

# Nature Conservation and Other Legislation Amendment Bill (No. 2) 2013

Amendments during consideration in detail to be moved by

The Honourable the Minister for National Parks, Recreation, Sport and Racing

## 1 **Clause 8 (Amendment of s 7 (Provisions relating to operation of Act))**

Page 16, line 8, ‘section 96E’—

*omit, insert—*

sections 96E, 96F and 96G

## 2 **Clause 14 (Replacement of s 96E (Protection from liability))**

Page 18, lines 15 to 28, page 19, lines 1 to 34, page 20, lines 1 to 32 and page 21, lines 1 to 29—

*omit, insert—*

### **96E Protection of State officials and the State from liability**

- (1) A State official is not civilly liable for an act done, or omission made, honestly and without negligence under this Act.
- (2) If subsection (1) prevents a civil liability attaching to a State official, the liability attaches instead to the State.
- (3) Also, the State or a State official is not civilly liable in a designated proceeding for an act done, or omission made, in—
  - (a) the performance or purported performance of a function under this Act; or
  - (b) the exercise or purported exercise of a power under this Act; or
  - (c) the management or operation of a State forest or timber reserve.

(4) This section is subject to section 96G.

(5) In this section—

*damages* includes any form of monetary compensation.

*designated proceeding* means a proceeding for damages based on a liability for personal injury, damage to property or economic loss resulting from personal injury or damage to property, and, for a fatal injury, includes a proceeding for the deceased's dependants or estate.

*personal injury* see the *Civil Liability Act 2003*, schedule 2.

*State official* means—

- (a) the Minister; or
- (b) the chief executive; or
- (c) a forest officer; or
- (d) a public service employee or another employee of the State; or
- (e) a person acting, on a voluntary basis (irrespective of whether the person receives out-of-pocket expenses), under the direction of a person mentioned in paragraph (a), (b), (c) or (d).

### **96F Protection of plantation officials and licensees from liability**

- (1) A plantation official is not civilly liable for an act done, or omission made, honestly and without negligence under this Act.
- (2) If subsection (1) prevents a civil liability attaching to a plantation official, the liability attaches instead to the plantation licensee

who employed the official when the act was done or the omission was made.

- (3) Also, a plantation licensee or plantation official is not civilly liable in a designated proceeding as defined under section 96E for an act done, or omission made, in—
  - (a) the performance or purported performance of a function under this Act; or
  - (b) the exercise or purported exercise of a power under this Act.
- (4) This section is subject to section 96G.
- (5) In this section—

***plantation official*** means—

  - (a) a plantation officer; or
  - (b) an employee of a plantation licensee; or
  - (c) a person acting, on a voluntary basis (irrespective of whether the person receives out-of-pocket expenses), under the direction of a person mentioned in paragraph (a) or (b).

### **96G Exception to protections against designated proceeding**

- (1) This section applies if, other than for this section, an entity would not be civilly liable for an act or omission because of section 96E(3) or 96F(3) (the ***protection***).
- (2) The protection does not apply to liability—
  - (a) arising from the entity's—
    - (i) construction, installation or maintenance of a relevant fixture,

or a road, that is defective other than because of a natural event; or

- (ii) failure to give adequate notice of a relevant fixture, or a road, that is defective other than because of a natural event; or
- (iii) carrying out of a non-exempt activity; or

*Examples of a natural event—*

a storm, flood, period of heavy rain

- (b) for an MAIA injury incurred by the entity as an insured person; or
  - (c) for an injury for which compensation is payable under the *Workers' Compensation and Rehabilitation Act 2003* (the **WCA**) incurred by the entity in the entity's capacity as an employer.
- (3) For subsection (2)(c), the following is immaterial—
- (a) whether compensation for the injury is actually claimed under the WCA;
  - (b) whether the entitlement to seek damages as defined under section 96E for the injury is regulated under the WCA.

- (4) In this section—

**compensation** see the WCA, section 9.

**defective** includes damaged or destroyed.

**insured person** see the *Motor Accident Insurance Act 1994* (the **MAIA**), section 4.

**MAIA injury** means a personal injury as defined under section 96E to which the MAIA applies.

**non-exempt activity** means the following—

- (a) if the entity is the State or a State official, an activity (a ***programmed activity***) that is the programmed—
- (i) shooting or poisoning of animals; or
  - (ii) burning or poisoning of vegetation;
- (b) if the entity is a plantation licensee or plantation official—
- (i) a programmed activity conducted by or for a plantation licensee; or
  - (ii) an activity related to plantation forestry.

***relevant fixture*** means a building, structure or other thing constructed or installed by or for the following—

- (a) if the entity is the State or a State official—the State;
- (b) if the entity is a plantation licensee or plantation official—a plantation licensee.

*Examples—*

- a lookout or boardwalk
- a stairway
- a fence or other barrier
- the following and anything else used for a recreational purpose—
  - a flying fox ride or zipline ride
  - a rope or swing over a river or waterhole
  - a ramp or jump on a mountain bike trail
  - an anchor point for rock climbing

*road*—

- (a) generally—see the *Transport Operations (Road Use Management) Act 1995*, schedule 4; and
- (b) if the entity is the State or a State official—includes a State-controlled road as defined under the *Transport Infrastructure Act 1994*, schedule 6.

**3 Clause 17 (Amendment of s 31 (Public notice of draft plan))**

Page 22, lines 18 to 20—

*omit, insert*—

- (3) Section 31(3), ‘28 days after the public notice is given’—

*omit, insert*—

20 business days after the notice is published

- (4) Section 31(5)(b), ‘28 days’—

*omit, insert*—

20 business days

**4 Clause 20 (Amendment of s 36 (Public notice of draft amendment))**

Page 24, lines 4 to 6—

*omit, insert*—

- (3) Section 36(3), ‘28 days after the public notice is given’—

*omit, insert*—

20 business days after the notice is published

**5 Clause 20 (Amendment of s 36 (Public notice of draft amendment))**

Page 24, lines 18 and 19—

*omit, insert—*

(6) Section 36(7)(b), ‘28 days’—

*omit, insert—*

20 business days

(7) Section 36(6A) and (7)—

*renumber* as section 36(7) and 36(8).

**6 Clause 24 (Amendment of s 4 (Object of Act))**

Page 28, line 25, ‘interest;’—

*omit, insert—*

interest under Aboriginal tradition or Island custom;

**7 Clause 116 (Amendment of s 17 (Management principles of national parks))**

Page 87, lines 24 and 28, after ‘cultural’—

*insert—*

resources and

**8 Clause 139 (Replacement of pt 4, div 3A (Regeneration plans for national parks (recovery)))**

Page 98, lines 2 to 6—

*omit, insert—*

(1) A regulation may declare a regional park, or part of a regional park, as a resource use area.

*Note—*

Section 27(1) does not apply to a regional park, or part of a regional park, that is a resource use area.

- (2) However, the regulation may only be made at the same time as the regulation first dedicating the regional park.

**9 Clause 153 (Insertion of new pt 12, div 5, sdiv 2)**

Page 106, line 20, ‘is taken’—

*omit, insert—*

despite section 42C, is taken

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