

RECENT DEVELOPMENTS

COMMONWEALTH

DISCUSSION PAPER ON FINANCIAL RESPONSIBILITY FOR LAND CONTAMINATION

BACKGROUND

The Commonwealth considers the lack of consistency throughout Australia's States and Territories in relation to laws for liability for contaminated sites to be a serious problem. ANZECC has prepared a discussion paper which is intended to raise issues and generate comments from all interested parties.

The comments received over the next three months will be incorporated into a Position Paper which will set down possible directions a nationally consistent approach to financial liability should take. Interested parties will also be able to comment on the Position Paper before a final position is developed.

It seems that the goal of this rather lengthy process is to establish rules or guidelines which are acceptable to, and supported by, the majority of the parties involved, that is government, industry and the community. It seems that the Commonwealth regards this consultative and cooperative approach necessary to achieve national consistency.

LIABILITY ISSUES

The paper attempts to address the following issues:

(a) What could be the basis of the liability regime to be applied?

Examples and principles discussed include the Polluter Pays Principle, a fault-based system, a risk and fault based system, a strict liability system and a general fund.

(b) What is or what could be the role of government in Australia in the management of contaminated sites?

This addresses how responsibility should be divided between local, State and Territory, and Commonwealth Governments.

(c) Should potential for liability be extended to governments carrying out their planning and regulatory functions?

If this is to be the case, the paper addresses whether the liability should vary between the different levels of government.

(d) Should the potential to be found liable be extended to parties other than those immediately involved in the contaminating activity?

Such parties discussed include lenders, receivers, providers of services or professional advice or persons concerned in the management of corporations.

(e) Should exemptions from, or limitations on, the extent of liability be allowed or factors mitigating liability be accepted?

The paper addresses how such exemptions and mitigating factors operate, at what stage in the process of assigning liability should they operate and the limits to the scope with which they are applied.

(f) How should the problem of "orphan sites" be dealt with?

The paper specifically discusses how and by whom remediation costs should be funded.

NATIONAL REGISTER OF CONTAMINATED SITES

The paper recommends that a register of contaminated sites be developed in order to assess the extent of the problem in financial and human health terms, and to provide information for potential purchasers, lenders and tenants.

UNEXPLODED ORDNANCE

The paper deals specifically with unexploded military ordnance, that is, any sort of military ammunition or explosive that has failed to explode. The paper notes that the major question about UXO is whether it should be included within the parameters of a national approach to dealing with liability for contaminated sites, or whether it should remain in a separate policy area.

The last part of the Discussion Paper details the approaches to the liability in each of the ANZECC jurisdictions.

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AUSTRALIAN CAPITAL TERRITORY ACT GREENHOUSE STRATEGY

On 19 May 1993, the Minister for Environment, Land and Planning released the ACT Greenhouse Strategy. The tabling of the Government's Greenhouse Strategy