

Contaminated Sites Amendment Regulations (No. 2) 2022

SL 2022/99

Made by the Governor in Executive Council.

1. Citation

These regulations are the *Contaminated Sites Amendment Regulations (No. 2) 2022*.

2. Commencement

These regulations come into operation as follows —

- (a) regulations 1 and 2 — on the day on which these regulations are published in the *Gazette*;
- (b) the rest of the regulations — on 1 July 2022.

3. Regulations amended

These regulations amend the *Contaminated Sites Regulations 2006*.

4. Regulation 3 amended

- (1) In regulation 3 insert in alphabetical order:

auditor insurance means insurance referred to in regulation 59A;

supporting expert means a person with theoretical and practical knowledge and skills that enable the person to assist an auditor to carry out the functions of an auditor;

supporting expert insurance means insurance referred to in in regulation 59B.

- (2) In regulation 3 in the definition of ***summary of records*** delete “records.” and insert:

records;

Note: The heading to amended regulation 3 is to read:

Terms used

5. Regulation 32A inserted

At the end of Part 7 insert:

32A. Auditor must give supplementary information

- (1) If the CEO is given a mandatory auditor's report under the Act in respect of a site, the CEO may, by written notice, require the auditor who prepared the report to give any other information to the CEO that, in the opinion of the CEO, is relevant to the audit of the site.
- (2) The written notice must state —
 - (a) the required information; and
 - (b) that the required information must be given —
 - (i) by the day (the *due date*) specified in the notice, which must not be less than 14 days after the day on which the notice is given to the auditor; or
 - (ii) if a later day is set by the CEO on request under subregulation (3) — by the later day;and
 - (c) that a failure to comply with the notice may constitute an offence.
- (3) The CEO may, on request, set by written notice a day after the due date as the day by which the required information must be given.
- (4) The auditor must give the required information to the CEO —
 - (a) by the due date; or
 - (b) if a later day is set under subregulation (3) — by the later day.

Penalty for this subregulation: a fine of \$1 000.

6. Regulation 35 amended

- (1) Delete regulation 35(1) and insert:

(1) The CEO may call for applications from persons seeking accreditation as contaminated sites auditors.

- (2) In regulation 35(2) delete “is to” and insert:

must

(3) After regulation 35(2) insert:

(3) The CEO must specify in the call for applications the period during which an application must be made.

Note: The heading to amended regulation 35 is to read:

Call for applications

7. Regulation 36 amended

(1) Before regulation 36(1) insert:

(1A) In this regulation —

former auditor —

- (a) means a person whose accreditation under section 69 of the Act has ceased; but
- (b) does not include a person —
 - (i) whose application for renewal of accreditation as an auditor is refused under regulation 45(2)(a), (b) or (c); or
 - (ii) whose accreditation as an auditor is cancelled.

(2) In regulation 36(1):

(a) delete “is to —” and insert:

must —

(b) before paragraph (a) insert:

(aa) if the applicant is not a former auditor — be made during a period specified under regulation 35(3); and

(c) in paragraph (c) delete “item 4, unless regulation 37 applies.” and insert:

item 4.

(3) In regulation 36(2) delete “is to” and insert:

must

Note: The heading to amended regulation 36 is to read:

Application for accreditation as contaminated sites auditor

8. Regulation 37 deleted

Delete regulation 37.

9. Regulation 39 amended

(1) In regulation 39:

(a) delete “The CEO” and insert:

(1) The CEO

(b) delete paragraph (b) and insert:

(b) has access to supporting experts whose assistance would be necessary for the person to competently carry out the functions of an auditor; and

(c) delete paragraph (d) and insert:

(d) is covered by auditor insurance; and

(d) in paragraph (e) delete “auditor.” and insert:

auditor; and

(e) after paragraph (e) insert:

(f) has paid to the CEO the fee set out in Schedule 2 item 5 for the term of the accreditation.

(2) At the end of regulation 39 insert:

(2) If the CEO accredits a person as an auditor, the CEO must set the term of the accreditation, which must not be longer than 5 years.

(3) The CEO must give to the auditor written notice specifying the term set by the CEO.

10. Regulation 40 replaced

Delete regulation 40 and insert:

40. Accreditation fee for persons accredited under *Mutual Recognition Act 1992* (Commonwealth) Part 3

- (1) A person accredited under the *Mutual Recognition Act 1992* (Commonwealth) Part 3 as an auditor must not carry out a function as an auditor unless the person has paid to the CEO the fee set out in Schedule 2 item 5 for the term of the accreditation.
- (2) If the person withdraws the notice given under the *Mutual Recognition Act 1992* (Commonwealth) section 19 or is refused accreditation under section 23(1) of that Act, the CEO may refund to the person all or part of a fee paid under subregulation (1).

11. Regulation 43 deleted

Delete regulation 43.

