, a body corporate that transferred land within 2 years before the Court’s order is made; and
- (b) the transferee has failed to comply with the assessment order or remediation order in respect of the land.

“(2) The person shall comply with the assessment order or remediation order, subject to any modification by the Supreme Court.

“(3) The Supreme Court may make an order under this section only if satisfied, on an application by the Authority that—

- (a) the person was a director of, or a person concerned in the management of, the body corporate at the time of the transfer of the land or at the time when the assessment order or remediation order was made in respect of the transferee; and

- (b) there is reason to believe that the body corporate transferred the land as part of a scheme to avoid having itself to carry out assessment or remediation of the land (whether or not an assessment order or remediation order had been made in respect of the body corporate).

“(4) There is reason for belief of the kind referred to in paragraph (3) (b) if, at the time or times when the body corporate entered into 1 or more transactions, or a substantial portion of the transactions, for the transfer of the land—

- (a) there was reason to believe that the land was contaminated;
- (b) the transferee was another body corporate that was related to the first body corporate (within the meaning of the Corporations Law); and
- (c) the first body corporate had reason to believe that the transferee was unable to pay its debts or would, if it took steps to remediate the land (to the extent that a reasonable person would have expected, at the time or times, would be necessary), become unable to pay its debts.

“(5) The Supreme Court shall not make an order under this section if the person against whom the order would be made satisfies the Court that—

- (a) the person exercised due diligence to prevent the body corporate from avoiding compliance with the assessment order or remediation order;
- (b) the person could not reasonably have been expected to be aware of a scheme to avoid compliance with the assessment order or remediation order; or
- (c) the person was not in a position to influence the conduct of the body corporate in relation to that scheme.

“(6) The fact that the relevant order was partially complied with by the transferee does not exclude the possibility that there is reason to form the belief referred to in subsection (3).

“91R. Holding company of body corporate that is wound-up

“(1) The Supreme Court may order a corporation to comply with an assessment order or remediation order at the corporation’s own expense if the corporation was the holding company of a company that—

- (a) has been wound-up within 2 years before the Court’s order is made; and

- (b) has failed to comply with the assessment order or remediation order.

“(2) The corporation shall comply with the assessment order or remediation order, subject to any modification by the Supreme Court.

“(3) The Supreme Court may make an order under this section only if satisfied, on an application by the Authority, that—

- (a) the corporation was the holding company of the other company at the time when the assessment order or remediation order was made; and
- (b) there is reason to believe that the other company was wound-up as part of a scheme to avoid compliance with the assessment order or remediation order.

“(4) There is reason for belief of the kind referred to in paragraph (3) (b) if—

- (a) the corporation contravened section 588V of the Corporations Law in relation to the other company;
- (b) there was (at the time or times when the contravention occurred) reason to believe that the land was contaminated; and
- (c) in a case to which regulations made for the purposes of this section apply—the prescribed conditions are satisfied.

“(5) Notwithstanding subsection (4), there is reason for belief of the kind referred to in paragraph (3) (b) also if—

- (a) the other company carried out 1 or more transactions—
 - (i) that were voidable because of section 588FE of the Corporations Law;
 - (ii) that were such that the liquidator of the other company had a right to recovery of cash under section 567 of the Corporations Law; or
 - (iii) by which the other company incurred a debt in relation to which a person contravened section 588G of the Corporations Law; and
- (b) there was (at the time or times when the other company entered those transactions or a substantial portion of them) reason to believe that the land was contaminated.

“(6) The fact that the relevant assessment order or remediation order was partially complied with by the other company does not exclude the possibility that there is reason to form the belief referred to in subsection (3).

“(7) For the purposes of this section, the fact that steps are taken to wind-up a company before the Authority makes an assessment order or remediation order in respect of the company does not preclude the Supreme Court from finding that there is reason to believe that the company was wound-up as part of a scheme to avoid compliance with the order.”.

17. Infringement notices

Section 115 of the Principal Act is amended by inserting in paragraph (b) “and (if known) the address” after “initials,”.

18. Environment protection orders

Section 125 of the Principal Act is amended—

- (a) by inserting after subsection (1) the following subsections:

“(1A) If the Authority is satisfied that land is contaminated, but has reasonable grounds for believing that if the land were—

- (a) to continue to be used for its present use; or
- (b) to be used for a specified use, or a use in a specified class of uses, other than its present use;

it would not cause, or would not be likely to cause, a significant risk of harm to human health or a significant risk of material environmental harm or serious environmental harm, the Authority may serve an environment protection order on the occupier of the land and, if the occupier is not the lessee, on the lessee.

“(1B) If the Authority is satisfied that land is contaminated but has reasonable grounds for believing that the contamination is not, or is not likely to, cause a significant risk of harm to human health or a significant risk of material environmental harm or serious environmental harm while measures for its containment continue, the Authority may serve an environment protection order on the occupier of the land and, if the occupier is not the lessee, on the lessee.”; and

- (b) by inserting after paragraph (2) (c) the following paragraph:
 - “(ca) if the order is served pursuant to subsection (1A) or (1B)—
 - (i) the nature of the substances in, on or under the land the subject of the order;
 - (ii) the grounds on which the Authority holds its belief;”.

