

## **Contaminated Land Management Amendment Bill 2003**

### **Explanatory note**

This explanatory note relates to this Bill as introduced into Parliament.

#### Overview of Bill

The object of this Bill is to amend the *Contaminated Land Management Act 1997* in relation to the site auditor scheme:

- (a) to update the procedure by which the Environment Protection Authority (the **EPA**) grants and renews accreditation as a site auditor to a person, and
- (b) to update and expand the EPA's monitoring and oversight powers in relation to site auditors, and
- (c) to update and expand the powers of the EPA in relation to suspension, revocation and non-renewal of a site auditor's accreditation, and
- (d) to make other minor amendments.

#### Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

**Clause 3** is a formal provision giving effect to the amendments to the *Contaminated Land Management Act 1997* (the **Principal Act**) set out in Schedule 1.

#### **Schedule 1 Amendments**

##### **Accreditation and renewal of accreditation**

**Schedule 1 [10]** replaces provisions of the Principal Act relating to the grant and renewal of accreditation as a site auditor. The new provisions make a clear distinction between a first application for accreditation and subsequent renewals of accreditation. The provisions enhance the powers of the EPA to refuse accreditation (proposed sections 50, 51 and 52). **Schedule 1 [10]** also inserts a new section into the Principal Act which makes it clear that the accreditation panel is an advisory body only and that the decision to grant or refuse accreditation lies with the EPA (proposed sections 49 and 50).

##### **Conditions and directions**

**Schedule 1 [10]** also contains provisions that permit accreditation and a renewal of accreditation to be granted subject to conditions. The EPA is permitted to impose further conditions on the accreditation at any time or vary or revoke such conditions (proposed section 53). The provisions also allow the EPA to direct a site auditor (in writing) to take specified action, or refrain from taking specified action, relating to the conduct of a site audit or the making of a site audit report or site audit statement. A direction may require a site auditor to refrain from conducting a site audit or class of site audits (proposed section 53A).

**Schedule 1 [14]** makes it an offence (punishable by a maximum penalty of \$66,000) for an individual to make any representation, or to cause or allow any representation to be made, to the effect that the individual is authorised by his or her accreditation to carry out a statutory site audit or class of statutory site audits if the individual is prohibited from carrying out that site audit or class of site audits by a condition of his or her accreditation.

##### **Site audit reports and site audit statements**

**Schedule 1 [10]** also requires site audits, site audit reports and site audit statements to be prepared and furnished in compliance with the Principal Act, including any EPA guidelines and having regard to any applicable environmental planning instruments. A site auditor is to prepare a site audit report in writing whenever he or she carries out a site audit and furnish that

report to the person who commissioned the site audit. The provisions also set out the requirements in relation to the preparation of a site audit report and a site audit statement and the order in which they must be prepared (proposed section 53B).

#### **Notification**

**Schedule 1 [10]** also contains a provision that sets out some of the material changes to the circumstances of a site auditor's employment, or changes that may affect a site auditor's accreditation or work as an accredited site auditor, that must be notified to the EPA by the site auditor. These include changes to the site auditor's team, changes to the site auditor's professional indemnity insurance, legal or disciplinary action taken against the site auditor and any other matter prescribed by the regulations (proposed section 53D).

#### **Conflicts of interest**

**Schedule 1 [11] and [12]** prohibit a site auditor from carrying out a site audit of land if it involves the site auditor reviewing any aspect of work carried out by, or a report written by, the site auditor or a person who is related to the site auditor. The categories of persons that are considered to be related to the site auditor for the purposes of the section are also expanded to include a person who is employed by the same employer as the site auditor.

#### **Revocation, suspension or refusal to renew accreditation**

**Schedule 1 [13]** makes the grounds for revoking or suspending a site auditor's accreditation consistent with the grounds for refusing to renew accreditation.

The existing grounds are expanded to include a number of new matters, including the following:

- (a) contravention of a condition of accreditation or a direction,
- (b) provision of false or misleading information in connection with an application for accreditation or renewal of accreditation,
- (c) the EPA being of the opinion that the action is justified having regard to the quality of the site auditor's work in recent accreditation periods, any formal or informal disciplinary action taken against the site auditor under the Principal Act or any other matter that the EPA considers to be relevant to the site auditor's suitability for accreditation.

A suspension of accreditation may be for a specified period, until completion of specified conditions, or until further written notice by the EPA.

The EPA must not suspend, revoke or refuse to renew accreditation unless before doing so it has given notice to the site auditor specifying the reasons for its intention to take the action, given the site auditor a reasonable opportunity to make submissions and taken into consideration any submission made.

#### **Other matters**

**Schedule 1 [3]** permits a person who is a contaminator of land (whether or not that person is the principal contaminator), and who carries out the requirements of an investigation or remediation order, to recover a portion of the person's costs from each other person who also had responsibility for the contamination.

**Schedule 1 [2]** makes a consequential amendment.

**Schedule 1 [13]** also makes it clear that a corporation may be convicted of the offence of knowingly providing false or misleading information in connection with a site audit (individuals are already covered by the offence) and increases the maximum penalty for the offence to \$137,500 in the case of a corporation, or to \$66,000 or imprisonment for 2 years or both, in the case of an individual.

**Schedule 1 [15]** requires the EPA to notify site auditors in writing about any new EPA guidelines or changes to existing EPA guidelines.

**Schedule 1 [1] and [4]–[8]** update certain definitions and insert new definitions into the Principal Act. **Schedule 1 [9]** makes consequential amendments.

**Schedule 1 [16]** permits regulations to be made in relation to the refund or

waiver of fees payable under Part 4 of the Principal Act and removes the specific power to prescribe the form of a site audit statement in the regulations.

**Schedule 1 [17] and [18]** contain provisions of a savings and transitional nature.