

TASMANIA

**ENVIRONMENTAL MANAGEMENT AND
POLLUTION CONTROL AMENDMENT
(CONTAMINATED SITES) BILL 2007**

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POLLUTION CONTROL AMENDMENT
(CONTAMINATED SITES) BILL 2007**

*(Brought in by the Minister for Tourism, Arts and the
Environment, the Honourable Paula Catherine Wriedt)*

A BILL FOR

**An Act to amend the *Environmental Management and
Pollution Control Act 1994***

Be it enacted by His Excellency the Governor of Tasmania, by
and with the advice and consent of the Legislative Council and
House of Assembly, in Parliament assembled, as follows:

1. Short title

This Act may be cited as the *Environmental
Management and Pollution Control Amendment
(Contaminated Sites) Act 2007*.

2. Commencement

This Act commences on the day on which this
Act receives the Royal Assent.

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3. Principal Act

In this Act, the *Environmental Management and Pollution Control Act 1994** is referred to as the Principal Act.

4. Section 3 amended (Interpretation)

Section 3(1) of the Principal Act is amended as follows:

- (a) by inserting the following definition after the definition of “condition”:

“contaminated site” has the meaning given by section 74A;

- (b) by inserting the following definition after the definition of “general manager”:

“investigation notice” has the meaning given by section 74A;

- (c) by inserting the following definition after the definition of “related body corporate”:

“remediation notice” has the meaning given by section 74A;

- (d) by inserting the following definition after the definition of “sell”:

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“**site management notice**” has the meaning given by section 74A;

5. Section 48 amended (Civil enforcement proceedings)

Section 48(5)(d) of the Principal Act is amended by omitting “programme or environment protection notice” and substituting “programme, environment protection notice, investigation notice, remediation notice or site management notice”.

6. Section 55 amended (General criminal defence)

Section 55(4)(b) of the Principal Act is amended by inserting “notice, investigation notice, remediation notice or site management” after “protection”.

7. Part 5A inserted

After section 74 of the Principal Act, the following Part is inserted:

PART 5A – CONTAMINATED SITES
Division 1 – Preliminary

74A. Interpretation of Part 5A

(1) In this Part –

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“allow”, in relation to the escape, discharge, emission or release of a pollutant, includes the failure of a person with the authority to prevent the escape, discharge, emission or release to prevent it;

“area of land” includes any water in, on or under that area of land;

“background concentration”, in relation to a pollutant, means the naturally occurring, ambient concentration of that pollutant;

“contaminated site” has the meaning given by subsections (2), (3) and (4);

“investigation notice” means an investigation notice, as amended from time to time, issued under section 74C for the purpose specified in section 74E(1);

“notice” means an investigation notice, a remediation notice or a site management notice;

“owner”, in relation to an area of land, includes a person who has taken possession of the area of land in the exercise of a right under a mortgage, charge or other encumbrance and has the power

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to sell or otherwise dispose of the area of land;

“remediation notice” means a remediation notice, as amended from time to time, issued under section 74C for the purpose specified in section 74F(1);

“site management notice” means a site management notice, as amended from time to time, issued under section 74C for the purpose specified in section 74G(1).

- (2) An area of land is a contaminated site if –
- (a) there is in, on or under that area of land a pollutant in a concentration that –
 - (i) is above the background concentration; and
 - (ii) is causing or is likely to be causing serious or material environmental harm or environmental nuisance, or is likely to cause serious or material environmental harm or environmental nuisance in the future if not appropriately managed; or

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- (b) a site management notice is registered on the land under section 74I and shown on the relevant folio in the register of title of land kept under the *Land Titles Act 1980*.
- (3) Despite subsection (2), an area of land is not a contaminated site if –
 - (a) the pollutant present in the area of land in a concentration above the background concentration as referred to in that subsection is a prescribed pollutant; or
 - (b) the pollutant present in the area of land in a concentration above the background concentration as referred to in that subsection is present in or because of prescribed circumstances.
- (4) A contaminated site includes any water in, on or under the contaminated site.

Division 2 – Action on becoming aware of contaminated site

74B. Action by owner or occupier on becoming aware of contaminated site

- (1) If the owner or occupier of any area of land knows, reasonably believes or should in the circumstances reasonably

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believe that the area of land is or is likely to be a contaminated site, the owner or occupier –

- (a) must not commence or continue any activity that may directly or indirectly further cause or continue the exposure, escape, discharge, emission or release of the pollutant that the owner or occupier knows, reasonably believes or should reasonably believe has made the area of land a contaminated site; and
- (b) must notify the Director of the details, if known, of the pollutant concerned, the circumstances in which the pollutant escaped or was discharged, emitted or released and any action that has been or is being taken to remedy the pollution –
 - (i) within 24 hours after the owner or occupier becomes aware, first reasonably believes or should first reasonably believe that the area of land is likely to be a contaminated site, if he or she became aware, first reasonably believed or should first reasonably

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have believed that the area of land is, or is likely to be, a contaminated site after the commencement of this section; or

- (ii) within 6 months after the commencement of this section if the owner or occupier, at the time this section commenced, was aware, reasonably believed or should reasonably have believed that the area of land was, or was likely to be, a contaminated site.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 1 200 penalty units; or
 - (b) a natural person, a fine not exceeding 600 penalty units.
- (2) An owner or occupier is not required to give notice under subsection (1)(b) if the person has reasonable grounds for believing that the fact that the area of land is likely to be a contaminated site has already come to the notice of the Director.