12. Regulation 44 amended

- (1) Delete regulation 44(1) and insert:
 - (1) In this regulation —
expiry day, in relation to an auditor, means the day on which the auditor's term of accreditation expires;
renewal period, in relation to an auditor, means the period of 70 days ending on expiry day.
 - (1A) An auditor may apply to the CEO for renewal of accreditation during the renewal period.
- (2) In regulation 44(2):
 - (a) delete "is to —" and insert:

must —
 - (b) delete paragraph (c) and insert:
 - (c) specify the term of renewal sought, which must not be longer than 5 years; and
 - (d) if the application for renewal is made less than 35 days before expiry day — be accompanied by the late renewal application fee set out in Schedule 2 item 5A.

(3) After regulation 44(3) insert:

- (4) If an auditor applies under subregulation (1A) before expiry day but the CEO does not give the auditor notice of the CEO's decision on the application on or before expiry day, the term of the auditor's accreditation continues from expiry day until the day on which the application is resolved.
- (5) A fee paid under subregulation (2)(d) is not refundable regardless of whether the application is successful or unsuccessful.

13. Regulations 45 and 46 replaced

Delete regulations 45 and 46 and insert:

45. Renewal of accreditation

- (1) In this regulation —
corresponding person means a person under the law of another Australian jurisdiction with functions that correspond or substantially correspond to the CEO's functions under the Act;
corresponding report means a report prepared under the law of another Australian jurisdiction that corresponds or substantially corresponds to a mandatory auditor's report.
- (2) If an auditor applies for renewal of accreditation under regulation 44, the CEO must renew the accreditation if —
 - (a) the CEO is satisfied that the auditor complies with the requirements set out in regulation 39(1)(a) to (e); and
 - (b) the auditor has not been convicted of an offence under section 11(3), 70(3), 71 or 74(2) of the Act; and
 - (c) the CEO does not consider it appropriate to refuse to renew the accreditation because —
 - (i) a ground set out in regulation 48(2)(a) to (da) is made out in respect of the auditor; or
 - (ii) the auditor has not provided a mandatory auditor's report to the CEO, or a corresponding report to a corresponding person, during the auditor's most recent term of accreditation;

and

- (d) the auditor has paid to the CEO the fee set out in Schedule 2 item 5 for the term of the accreditation.
- (3) If the CEO renews the accreditation of an auditor under subregulation (2), the CEO must set a new term of accreditation, which must not be longer than 5 years.
- (4) The term set by the CEO begins on the day after the day on which the auditor's most recent term of accreditation expires.
- (5) The CEO must give to the auditor written notice specifying the term set by the CEO.

46. Identity card must be returned if person ceases to be accredited

- (1) A person who ceases to be accredited as an auditor must return to the CEO the written authority given under section 70(1) of the Act.
Penalty for this subregulation: a fine of \$1 000.
- (2) However, subregulation (1) does not apply to a person who is taken not to be accredited as an auditor under regulation 51(1).

14. Part 9 Division 1A heading inserted

Before regulation 47 insert:

Division 1A — Disciplinary matters

15. Regulation 47 amended

- (1) In regulation 47(1) delete “70,” and insert:

70(3),

- (2) Delete regulation 47(2) to (4).

Note: The heading to amended regulation 47 is to read:

Cancellation of accreditation on conviction for offence

16. Regulation 48 amended

- (1) Delete regulation 48(1) and insert:

- (1) The CEO may by written notice, on a ground set out in subregulation (2) —

- (a) suspend the accreditation of an auditor for a fixed period specified in the notice; or
- (b) cancel the accreditation of an auditor.

(2) In regulation 48(2):

- (a) in paragraph (a) delete “regulations;” and insert:

regulations, including regulation 32A(4), 57, 59A or 59B;

- (b) after paragraph (d) insert:

- (da) the auditor has failed to competently carry out their functions as an auditor, including by failing to obtain assistance from a supporting expert in circumstances in which obtaining the assistance was necessary;

- (db) the auditor is not covered by auditor insurance;

- (c) in paragraph (e) delete “meets the requirements of regulation 39.” and insert:

complies with the requirements set out in regulation 39(1).

(3) Delete regulation 48(3) and (4).

Note: The heading to amended regulation 48 is to read:

Accreditation may be cancelled or suspended in other circumstances

17. Regulation 49 amended

- (1) In regulation 49(1) delete “46,” and insert:

45(2)(a), (b) or (c),

- (2) In regulation 49(3):

- (a) delete “is not to” and insert:

must not

- (b) delete “46,” and insert:

45(2)(a), (b) or (c),

- (3) Delete regulation 49(5).

18. Regulation 50 amended

In regulation 50(2):

- (a) delete “where —” and insert:

if —

- (b) in paragraph (a) delete “70,” and insert:

70(3),

- (c) delete paragraphs (b) and (c).

19. Regulations 52 and 53 replaced

Delete regulations 52 and 53 and insert:

52. No application for re-accreditation for 3 years following refusal to renew or cancellation

A person who is refused renewal of accreditation as an auditor under regulation 45(2)(b) or whose accreditation is cancelled under regulation 47(1) cannot apply for accreditation for 3 years after the refusal or cancellation.

