



## **Lodging an application (disclosure statement) for an exemption certificate**

This information sheet provides a guide to persons who are, or who may be considering, lodging an application with the Contaminated Sites Committee seeking an exemption certificate, under the Contaminated Sites Act 2003 (the Act).

### **Background**

The Act provides a regulatory framework for the identification, recording, classification, management and remediation of contaminated sites.

A site that is known or suspected of being contaminated is required to be reported to the Department of Environment and Conservation (DEC) by the owner or occupier of the site, the person that caused the contamination, or an auditor engaged to report on the site under the Act. When a site is reported, the Chief Executive Officer of DEC is required to review the report and classify the site based on the risk the site poses to human health, the environment or any environmental value. Schedule 1 of the Act provides for seven categories of site classification.

During the first two years of operation of the Act, a landowner may submit, or give notice of intention to submit, a disclosure statement in respect of contamination of the land for which the owner is not responsible. Section 65 of the Act provides for the issuing of an exemption certificate, which exempts the landowner from responsibility for the contamination so disclosed, provided that the contamination was not the fault of the landowner.

### **Who may lodge an application for an exemption certificate?**

Section 64 of the Act prescribes that an owner of land may make a disclosure statement to the Committee, with respect to the contamination of that land –

- in the prescribed form;
- in respect of land of which that person is the owner, and was the owner immediately before the commencement of the Act, and
- within two years after the commencement of the Act (a person may give written notice to the Committee within two years of the commencement of the Act of their intention to lodge a disclosure statement, in which case the person has 12 months after giving notice to the Committee to lodge the disclosure statement).

If you are unsure about your eligibility to lodge an application under the Act, you may wish to seek legal advice before proceeding.



## Format of the Application

Regulation 33 of the Contaminated Sites Regulations 2006 prescribes that for the purposes of section 64 of the Act, a disclosure statement is to be in the form of Form 5. A copy of Form 5 may be downloaded from the Committee's website. Alternatively, a copy of Form 5 may be requested from the Office of the Contaminated Sites Committee.

For applications for an exemption certificate to be accepted by the Committee, they must:

- be in writing;
- be in the form of, and contain the information described in, Form 5;
- include a certified copy of the certificate, or certificates, of title for the owner's land;
- include a report, prepared in accordance with the relevant guidelines, regarding the nature and extent of contamination of the owners' land;
- include all available information in the possession of, or available to, the person making the statement that the person believes may be relevant to –
  - the nature and extent of known contamination of the owner's land, currently and historically; or
  - the use to which the owner's land has been, and is being, put and the activities which have been carried out on the land which may have caused or contributed to the contamination;
- provide any other information or documents in the possession of, or available to, the person making the statement supporting the reasons set out in the statement as to why the person believes he or she is entitled to an exemption certificate;
- include relevant details of the transaction or transactions which resulted in the owner of the land becoming the owner of the land and the reasons why;
- be signed by the applicant; and
- be lodged at the Office of the Contaminated Sites Committee within the time prescribed under section 64 of the Act.

## Time limit for lodging an application

A disclosure statement must be lodged with the Office of the Contaminated Sites Committee within two years after the commencement of the Act. A person may give written notice to the Committee within two years of the commencement of the Act, of their intention to lodge a disclosure statement, in which case the person has 12 months after giving notice to the Committee to lodge the disclosure statement.

If a person has a programme for reporting sites approved by DEC under section 12 of the Act, that person may lodge a disclosure statement in respect of that land at any time before the programme is to be completed.



### **The Committee's decision**

The Committee will give written notice of its decision and reasons for its decision, to the applicant and the Chief Executive Officer of DEC.

The Committee may cancel or amend an exemption certificate after it has been given, if it becomes aware and is satisfied that the disclosure statement in question contained false or misleading information or failed to disclose information that was materially relevant.

The holder of an exemption certificate may apply to the Committee under section 65(5) of the Act to have the exemption certificate transferred to another person who has become an owner of the land, or part of the land.

A person who submitted a disclosure statement may appeal against a decision of the Committee to the Supreme Court, but only on a question of law and within 21 days after notice of the decision was given, or such later time as may be specified by the Supreme Court.

### **Other information sheets**

1. Role of the Contaminated Sites Committee
2. Lodging an appeal against a site classification
3. Lodging an appeal against an investigation or clean up notice
4. Lodging an application to determine responsibility for remediation

### **Contact details**

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