- (3) An owner or occupier of an area of land is required to notify the Director under subsection (1)(b) despite the fact that to do so might incriminate him or her or make him or her liable to a penalty.

Division 3 – Investigation, remediation and site management notices

74C. Types of notices

The Director may issue one or more of the following notices in accordance with this Division:

- (a) an investigation notice;
- (b) a remediation notice;
- (c) a site management notice.

74D. Content of notices generally

- (1) A notice must specify –
- (a) the area of land to which it applies; and
 - (b) the name and address of every person to be served with the notice; and
 - (c) either –

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- (i) the works required to be carried out by each person served with the notice; or
 - (ii) the works required to be carried out and the proportion of those works for which each person served with the notice is responsible; and
- (d) the time within which the works referred to in paragraph (c) must be completed; and
- (e) any other action each person served with the notice must take, must not take or must cease; and
- (f) the time within which a person must take, must not take or must cease any action referred to in paragraph (e); and
- (g) the grounds on which the Director reasonably believes that the area of land is or may be contaminated; and
- (h) that, within 14 days after receiving the notice, a person served with the notice may appeal to the Appeal Tribunal against the notice or any requirement of the notice.

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- (2) When determining the work to be carried out by each person served with a notice or the proportion of the works to be carried out by each such person, the Director may take into account –
- (a) the period during which each of those persons occupied or was responsible for the area of land which is the contaminated site; and
 - (b) the use to which each of those persons put the area of land; and
 - (c) the responsibility of each of those persons for any known or likely incident or circumstance which, in the opinion of the Director, could have caused or contributed to the presence of the pollutant in, on or under that area of land; and
 - (d) any other matter the Director considers relevant.
- (3) A notice may –
- (a) specify that the notice binds any person who becomes the owner or occupier of the area of land after the notice has been issued; and
 - (b) contain any other matter the Director considers appropriate.

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74E. Investigation notice

- (1) If the Director reasonably believes that an area of land is or may be a contaminated site, he or she may issue an investigation notice for the purpose of determining one or more of the following:
 - (a) whether the area of land is a contaminated site;
 - (b) the type of pollutant concerned;
 - (c) the extent of the pollution caused by the pollutant;
 - (d) the possibility of the pollutant escaping from the area of land and affecting another area of land or a watercourse or body of water;
 - (e) the extent of environmental harm caused, being caused or that may be caused by the pollution;
 - (f) whether the pollutant is being appropriately managed.
- (2) The Director may serve an investigation notice in respect of an area of land on any person the Director knows or reasonably believes is, or is likely to be, wholly or partly responsible for causing

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or possibly causing that area of land to be a contaminated site.

- (3) For the purposes of subsection (2) and without limiting that subsection, an owner, occupier or person in charge, or former owner, occupier or person in charge, of an area of land (the “pollutant source land”) may be taken to be responsible for causing or possibly causing the pollutant source land, or another area of land, in respect of which the investigation notice is issued to be a contaminated site if he or she, while such an owner, occupier or person in charge, in the opinion of the Director –
- (a) knew, or suspected or reasonably should have suspected, that there was or possibly was in, on or under the pollutant source land a pollutant in a concentration greater than the background concentration; and
 - (b) allowed or is likely to have allowed, or possibly allowed or possibly is likely to have allowed, the pollutant to escape or be discharged, emitted or released into, on or under the pollutant source land or that other area of land.

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- (4) The Director may serve an investigation notice in respect of an area of land on the owner of the area of land who is not or is not likely to be responsible for causing or possibly causing that area of land to be a contaminated site if –
- (a) the owner became the owner of the area of land after the commencement of this section; and
 - (b) the Director is of the opinion that, at the time the owner became the owner of the area of land, the owner knew, suspected or should have reasonably suspected that the area of land was or was likely to be a contaminated site; and
 - (c) either –
 - (i) the Director has been unable to identify, find or serve with the investigation notice under subsection (2), after taking all reasonable steps to do so, any person who the Director reasonably believes is, or is likely to be, wholly or partly responsible for causing or possibly causing that area

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- of land to be a
contaminated site; or
- (ii) each person served with a
notice under
subsection (2) is bankrupt
or insolvent; or
- (iii) each person served with a
notice under
subsection (2) has
appealed in relation to the
notice and the appeal has
been upheld.
- (5) The Director may serve an investigation
notice in respect of an area of land on a
person not referred to in subsection (2) or
(4) if the Director has been provided with
written documentation showing to the
satisfaction of the Director that the
person has accepted responsibility for the
investigation of the pollution of the area
of land, either specifically or as part of a
more general acceptance of responsibility
in relation to the pollution of the area of
land.
- (6) Without limiting the works or actions
that an investigation notice may require a
person on whom it is served to do or
take, an investigation notice may require
a person to do or take one or more of the
following works or actions:

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- (a) testing, sampling and analysis of land, water and air;
- (b) the installation of groundwater bores;
- (c) data analysis;
- (d) the making of progress reports to the Director;
- (e) the conduct of public meetings for the purpose of informing the public on the progress made in investigating the area of land to which the investigation notice relates or for any other purpose the Director considers appropriate.