20. Part 9 Division 1B heading inserted

After regulation 54 insert:

Division 1B — Notification requirements

21. Regulation 55 amended

- (1) In regulation 55(1):

- (a) delete “is to notify the CEO in writing —” and insert:

must notify the CEO in writing within 7 days —

- (b) in paragraph (a) delete “regulation 39; or” and insert:

regulation 39(1); or

- (c) delete paragraph (d) and insert:

- (d) in the case of an auditor who satisfies the CEO that the auditor has access to a supporting

expert — if the auditor no longer has access to the expert.

- (d) delete “within 7 days after the day on which the change occurs.”.

- (2) At the end of regulation 55(1) insert:

Penalty for this subregulation: a fine of \$1 000.

- (3) In regulation 55(2) delete “is to” and insert:

must

- (4) At the end of regulation 55(2) insert:

Penalty for this subregulation: a fine of \$1 000.

- (5) Delete regulation 55(3) and (4) and insert:

- (3) An auditor must, within 7 days after the day on which the auditor is engaged to provide a mandatory auditor’s report, give to the CEO a written notice —

- (a) stating that the auditor has been engaged to provide a report; and
 - (b) containing a description of the location and extent of the site in respect of which the auditor has been engaged to provide the report, sufficient to identify it; and
 - (c) containing the name of the person who engaged the auditor to provide the report.

Penalty for this subregulation: a fine of \$1 000.

- (6) At the end of regulation 55 delete the Penalty.

Note: The heading to amended regulation 55 is to read:

Auditor must notify CEO in certain circumstances

22. Regulation 56 replaced

Delete regulation 56 and insert:

56. Auditor must notify CEO if insurance not maintained

- (1) If an auditor ceases to be covered by auditor insurance, the auditor must, as soon as possible after the auditor

becomes aware that they have ceased to be covered by the insurance, give written notice to the CEO stating —

- (a) that the auditor is no longer covered by the insurance; and
- (b) the day on which the auditor ceased to be covered by the insurance.

Penalty for this subregulation: a fine of \$1 000.

- (2) If an auditor carries out a function as an auditor in reliance on assistance provided by a supporting expert and the auditor becomes aware that the expert is not covered by supporting expert insurance, the auditor must give written notice to the CEO as soon as possible.

Penalty for this subregulation: a fine of \$1 000.

23. Regulation 59 amended

In regulation 59 delete “may” and insert:

must

Note: The heading to amended regulation 59 is to read:

Title of auditor must be used only when carrying out functions of auditor

24. Regulations 59A to 59C inserted

After regulation 59 insert:

59A. Auditor must have insurance

An auditor must not carry out a function as an auditor unless the auditor is covered by insurance —

- (a) for the auditor’s civil liability for anything done or omitted in relation to carrying out the function; and
 - (b) against which a claim is able to be made —
 - (i) while the person is an auditor; and
 - (ii) for at least 7 years after the person ceases to be an auditor;
- and
- (c) that provides cover of not less than \$5 000 000 for a claim.

Penalty: a fine of \$1 000.

59B. Supporting expert must have insurance

An auditor must not carry out a function as an auditor in reliance on assistance from a supporting expert unless the supporting expert is covered by insurance —

- (a) that is in effect in respect of the expert's civil liability for anything done or omitted in relation to providing the assistance; and
- (b) that provides cover of not less than \$5 000 000 for a claim.

Penalty: a fine of \$1 000.

59C. Auditor must submit annual reports

- (1) Before the end of February each year, an auditor must submit a written report in a form approved by the CEO setting out the following information in relation to the previous calendar year —

- (a) details of each audit carried out by the auditor, regardless of whether the audit was completed;
- (b) details of each supporting expert that provided assistance to the auditor and the assistance provided;
- (c) details of the auditor's auditor insurance;
- (d) any other information relevant to establishing the risk to public health and the environment from the functions carried out by the auditor.

Penalty for this subregulation: a fine of \$1 000.

- (2) The report must be accompanied by a certificate of currency for the auditor's auditor insurance.

Penalty for this subregulation: a fine of \$1 000.

25. Regulation 62A inserted

At the beginning of Part 10 insert:

62A. Approved forms must be published on website

The CEO must ensure that —

- (a) a form approved by the CEO under regulation 36(1)(a), 44(2)(a) or 59C(1) is published on a website maintained by or on behalf of the Department; and
- (b) a form approved by the committee under regulation 24(1) is published on a website maintained by or on behalf of the committee.

26. Schedule 2 amended

In Schedule 2:

(a) in item 4 delete “(other than auditor accredited under r. 37)”;

(b) in item 5 delete “r. 40 and r. 45” and insert:

r. 39(1)(f), 40(1) and 45(2)(d)

(c) after item 5 insert:

5A.	Late renewal application fee	r. 44(2)(d)	10
-----	------------------------------	-------------	----

V. MOLAN, Clerk of the Executive Council.