19. Review of decisions

Section 135 of the Principal Act is amended—

- (a) by inserting after paragraph (1) (a) the following paragraph:
 - “(aa) under paragraph 21A (4) (b) or (c) refusing to remove an entry from the register;”;
- (b) by inserting after paragraph (1) (x) the following paragraph:
 - “(xa) under subsection 76 (1A) requiring a person to commission an environmental audit;”;
- (c) by inserting after paragraph (1) (zc) the following paragraphs:
 - “(zca) under subsection 91C (1) making an order to conduct an assessment;
 - (zcb) under subsection 91D (1) making an order to remediate;
 - (zcc) under subsection 91D (8) refusing to consent;
 - (zcd) under subsection 91G (1) refusing to extend a period for compliance;
 - (zce) under subsection 91G (1) specifying a period of compliance for a period less than that applied for;
 - (zcf) under section 91K requiring a stated person to pay reasonable costs and expenses;”;
- (d) by omitting from paragraph (1) (ze) “and”;
- (e) by adding at the end of paragraph (1) (zf) “and”;
- (f) by adding at the end of subsection (1) the following paragraph:
 - “(zg) under subsection 125 (1A) or (1B) to serve an environment protection order.”;

- (g) by omitting paragraph (2) (a) and substituting the following paragraphs:

“(a) in the case of a decision referred to in paragraph (1) (a)—the applicant;

(aa) in the case of a decision referred to in paragraph (1) (aa)—the person to whom the entry relates;

(ab) in the case of a decision referred to in paragraph (1) (d), (e), (f), (g), (y), (z), (zcc), (zcd) or (zce)—the applicant;”;

- (h) by omitting from paragraph (2) (d) “or”;

- (i) by omitting from paragraph (2) (e) “or (zf)” and substituting “, (zf) or (zg)”.

20. Strict liability offences

Section 155 of the Principal Act is amended by omitting “45” and substituting “45 or 126”.

21. Insertion

After section 159 of the Principal Act the following section is inserted:

“159A. National Pollutant Inventory—provision of information

“(1) The occupier of a facility to which the National Environment Protection (National Pollutant Inventory) Measure applies, shall give to the Authority, in a form approved by the Authority, information required to be provided by the occupier of the facility under that measure in accordance with the measure.

Penalty:

(a) if the offender is a natural person—10 penalty units;

(b) if the offender is a body corporate—50 penalty units.

“(2) In subsection (1)—

‘National Environment Protection (National Pollutant Inventory) Measure’ means the National Environment Protection (National Pollutant Inventory) Measure dated 27 February 1998, as in force from time to time, made under the *National Environment Protection Council Act 1994*.”.

22. Recovery of clean-up costs

Section 160 of the Principal Act is amended by omitting from subsection (4) “164” and substituting “165”.

23. Determination of fees

Section 165 of the Principal Act is amended by inserting in paragraph (1) (d) “, 91K, 91L” after “90 (3)”.

24. Schedule 1

Schedule 1 to the Principal Act is amended—

- (a) by inserting after paragraph 2 (e) the following paragraph:

“(ea) the acceptance by a lessee or occupier of land that is in an area identified in—

- (i) the Territory Plan as 1 of the following,:

Broadacre; Rural; Hills, Ridges and Buffer Areas; River Corridors; Mountains and Bushlands; Plantation Forestry; or

- (ii) the National Capital Plan as 1 of the following:

Broadacre Areas; Rural Areas; Hills, Ridges and Buffer Spaces; River Corridors; Mountains and Bushland;

of more than 100 cubic metres of soil for placement on that land”;

- (b) by omitting paragraph 2 (f) and substituting the following paragraph:

“(f) transport activities to which the National Environment Protection (Movement of Controlled Waste between States and Territories) Measure dated 26 June 1998, as in force from time to time, made under the *National Environment Protection Council Act 1994*, applies;”;

- (c) by omitting from paragraph 2 (h) “freshwater” and substituting “aquatic”.

25. Schedule 2

Schedule 2 to the Principal Act is amended—

- (a) by omitting from the definition of “maximum lead concentration” in clause 1 “subregulation 30F (5) of the Clean Air Regulations 1964” and substituting “subregulation 14 (1) of the *Clean Air (Motor Vehicles and Motor Vehicles Fuels) Regulation 1997*”;
- (b) by omitting from subclauses 8 (4) and (5) “Unless” and substituting “Subject to subclause (5A) and unless”; and
- (c) by inserting after subclause 8 (5) the following subclause:
“(5A) Subclauses (4) and (5) do not apply to the sale, distribution for sale, offer or exhibition for sale or the having in possession for sale or distribution for sale, of petrol containing more than the maximum lead concentration per litre if the petrol is for use in aircraft.”.

26. Repeal

The following Acts are repealed:

Air Pollution (Amendment) Act (No. 2) 1996

Ozone Protection (Amendment) Act 1996.

NOTES

Principal Act

1. Act No. 92, 1997. See also Act No 52, 1998

Penalty units

See section 33AA of the *Interpretation Act 1967*.

[Presentation speech made in Assembly on 1 July 1999]