74F. Remediation notice

- (1) The Director may issue a remediation notice in respect of an area of land that is a contaminated site for the purpose of requiring the taking of action to ensure that persons are protected from harm, and the environment is protected from harm or further harm, that is or is likely to be caused by the relevant pollutant in, on or under that area of land when that area of land is used in accordance with its existing land use or a proposed land use.

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- (2) The Director may serve a remediation notice in respect of an area of land on any person the Director reasonably believes is, or is likely to be, wholly or partly responsible for causing that area of land to be a contaminated site.
- (3) For the purposes of subsection (2) and without limiting that subsection, an owner, occupier or person in charge, or former owner, occupier or person in charge, of an area of land (the “pollutant source land”) may be taken to be responsible for causing the pollutant source land, or another area of land, in respect of which the remediation notice is issued to be a contaminated site if he or she, while such an owner, occupier or person in charge, in the opinion of the Director –
 - (a) knew, suspected or reasonably should have suspected that there was in, on or under the pollutant source land a pollutant in a concentration greater than the background concentration; and
 - (b) allowed or is likely to have allowed the pollutant to escape or be discharged, emitted or released into, on or under the pollutant source land or that other area of land.

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- (4) The Director may serve a remediation notice in respect of an area of land on the owner of the area of land who is not or is not likely to be responsible for causing that area of land to be a contaminated site if –
- (a) the owner became the owner of the area of land after the commencement of this section; and
 - (b) the Director is of the opinion that, at the time that owner became the owner of the area of land, that owner knew, suspected or should have reasonably suspected that the area of land was or was likely to be a contaminated site; and
 - (c) either –
 - (i) the Director has been unable to identify, find or serve with the notice under subsection (2), after taking all reasonable steps to do so, any person who the Director reasonably believes is, or is likely to be, wholly or partly responsible for causing that area of land to be a contaminated site; or

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- (ii) each person served with a notice under subsection (2) is bankrupt or insolvent; or
 - (iii) each person served with a notice under subsection (2) has appealed in relation to the notice and the appeal has been upheld.
- (5) The Director may serve a remediation notice in respect of an area of land on a person not referred to in subsection (2) or (4) if the Director has been provided with written documentation showing to the satisfaction of the Director that that person has accepted responsibility for the remediation of the area of land, either specifically or as part of a more general acceptance of responsibility in relation to the pollution of the area of land.
- (6) Without limiting the works or actions that a remediation notice may require a person on whom it is served to do or take, a remediation notice may require a person to do or take one or more of the following works or actions:
 - (a) for the purpose of determining what remediation options are suitable, any of the actions that

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- may be required by an investigation notice;
- (b) the erection of a fence, wall, bund or other barrier;
 - (c) the removal, destruction, reduction, containment or dispersal of the pollutant;
 - (d) the removal or treatment of any soil, sand, rock, water or any other solid or liquid material;
 - (e) the vacation by the occupier of the whole or any part of the contaminated site;
 - (f) the erection or display of a sign that does one or more of the following:
 - (i) prohibits persons from entering, or regulates the entry of persons to, the contaminated site;
 - (ii) prohibits or regulates the use of the contaminated site as specified in the sign;
 - (iii) gives directions relating to the use of the contaminated site or any

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other matter the Director
considers appropriate;

- (g) the making of progress reports to the Director;
- (h) the conduct of public meetings for the purpose of informing the public on the progress made in remediation of the contaminated site or for any other purpose the Director considers appropriate.

74G. Site management notice

- (1) The Director may issue a site management notice in respect of an area of land that is a contaminated site for the purpose of ensuring the safe management of the contaminated site and the pollutant that is polluting it.
- (2) The Director may serve a site management notice in respect of an area of land on any one or more of the following persons:
 - (a) any person the Director reasonably believes is, or is likely to be, wholly or partly responsible for causing the area of land to be a contaminated site;

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- (b) the owner, occupier or person in charge of the area of land;
 - (c) any other person if written documentation has been provided to the Director showing to the satisfaction of the Director that the person has accepted responsibility for the management of the pollution of the area of land, either specifically or as part of a more general acceptance of responsibility in relation to the pollution of the area of land.
- (3) For the purposes of subsection (2)(a) and without limiting that subsection, an owner, occupier or person in charge, or former owner, occupier or person in charge, of an area of land (the “pollutant source land”) may be taken to be responsible for causing the pollutant source land, or another area of land, in respect of which the site management notice is issued to be a contaminated site if he or she, while such an owner, occupier or person in charge, in the opinion of the Director –
- (a) knew, suspected or reasonably should have suspected that there was in, on or under the pollutant source land a pollutant in a

