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New South Wales

Environmental Planning and Assessment Amendment (Contaminated Land) Bill 1995

Explanatory note

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

Overview of Bill

The object of this Bill is to provide certain planning authorities with statutory protection against liability for the exercise of specified planning functions in relation to contaminated land.

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 *Environmental Planning and Assessment Act 1979* set out in Schedule 1.

Schedule 1 [1] inserts proposed Part 7A containing the following provisions:

Proposed section 145A contains definitions of *contaminated land*, *contaminated land planning guidelines* and *planning authority*.

Proposed section 145B confers statutory immunity on certain planning authorities who, in good faith, do or omit to do anything in duly carrying out certain planning functions in relation to contaminated land (including the likelihood of land being contaminated land) or in relation to the nature or extent of contamination of land. The proposed section also provides that anything done or omitted to be done in compliance with any contaminated land planning guidelines then in force is taken to be done or omitted to be done in good faith.

Proposed section 145C provides that the Minister may give notice of the publication of contaminated land planning guidelines in the Gazette. Copies of such guidelines are to be made available for inspection at council offices during ordinary office hours. Guidelines will have effect from the time that notification of their publication is made in the Gazette.

Schedule 1 [2] amends section 149 (6) to ensure that the general immunity conferred by that subsection does not apply to advice provided in relation to contaminated land. The new Part 7A will apply exclusively to determine liability for such advice.

Schedule 1 [3] and **[4]** contain provisions of a savings and transitional nature.

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New South Wales

Environmental Planning and Assessment Amendment (Contaminated Land) Bill 1995

No. , 1995

A Bill for

An Act to amend the *Environmental Planning and Assessment Act 1979* to provide statutory protection for the exercise of certain planning functions in relation to contaminated land; and for related purposes.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Environmental Planning and Assessment Amendment (Contaminated Land) Act 1995*.

2 Commencement

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This Act commences on a day or days to be appointed by proclamation.

3 Amendment of Environmental Planning and Assessment Act 1979 No 203

The *Environmental Planning and Assessment Act 1979* is 10 amended as set out in Schedule 1.

Schedule 1 Amendments

(Section 3)

[1] Part 7A

Insert after Part 7:

Part 7A Liability in respect of contaminated land 5

145A Definitions

In this Part:

contaminated land means land in, on or under which any substance is present at a concentration above that naturally present in, on or under the land and that poses, or is likely to pose, an immediate or long term risk to human health or the environment. 10

contaminated land planning guidelines means guidelines notified in accordance with section 145C.

planning authority, in relation to a function specified in section 145B, means: 15

- (a) in the case of a function relating to a development application—the consent authority (or a person or body taken to be a consent authority), and
- (b) in the case of any other function—the public authority or other person responsible for exercising the function. 20

145B Exemption from liability—contaminated land

- (1) A planning authority does not incur any liability in respect of anything done or omitted to be done in good faith by the authority in duly exercising any planning function of the authority to which this section applies in so far as it relates to contaminated land (including the likelihood of land being contaminated land) or to the nature or extent of contamination of land. 25
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Schedule 1 Amendments

- (2) This section applies to the following planning functions:
- (a) the preparation or making of an environmental planning instrument,
 - (b) the preparation or making of a development control plan, 5
 - (c) the processing and determination of a development application,
 - (d) the modification of a development consent,
 - (e) the furnishing of advice in a certificate under section 149, 10
 - (f) anything incidental or ancillary to the carrying out of any function listed in paragraphs (a)–(e).
- (3) Without limiting any other circumstance in which a planning authority may have acted in good faith, a planning authority is (unless the contrary is proved) taken to have acted in good faith if the thing was done or omitted to be done substantially in accordance with the contaminated land planning guidelines in force at the time the thing was done or omitted to be done. 15
- (4) This section applies to and in respect of: 20
- (a) a councillor, and
 - (b) an employee of a planning authority, and
 - (c) a public servant, and
 - (d) a person acting under the direction of a planning authority, 25
- in the same way as it applies to a planning authority.

145C Contaminated land planning guidelines

- (1) For the purposes of section 145B, the Minister may, from time to time, give notice in the Gazette of the publication of planning guidelines relating to contaminated land and that a copy of the guidelines may be inspected, free of charge, at the principal office of each council during ordinary office hours. 30

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- (2) A copy of the guidelines must be made available for public inspection, free of charge, at the principal office of each council during ordinary office hours.
- (3) For the purposes of this Part, contaminated land planning guidelines: 5
- (a) enter into force on the day on which their publication is notified in the Gazette, and
- (b) cease to be in force on the day on which the publication of new contaminated land planning guidelines is notified in the Gazette in accordance with this section. 10
- [2] Section 149 Certificates**
- Insert "However, this subsection does not apply to advice provided in relation to contaminated land (including the likelihood of land being contaminated land) or to the nature or extent of contamination of land within the meaning of Part 7A." at the end of section 149 (6). 15
- [3] Schedule 6 Savings, transitional and other provisions**
- Insert at the end of clause 1 (1) of Part 1:
- Environmental Planning and Assessment Amendment (Contaminated Land) Act 1995* 20
- [4] Schedule 6, Part 4**
- Insert at the end of Schedule 6:
- Part 4 Environmental Planning and Assessment Amendment (Contaminated Land) Act 1995** 25
- 16 Application of section 145B to acts or omissions before commencement**
- Section 145B extends to anything done or omitted to be done before the commencement of Schedule 1 [1] to the *Environmental Planning and Assessment Amendment (Contaminated Land) Act 1995* if: 30

Schedule 1 Amendments

- (a) the thing was done or omitted to be done substantially in accordance with planning guidelines relating to contaminated land published before that commencement, and
- (b) those guidelines were notified in a manner that, had section 145C been in force, would have complied with that section.

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