

CONTAMINATED SITES LEGISLATION

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The *Contaminated Sites Act 2003 (WA)* ("CS Act") comes into effect in Western Australia on 1 December 2006. The government considers it to be the most progressive contaminated sites legislation in Australia. The CS Act will implement a regime for the reporting and recording of contaminated sites in Western Australia. The objective is to provide certainty and transparency for current and future landowners.

A "contaminated site" is an area of land (including groundwater and surface water on the land), which has "a substance present... at above background concentrations that presents, or has the potential to present, a risk of harm to human health, the environment or any environmental value". Regulations to be enacted under the CS Act will provide a number of exceptions to the definition of a contaminated site. This will include domestic septic tanks and substances wholly contained within a building (such as asbestos in building materials where the materials remain intact).

The Department of Environment and Conservation ("DEC") administers the CS Act. If a site is known or thought to be contaminated, all of the following people are obliged to report the contamination to the DEC:

- the landowner;
- the occupier; and
- the person or company who caused the contamination.

Any other person may voluntarily report a contaminated site.

A person who is obliged to report a known or suspected contaminated site and fails to report the site commits a serious offence. There are maximum fines of \$250,000 for individuals and \$1.25 million for companies.

When it receives a report of contamination, the DEC will investigate the site and record any contamination. Details of a contaminated site will be recorded on the landowner's Certificate of Title. The landowner must disclose the contamination in all dealings with the land. In some cases, the DEC may order remedial action to remove the contamination.

The DEC maintains an online public database of contaminated sites: www.dec.wa.gov.au/contaminatedsites/. Records are also available for sites where contamination has not been proven, or has been remedied but, this information is only available by written request and upon payment of a fee.

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If you think that you may be aware of a contaminated site or if you want further information concerning the contaminated sites legislation, you should contact the Department of Environment and Conservation or a lawyer with suitable expertise.

This is general information only, and does not constitute specific legal advice. If you would like further information in relation to Commercial Law/Litigation or any other matters, or if we can assist you, please email us at reception@hhg.com.au.

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