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concentration greater than the background concentration; and

- (b) allowed, is likely to have allowed or is likely to allow the pollutant to escape or be discharged, emitted or released into, on or under the pollutant source land or that other area of land.
- (4) Without limiting the works or actions that a site management notice may require a person on whom it is served to do or take, a site management notice may require a person to do or take one or more of the following works or actions:
- (a) the erection of a fence, wall, bund or other barrier;
 - (b) testing and monitoring for the purpose of detecting any changes in the nature and extent of any risk of harm to persons or environmental harm that is or may be caused by the relevant pollutant in, on or under the contaminated site when that site is used in accordance with its existing land use or a proposed land use;
 - (c) any action the Director considers necessary to prevent or reduce the transport or escape from the

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contaminated site of the pollutant concerned when that area is used in accordance with its existing land use or a proposed land use;

- (d) any action the Director considers necessary to prevent or reduce the risk of harm to persons or environmental harm that is or may be caused by the relevant pollutant in, on or under the contaminated site when that site is used in accordance with its existing land use or a proposed land use;
- (e) the vacation by the occupier of the whole or any part of the contaminated site;
- (f) the erection or display of a sign that does one or more of the following:
 - (i) prohibits persons from entering, or regulates the entry of persons to, the contaminated site;
 - (ii) prohibits or regulates the use of the contaminated site as specified in the sign;
 - (iii) gives directions relating to the use of the

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contaminated site or any
other matter the Director
considers appropriate;

- (g) the making of progress reports to the Director;
- (h) the conduct of public meetings for the purpose of informing the public on the management of the contaminated site or for any other purpose the Director considers appropriate.

74H. Copies of notice to be served

As soon as practicable after a notice has been served in respect of an area of land that is a contaminated site, the Director is to cause a copy of the notice to be served on each of the following persons:

- (a) an owner or occupier of the area of land who has not been served with the notice;
- (b) any other person who has an interest in the area of land that is registered or recorded on the relevant folio of the register kept under the *Land Titles Act 1980* in respect of that land;

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- (c) the council of the municipal area in which that land is situated.

74I. Registration of notice

- (1) In this section, unless the contrary intention appears –

“register” means the register kept under the *Land Titles Act 1980*.

- (2) As soon as practicable after a notice has been served on a person in respect of an area of land, the Director is to lodge a copy of the notice, together with the particulars of title of the land, with the Recorder of Titles.
- (3) If the land to which a notice relates is not under the *Land Titles Act 1980*, the Recorder of Titles, as soon as practicable after the copy of the notice and particulars are lodged with him or her is to –
 - (a) register the copy of the notice in the Registry of Deeds; and
 - (b) bring the land under that Act as if an application had been made in relation to that land under section 11 of that Act.

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- (4) For the purposes of subsection (3), the Recorder of Titles is not bound to investigate the title of any land.
- (5) On the lodgment under subsection (2) of a copy of a notice and particulars in relation to land that is under the *Land Titles Act 1980*, the Recorder of Titles is to register the notice against the relevant folio of the register as if it were a dealing, within the meaning of that Act, lodged in accordance with that Act.
- (6) While a notice registered by the Recorder of Titles remains so registered against the relevant folio of the register, the notice –
 - (a) remains in force despite any subsequent disposition of the land to which it relates or any other dealing in that land; and
 - (b) continues to bind the person on whom it was served; and
 - (c) after a disposition of the land to which it relates, also binds any person who subsequently becomes the owner or occupier of that land if the notice specifies that it binds any person who becomes the owner or occupier of that land after its issue; and
 - (d) operates as the basis for a charge on the land, as provided by

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section 74V, securing payment to the Director of reasonable costs and expenses incurred in doing work or taking action if a person served with the notice fails to comply with it.

- (7) If a copy of a notice is lodged under this section for registration under the *Land Titles Act 1980* or in the Registry of Deeds by the Recorder of Titles, the Recorder is entitled to assume that all necessary pre-requisites and procedures in respect of the notice have been complied with.

74J. Amendment of notice

- (1) The Director, at any time, may amend a notice by issuing an amendment to that notice.
- (2) A person is not bound by an amendment to a notice until that person has been served with a copy of the amendment.
- (3) As soon as practicable after issuing an amendment to a notice, the Director is to lodge the amendment with the Recorder of Titles.
- (4) On the lodgment under subsection (3) of an amendment to a notice, the Recorder of Titles is to register the amendment

against the relevant folio of the register kept under the *Land Titles Act 1980*.

