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Biodiversity Conservation Act 2016

The sharp end of the stick

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Melanie Debenham, Senior Associate
melanie.debenham@hsf.com

#quokkaselfie

#1 Quokka Selfie



LabelUP

Report

Final score: 153 points

#quokkaselfie



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What does the Biodiversity Conservation Act do?

Conserve, Manage, Protect and Use

- Act establishes comprehensive regime
- Listings, recovery, plans, conservation agreements, criminal offences, etc.
- Plus regulations, Codes and guidance to come
- But also an enabler for use of environmental assets

What are the key implications for consultants?

Duty to report

- Threatened species
- Threatened ecological communities

Assisting clients

- Obtain authorisations
- Respond to notices and direction
- Participate in consultation
- Manage inspections

Protection offences

- Taking, possessing, feeding, dealing in, processing, importing, exporting flora and fauna

Accessory to an offence

Extended liability

Duty to report

43. Duty of certain people to report occurrence of threatened species

- (1) This section applies to a person who is carrying out field work for the purposes of —
 - (a) an assessment under the *Environmental Protection Act 1986* Part IV; or
 - (b) complying with a requirement under the *Environmental Protection Act 1986* section 51E(1)(d) in relation to an application for a clearing permit.
- (2) If the person, in the course of carrying out the field work, finds an occurrence of a species that is a threatened species on land to which the work relates, the person must report its presence to the CEO.
Penalty for this subsection: a fine of \$50 000.
- (3) A report under subsection (2) may be made orally or in writing.
- (4) It is a defence to a charge of an offence under subsection (2) to prove that the person charged did not know, and could not reasonably have known, that the occurrence found was an occurrence of a threatened species.

49. Duty of certain people to report occurrence of threatened ecological community

- (1) This section applies to a person who is carrying out field work for the purposes of —
 - (a) an assessment under the *Environmental Protection Act 1986* Part IV; or
 - (b) complying with a requirement under the *Environmental Protection Act 1986* section 51E(1)(d) in relation to an application for a clearing permit.
- (2) If the person, in the course of carrying out the field work, finds an occurrence of an ecological community that is a threatened ecological community on land to which the work relates, the person must report its presence to the CEO.
Penalty for this subsection: a fine of \$50 000.
- (3) A report under subsection (2) may be made orally or in writing.
- (4) It is a defence to a charge of an offence under subsection (2) to prove that the person charged did not know, and could not reasonably have known, that the occurrence found was an occurrence of a threatened ecological community.

Accessory to an offence

234. Attempt, incitement or accessory after the fact

- (1) In this section —
accessory after the fact to an offence has the meaning given in *The Criminal Code* section 10.
- (2) *The Criminal Code* section 555A applies to an offence under this Act as if it were a simple offence under that Code.
- (3) A person who becomes an accessory after the fact to an offence under this Act (the *principal offence*) commits an offence and is liable on conviction to the penalty to which a person convicted of the principal offence is liable.

Extended liability

241. Liability of employers for offence by employee

- (1) If an employee of another person (the *employer*) is charged as an employee with an offence under this Act, the employer may also be charged with the offence whether or not the employee acted without the employer's authority or contrary to the employer's orders or instructions.
- (2) If an employer is charged as permitted by subsection (1) and the employee is convicted of the offence, the employer is to be taken to have also committed the offence, subject to subsection (5).
- (3) If an employee of another person (the *employer*) commits an offence under this Act as an employee, then, although the employee is not charged with the offence, the employer may be charged with the offence whether or not the employee acted without the employer's authority or contrary to the employer's orders or instructions.
- (4) If an employer is charged as permitted by subsection (3) and it is proved that the employee committed the offence, the employer is to be taken to have also committed the offence, subject to subsection (5).
- (5) If under this section an employer is charged with an offence it is a defence to prove that —
 - (a) the offence was committed without the employer's consent or connivance; and
 - (b) the employer took all the measures to prevent the commission of the offence that the employer could reasonably be expected to have taken having regard to all the circumstances.

How to mitigate potential liability?

Understand the new law

- Processes, procedures and systems to ensure compliance
- Training
- Educate

Adequate supervision

- Directors/officers – activities of the body corporate
- Employers – conduct of employees
- Audit compliance and address issues

Don't be a party to a crime!

- Duty to report is a personal obligation
- Not at discretion of client, so include in terms of engagement

Questions?



Melanie Debenham, Senior Associate

Environment, Planning and Communities

T +61 8 9211 7560

M +61 410 486 327

melanie.debenham@hsf.com

Experience

Melanie is a leading advisor in the areas of environment, planning and hospitality regulation. She has experience advising on approvals, regulatory and compliance issues across a range of industry sectors, including mining, oil and gas, industrial, infrastructure and urban development.

Melanie has also advised on a number of major Western Australian projects, where stakeholder risk management played a critical role in the environmental approval process. Assisting clients identify and manage legal risk strategically and maximise opportunities the regulatory regime presents is her primary focus.

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