

5 March 2014



Contaminated Sites
Department of Environment Regulation
Locked Bag 33
CLOISTERS SQUARE
PERTH WA 3850



RE: Review of the *Contaminated Sites Act 2003* – Discussion Paper

Thank you for the opportunity to provide comment on the Review of the *Contaminated Sites Act 2003* - Discussion Paper.

CCI is the peak organisation representing business in Western Australia. It is the second largest organisation of its kind in Australia, with a membership of over 8,500 businesses across all sectors of the economy. CCI aims to build a competitive and productive business environment in Western Australia by promoting free enterprise through advocacy and essential services that make it easier to do business. CCI's vision is for Western Australia to be a world leading place to live and do business.

The *Contaminated Sites Act 2003* serves an important purpose from an environmental perspective. However, it also adds to business costs and it is important that the implications for business are carefully considered. CCI members have raised the following feedback in relation to the proposed changes.

1. Duty to report

Environmental consultants provide critical independent specialised advice to landowners and occupiers of potentially contaminated sites. It is important that consultants be free to provide objective advice, and not be encumbered by conflicting incentives. As such, CCI does not support the proposed change to include an 'environmental consultant' in the persons with a duty to report.

CCI would prefer the current wording of the Act remain unchanged, as it adequately details the reporting requirements of parties. CCI considers that the inclusion of 'environmental consultant' would lead to increased regulatory burden, increased business costs and conflicting incentives. In this regard:

- Landowners and occupiers are already compelled to report sites under the Act. The requirement for an environmental consultant to report the same site could lead to duplication.
- The requirement for consultants to report under the Act would extend the time that a consultant is engaged by a land owner/occupier, resulting in increased consultation costs for businesses.
- The proposed change leaves environmental consultants vulnerable to litigation if sites are incorrectly reported as contaminated.



- The onus to report and the burden of legal responsibilities could make many consultants reluctant to engage in contaminated sites work.
- A reduction in competition caused by fewer environmental consultants might lead to higher costs to businesses and increased delays to developments.
- Environmental consultants would be compelled to report sites, with or without client approval, which would create a fundamental conflict of interest between consultants and their clients. The cost to businesses to disprove a contaminated sites finding made by a consultant would be significant as businesses could potentially incur additional investigation and remediation fees.

2. *Site classification scheme*

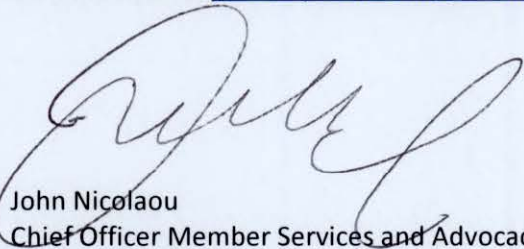
CCI supports the recommendation to leave the site classification scheme unchanged and implement procedures which provide clearer guidance on sites classified as 'possibly contaminated – investigation required'. Clearer guidance and process improvements will enable the Act to meet the objectives sought by the earlier proposal to introduce a new 'contaminated – investigation required' classification.

3. *Role of the Contaminated Sites Committee and the State Administrative Tribunal*

CCI supports the State Administrative Tribunal (SAT) reviewing of the Contaminated Sites Committee's primary decisions and the SAT becoming the review decision-maker in place of the Contaminated Sites Committee for appeals against classification and notices served under the Act. The SAT has demonstrated its ability to resolve technically complicated matters across a range of disciplines such as human rights, vocational regulation, commercial and civil disputes and development and resource issues in a timely and efficient manner, and proponents are now familiar with the process.

CCI appreciates the opportunity to provide feedback on the proposed changes to the *Contaminated Sites Act 2003*, and hope that our feedback is taken into consideration in the final review report.

Should you require more information, please contact Joanne Penaranda, Senior Economist on 9365 7654 or joanne.penaranda@cciwa.com.



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