74K. Revocation of notice and issue of completion certificate

- (1) The Director, at any time, may revoke a notice by issuing a further notice revoking it.
- (2) The Director may issue a completion certificate in respect of a notice if he or she is satisfied that a notice has been complied with in full by the persons bound by it.
- (3) As soon as practicable after issuing a revocation of a notice or a completion certificate in respect of a notice, the Director is to serve a copy of the revocation or completion certificate on –
 - (a) all persons who, immediately before the issue of the revocation or the completion certificate, are bound by the notice; and
 - (b) the owner and occupier of the area of land to which the notice relates and any other person who has an interest in the land that is registered or recorded on the relevant folio of the register kept

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under the *Land Titles Act 1980*;
and

- (c) the council of the municipal area
in which the area of land is
situated.

- (4) As soon as practicable after issuing a
revocation of a notice or a completion
certificate in respect of a notice, the
Director is to lodge it with the Recorder
of Titles.

- (5) On receiving a revocation of a notice or a
completion certificate in respect of a
notice, the Recorder of Titles is to cancel
the registration of the notice in such
manner as the Recorder considers
appropriate.

74L. Caveatable interest

If the Director has determined, in writing, that a notice in relation to an area of land is to be issued or has issued such a notice, the Director is taken to have a caveatable interest in the land.

74M. Effect of section 40 of *Land Titles Act 1980*

Nothing in section 40 of the *Land Titles Act 1980* affects the validity of a notice

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or prejudices or affects the operation of a notice.

74N. Costs

- (1) The Director may require a person on whom a notice has been served to pay the whole or a part of the reasonable costs and expenses incurred by the Director in relation to –
 - (a) the issue and service of the notice and any amendment to the notice; and
 - (b) the issue and service of copies of the notice, and any amendment to the notice, required under this Act; and
 - (c) the lodging with the Recorder of Titles of the notice and any amendment to the notice; and
 - (d) the inspection of the contaminated site and any other action taken in respect of monitoring the compliance by the person with the notice; and
 - (e) the review of any reports and the monitoring of data required to ensure compliance with the notice.

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- (2) A requirement must be in writing and must be served on the person to whom it relates.
- (3) If the costs and expenses referred to in subsection (1) are not paid or fully paid by the person within the period specified in the requirement, the person is liable to pay interest charged at the prescribed rate on the amount unpaid.
- (4) The Director may recover, as a debt due, the costs and expenses referred to in subsection (1), and any interest payable under subsection (3), in a court of competent jurisdiction.

740. Appeals

- (1) A person on whom a notice has been served may appeal to the Appeal Tribunal in relation to the notice.
- (2) A person who institutes proceedings for an appeal must comply with the notice unless the Director agrees, in writing, that no work need be done and no action need be taken by the appellant until the proceedings have been determined.
- (3) If an appeal is upheld and the appellant has done work or taken action in accordance with the notice, the appellant is entitled to be compensated by the State

for any loss or damage incurred in doing that work or taking that action.

- (4) The amount of compensation payable is the amount agreed between the Director and the appellant.
- (5) If the Director and the appellant cannot agree on the amount of compensation payable, that amount is to be determined as a disputed claim for compensation under the *Land Acquisition Act 1993*.

Division 4 – Compliance with notice

74P. Duty to comply with notice

A person served with a notice must comply with it.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 1 000 penalty units; or
- (b) an individual, a fine not exceeding 500 penalty units.

74Q. Duty to notify if contaminated site sold

If the owner of an area of land has been served with a notice, or provided with a

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copy of a notice, in relation to that area of land, the owner must notify the Director, in writing, of any sale or other disposal of, or any agreement to sell or otherwise dispose of, that area of land as soon as practicable after making that sale, disposal or agreement.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 20 penalty units; or
- (b) an individual, a fine not exceeding 10 penalty units.

74R. Entry of person on land to comply with notice

- (1) A person who is required by a notice to do any work or take any action in, on or under land may enter and remain on the land with necessary vehicles and equipment if –
 - (a) it is necessary to enter on that land to do that work or take that action; and
 - (b) subject to subsection (3), the person has given both the owner and the occupier, not less than 3

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days before the person enters on that land, written notification of –

- (i) the intention to enter and remain on that land; and
 - (ii) the reason the person needs to enter and remain on the land; and
 - (iii) the details of the vehicles and equipment that the person will bring onto that land; and
 - (iv) the approximate period of time that the person will need to remain on that land.
- (2) A person who has the power to enter and remain on land under subsection (1) may enter on and cross other land with the vehicles and equipment referred to in that subsection if –
- (a) it is necessary to do so to gain entry onto that land; and
 - (b) subject to subsection (3), the person has given both the owner and the occupier of the other land, not less than 3 days before the person first enters on the other land, written notification of –

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- (i) the intention to enter on and cross the other land; and
 - (ii) the reason the person needs to enter on and cross the other land; and
 - (iii) the details of the vehicles and equipment that the person will bring onto the other land; and
 - (iv) the approximate times and days when the person will need to enter on and cross the other land.
- (3) If the notice requires the person on whom it is served to do any work or take any action in, on or under land as a matter of urgency, the person may exercise the powers under subsections (1) and (2) immediately after giving to the occupier of the land written notifications which, respectively, include the information referred to in those subsections.
- (4) The regulations may –
- (a) grant the person exercising powers under this section further powers for the purpose of complying with the notice; and

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- (b) restrict the exercise of powers under this section.
- (5) A person who exercises powers conferred by or under this section is to do so in a manner that minimises interference with the enjoyment of land by its owner and occupier.
- (6) The powers conferred on a person by or under this section may be exercised by agents, contractors and employees authorised by the person to act on his or her behalf.
- (7) A person who exercises a power conferred by or under this section is liable to –
 - (a) make good any damage caused by the exercise of that power as soon as practicable; or
 - (b) if the owner or occupier agrees, pay reasonable compensation for that damage.
- (8) If a dispute arises as to the payment or amount of compensation payable under this section, it is to be determined in the same manner as a disputed claim for compensation under the *Land Acquisition Act 1993*.
- (9) If an owner or occupier of land has been given written notification under

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subsection (1) or (2), the owner or occupier must allow the person who gave the notification to exercise the powers conferred by or under this section.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 1 000 penalty units; or
- (b) an individual, a fine not exceeding 500 penalty units.

Division 5 – Action by Director if failure to comply with notice or in other circumstances

74S. Action on non-compliance with notice

- (1) The Director, by his or her agent, may do any work or take any action required by a notice if a person served with the notice fails to do that work or take that action in compliance with the notice –
 - (a) within the period specified in the notice or a longer period allowed by the Director; or
 - (b) if no period is specified in the notice, within a period the Director considers reasonable.
- (2) For the purposes of subsection (1), section 74R applies to the agent of the

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Director as if the agent were a person served with a notice.

74T. Action if person to be served cannot be found

If the Director, after reasonable enquiry, cannot determine –

- (a) the whereabouts of the person on whom the notice is to be served;
or
- (b) on whom to serve a notice –

the Director, by his or her agent, may do any work or take any action that could be required by the notice.

74U. Recovery of cost of action under section 74S or 74T as debt due

- (1) In this section –

“relevant person”, in relation to an area of land in respect of which a notice has been issued, means –

- (a) if the Director has taken action in respect of that area of land under section 74S, a person who has been served with that

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notice under section 74E,
74F or 74G; or

- (b) if the Director has taken action in respect of that area of land under section 74T, a person who could have been served with that notice under section 74E, 74F or 74G had the Director been able to determine, before taking that action, the whereabouts of the person or the person on whom that notice could have been served;

“specified” means specified in a requirement served under subsection (4).

- (2) If the Director does any work or takes any action under section 74S or 74T in relation to an area of land in respect of which a notice has been issued, the reasonable costs of doing that work or taking that action may be recovered by the Director as a debt due in a court of competent jurisdiction –
 - (a) from the relevant person; or
 - (b) if there is more than one relevant person, from each relevant person

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in the same proportion as the proportion of the responsibility each relevant person bears for the pollutant's presence in, on or under that area of land and taking into account any costs each relevant person has incurred in complying with the notice.

- (3) In determining for the purposes of subsection (2)(b) the proportion of the responsibility each relevant person bears for the pollutant's presence in, on or under an area of land –
- (a) the responsibility for that pollutant's presence borne by any person who is not a relevant person is to be disregarded and the relevant persons, together, are to be taken to be wholly responsible for the pollutant's presence; and
 - (b) the following factors may be taken into account:
 - (i) the period during which each relevant person occupied or was responsible for the area of land which is the contaminated site;

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- (ii) the use to which each relevant person put the area of land;
 - (iii) the responsibility of each relevant person for any known or likely incident or circumstance which caused or contributed, or could reasonably be believed to have caused or contributed, to the presence of the pollutant in, on or under that area of land;
 - (iv) any other matter considered relevant.
- (4) If the whole or a proportion of the reasonable costs incurred by the Director are recoverable from a relevant person under this section, the Director may require the relevant person, in writing served on the relevant person, to pay that amount to the Director within the specified period of not less than 28 days after service of the requirement.
- (5) If a relevant person on whom a requirement has been served fails to pay the whole of the specified amount within the specified period, the relevant person is liable to pay interest charged at the prescribed rate on the amount unpaid.

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74V. Cost of action under section 74S or 74T may be charge on land

(1) If –

(a) the Director does any work or takes any action under section 74S or 74T in respect of an area of land; and

(b) the Director has been unable to recover the reasonable costs of doing that work or taking that action, or any part of those reasonable costs –

(i) because of the failure of a relevant person, within the meaning of section 74U, to pay the proportion of those reasonable costs as ordered by a court under that section; or

(ii) because the Director was unable to determine on whom to serve a notice or the whereabouts of a person on whom a notice was to be served –

the Director may determine that the reasonable costs of doing that work or taking that action together with any interest owing under section 74U(5)

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should be a charge on any land owned by the owner of that area of land.

- (2) As soon as practicable after making a determination under subsection (1), the Director is to lodge a copy of the determination, together with the particulars of the titles of all the land to be affected by the charge, with the Recorder of Titles.
- (3) If any land which will be affected by the charge is not under the *Land Titles Act 1980*, the Recorder of Titles, as soon as practicable after the determination and particulars of the land are lodged with him or her is to –
 - (a) register the determination in the Registry of Deeds; and
 - (b) bring the land under that Act as if an application had been made in relation to that land under section 11 of that Act.
- (4) For the purposes of subsection (3), the Recorder of Titles is not bound to investigate the title of any land.
- (5) On the lodgment under subsection (2) of the determination of the Director and particulars of title, the Recorder of Titles is to register the determination against the relevant folio of the register kept under the *Land Titles Act 1980* as if it

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were a dealing, within the meaning of that Act, lodged in accordance with that Act.

- (6) On the registration, under the *Land Titles Act 1980* by reason of subsection (5), of the determination on the land in respect of which the Director did any work or took any action under section 74S or 74T, the amount of the reasonable costs of the Director in doing that work or taking that action, as specified in the determination, together with any interest owing under section 74U(5) are a charge on that or any other land owned by that owner and that charge –
- (a) ranks equally with –
 - (i) a debt referred to in section 119 of the *Local Government Act 1993*; and
 - (ii) any other debt to a State Service Agency that is a charge on the land; and
 - (b) ranks in priority to any other charge, mortgage, lien or encumbrance.
- (7) Subsection (1) does not apply if the Director was not entitled to serve a notice on the owner of the land in respect of

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which work was done or action was
taken under section 74S or 74T.

**74W. Recovery of costs by certain persons from
polluter**

(1) In this section –

“polluter”, in relation to an area of
land in respect of which a notice
has been issued, means a person
on whom the Director has served,
or is or was entitled to serve, a
notice in respect of that area of
land under section 74E(2) or (5),
section 74F(2) or (5) or
section 74G(2)(a) or (c);

“prescribed person” means –

- (a) a person who has incurred
costs in complying with a
notice; or
- (b) a person from whom the
Director has recovered
costs under section 74U in
respect of an area of land;

“recoverable sum”, in relation to a
prescribed person, means –

- (a) the reasonable costs
incurred by the prescribed

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person in complying with
a notice; or

- (b) the costs recovered by the
Director under
section 74U from the
prescribed person together
with the reasonable costs
incurred by the prescribed
person in paying to the
Director the costs so
recovered.

- (2) A prescribed person may recover as a debt from a polluter that proportion of the recoverable sum that is the same as the proportion of the responsibility the polluter bears for the area of land in respect of which the relevant notice was issued being, or possibly being, a contaminated site.
- (3) Subsection (2) does not apply to a prescribed person who has accepted responsibility for the management of the pollution of the area of land (including responsibility for the costs of that management), either specifically or as part of a more general acceptance of responsibility in relation to the pollution of the area of land.
- (4) If –

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- (a) the prescribed person provides the polluter with a letter demanding the payment of that proportion of the recoverable sum that may be recovered from the polluter under subsection (2); and
- (b) that proportion of the recoverable sum is not paid or fully paid by the polluter within the period specified in the letter or a longer period agreed between the prescribed person and the polluter –

the polluter is liable to pay interest charged at the prescribed rate on the amount unpaid.

- (5) For the purposes of this section, section 6 is of no effect.

74X. Sale or transfer of land if owner cannot be found

- (1) In this section –

“land” includes a part of land.

- (2) If the Director is entitled to serve a notice on the owner of land, has been unable to find and so serve that notice on the owner and, under section 74T, has done any work or taken any action that could

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have been required by the notice, the Director may –

- (a) sell the land in respect of which that work or action was done or taken as if the Director were the owner of the land –
 - (i) by public auction; or
 - (ii) if the proceeds of the sale are unlikely to meet the costs of the public auction, by direct sale; or
 - (b) determine that the land is to be transferred to the Crown or, if a council agrees, to that council.
- (3) For the purposes of selling or transferring land, the Director may –
- (a) cause the land to be subdivided if this is otherwise allowed by law; and
 - (b) carry out any work on the land or otherwise develop the land; and
 - (c) require an occupier of the land to vacate it; and
 - (d) do anything a mortgagee may do under the *Land Titles Act 1980* in the case of default of payment of

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- money owing under a mortgage;
and
 - (e) grant any easements or enter into covenants in respect of the land.
- (4) Not less than 90 days before the Director sells land under subsection (2)(a), makes a determination to transfer land under subsection (2)(b) or takes any action under subsection (3), the Director must cause notice that he or she intends to do so –
- (a) to be published in at least 3 newspapers published and circulating generally in Tasmania; and
 - (b) to be posted on the land.
- (5) If land is sold by the Director under subsection (2)(a) –
- (a) the registration of a memorandum of transfer vests the title to the land in the purchaser; and
 - (b) the title vested in the purchaser is freed of –
 - (i) all mortgages and charges; and
 - (ii) any caveat that if not removed would forbid the

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registration of the memorandum of transfer or execution of the indenture of conveyance; and

(iii) any other encumbrance or interest other than an encumbrance or interest which the Director determines, in writing provided to the Recorder of Titles, should remain in force; and

(iv) all leases and licences; and

(c) the memorandum of transfer or indenture of conveyance by the Director is evidence that the requirements of this Act in relation to the sale of the land have been complied with.

(6) Any money received on the sale of the land under subsection (2)(a) is to be applied as follows:

(a) firstly, in paying the costs of the sale and any other costs incurred in proceeding under this section;

(b) secondly, in meeting the reasonable costs incurred by the Director in doing the work or

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- taking the action under section 74T;
- (c) thirdly, in discharging any liabilities to the Crown or a council for rates or taxes in respect of the land;
 - (d) fourthly, in discharging any liabilities secured by registered mortgages and other encumbrances;
 - (e) fifthly, in discharging any other mortgages or other encumbrances of which the Director has notice.
- (7) If, after all disbursements referred to in subsection (6) have been paid, there remain proceeds from the sale of the land, the excess is to be paid to the Public Trustee and such payment is taken to be an order made under section 25(1) of the *Public Trustee Act 1930*.
- (8) If the reasonable attempt of the Director to sell land under subsection (2)(a) is unsuccessful, the Director may determine that the land is to be transferred to the Crown or, if a council agrees, to that council.
- (9) A determination made under subsection (2)(b) or (8), if done in a form approved by the Recorder of Titles, operates as a memorandum of transfer.

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- (10) If a determination under subsection (2)(b) or (8) is made –
- (a) the land to which the determination relates is freed of any charge against the land that exists by reason of this Act; and
 - (b) any outstanding liability to the Crown in respect of the land that exists by reason of this Act is discharged.
- (11) If land is transferred to the Crown or to a council under this section and the value of the land exceeds the total cost that the Director is entitled to recover under this Division, the Crown or council –
- (a) is to apply an amount equal to that excess as specified in subsection (6); and
 - (b) if part of that amount remains after being so applied, is to pay that remaining part to the Public Trustee and such payment is taken to be an order made under section 25(1) of the *Public Trustee Act 1930*.
- (12) If the Director, in good faith, has sold land or determined that land be transferred to the Crown or a council under this section, neither the Director, the Crown nor the council is liable to pay

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damages or compensation or otherwise make reparation to any person in respect of –

- (a) the sale of the land; or
- (b) the making of the determination; or
- (c) the transfer of the land.

Division 6 – Miscellaneous

74Y. Responsibility of related body corporate

(1) In this section –

“related body corporate” has the same meaning as in the Corporations Act.

(2) Instead of, or in addition to, serving a notice on a company, the Director may serve that notice on a related body corporate if, within the immediately preceding 2 years, one or more of the following events have occurred:

- (a) the company has been wound up;
- (b) proceedings for the winding-up of the company have been commenced;
- (c) assets of the company have been transferred to another company.

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(3) For the purposes of this Part, if –

- (a) a company is wholly or partly responsible for the release in, on or under an area of land of the pollutant which is the cause of a notice being issued; and
- (b) the company has been wound up or its assets have been transferred to another company; and
- (c) a related body corporate has been served with a notice under subsection (2) –

the related body corporate which has been so served with the notice is taken to be responsible for the release of that pollutant, with the responsibility of the company for the presence of the pollutant in, on or under the area of land in respect of which the notice was served being equally divided between each such related body corporate.

8. Section 92 amended (Powers of authorized officers and council officers)

Section 92 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1)(d) “substance or” and substituting “air, soil,

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sand, rock, water, other solid or liquid substance or any other”;

- (b) by omitting from subsection (2)(d) “out” and substituting “out, or that the place is or may be a contaminated site,”.

9. Section 102 amended (Regulations)

Section 102 of the Principal Act is amended as follows:

- (a) by omitting from subsection (2) “Regulations” and substituting “Without limiting the generality of subsection (1), regulations”;
- (b) by inserting the following paragraph after paragraph (c) in subsection (2):
 - (ca) matters relating to contaminated sites, including but not limited to –
 - (i) the undertaking of independent reviews and audits in relation to the contaminated site; and
 - (ii) the accreditation of independent reviewers and auditors; and
 - (iii) the establishment of committees for purposes

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related to the
accreditation of
independent reviewers
and auditors; and

(iv) the issue and publication
of guidelines relating to
the accreditation of
independent reviewers
and auditors; and

(c) by omitting from subsection (3A)(e)
“conditions.” and substituting
“conditions; and”;

(d) by inserting the following paragraphs
after paragraph (e) in subsection (3A):

(f) in respect of independent reviews
and audits relating to
contaminated sites and the
accreditation of independent
reviewers and auditors; and

(g) in respect of any other matter
relating to such contaminated
sites.