

NATIONAL PARKS AND WILDLIFE AMENDMENT (ILLEGAL FORESTRY OPERATIONS) BILL 2012

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Bill introduced, read a first time and ordered to be printed on motion by the Hon. Luke Foley.

Second Reading

The Hon. LUKE FOLEY (Leader of the Opposition) [12.36 p.m.]: I move:
That this bill be now read a second time.

I am proud to introduce the National Parks and Wildlife Amendment (Illegal Forestry Operations) Bill 2012, which amends the National Parks and Wildlife Act 1974 to substantially increase the penalties for illegal forestry operations. Australia's forests, and the animals that live in them, have always been a source of pride and inspiration to Australians. When Europeans first came to our shores they were beguiled by and sometimes frightened of the bush. Eucalypts, cycads, wattles and waratahs greeted the new settlers and became the backdrop to their lives. The colonial wonder and amazement were palpable. In 1791 the colony sent two kangaroos as exotic gifts to the King and a dingo to the Under Secretary of State.

The art of John Lewin—an exhibition of which closed just this week at the Mitchell Library—further illuminated the colonial fascination with our forests. In the first years of the 1800s Lewin painted Gynea lilies and waratahs, tawny frogmouths and eastern rosellas. In 1803 Governor King despatched him to record the first koala sighted by white people. His stilted efforts at capturing the koala and the distinctive eucalypt reveal how foreign the forest and its animals seemed to European eyes. Struggling against and subduing this wild landscape became the task of white settlement. By the late nineteenth century a nationalist pride in our forest heritage was awakening.

In the lead-up to Melbourne's international expo in 1888 a competition was held to measure the tallest tree, with Australia hoping to find a *Eucalyptus regnans* taller than the tallest redwoods of the United States. Although the contest to claim ownership of the world's tallest tree was never settled—Australia's tallest eucalypts were cut down before they were properly measured—the nationalist pride that was piqued by the competition with the Americas opened the minds of Australians to the majesty of their forest heritage. By the turn of the century some visionaries were starting to worry about the rate of forest destruction occurring in the new federation. Arthur Streeton was one of those visionaries.

The famous Heidelberg painter, who played such a role in helping us see and embrace the Australian landscape, as well as celebrating the work of pioneers in carving out an economic future on this challenging land of ours, was a strident activist rallying against the destruction of our forests. While clearly proud of all that the settlers had done, he wanted some balance. He deplored Australia's failure to develop what he called a forest conscience, and he painted images bluntly named, such as *The Vanishing Forest*. In 1940 Streeton exhibited his most openly critical painting, *Sylvan Dam and Donna Buang, AD 2000*, which, as art critic Tim Bonyhady wrote, "conveys Streeton's nightmare vision of a wasted Australia, bleached, eroded and lifeless, as a result of the clearing of the forests."

The importance of our forests and their animals in the nation's culture is elegantly seen in our favourite children's books May Gibbs's *Gumnut Babies*, first published in 1916, and Dorothy

Wall's *Blinky Bill*, published in 1939. Both remain staples in the childhood of so many Australians. This history puts forests at the centre of Australia's identity—our sense of place, our sense of wonder at living on this most marvellous of continents. And it was from this history that the modern forest campaigns were born, with New South Wales leading the nascent movement. In 1979 locals of Terania Creek, on the State's North Coast, held protests to protect rainforest gullies slated for logging and forced a radical rethink of the open slash policies of forest use. In 1982 Labor Premier Neville Wran protected 90,000 hectares of the rainforests of New South Wales. This was a brave and historic new approach and reflected the changing attitudes in the community towards preservation of the State's most impressive forests.

But still the community concern grew. In 1989 and 1990 the forest protests on the New South Wales South Coast dwarfed even the Franklin River blockade, continuing over 18 months with 1,300 arrests. In 1995 Bob Carr became Premier of New South Wales, aided by community sentiment for forest protection and Labor's promise to deliver a world-class national parks system and strong forest management—which is exactly what he did. Labor reformed the timber industry in New South Wales. Labor showed that it is not a crude choice between jobs and the environment but that a progressive society can create growing prosperity while protecting working people and the environment. Labor provided generous transition arrangements; and where the industry continued it was given certainty and resource security.

Labor created the best-forested national parks system in Australia, protecting for perpetuity the most ecologically important forests. Over 16 years Labor added three million hectares to the State's terrestrial reserve system, much of this on former State forest land. Iconic places such as Chaelundi and Jilliby in the north and Deua in the South East Forest National Park are now protected forever. But this was only half the equation. For the State forests left open to logging Labor designed a comprehensive set of laws and prescriptions designed to ensure that logging did not decimate the ecological fabric of the forests; instead, leaving the building blocks of forest diversity and recovery, ensuring waterways were kept clean and animals were not robbed of their homes entirely. The integrated forest operations approvals [IFOAs] are the detailed documents which outline forest prescriptions and the licences granted to forestry operations. Perhaps most significant are those relating to threatened species.

One of the challenges with the logging of native forests is that animals require a mix of different-aged trees. A clear-fell destroys the forest as a home for animals as the trees that grow back are all the same age, creating a biological desert. Many animals specifically require big, old trees. It is only after a tree is mature that it starts to drop branches and create the hollows that many animals rely on. Gliders, birds and bats require these cosy hideouts to survive. Hollows have been called the apartment blocks of the forest, and many species of fauna in Australia are hollow dependent. Labor's rules require a set number of old trees, called habitat trees, to remain in a logged area. This is one example of the many sensible prescriptions which govern logging in State forests in New South Wales.

Furthermore, under integrated forest operation approvals, pre-logging fauna surveys are to be undertaken by fully qualified experts and particular prescriptions have to be followed if threatened species are found to be present. Specific numbers of hollow-bearing and recruitment habitat trees must be clearly marked, protected and retained. Feed trees, nests, roosts and den sites are identified, marked and protected. Buffer zones must be established and clearly delineated. And dedicated staff must be on hand to ensure there are no animals in harm's way.

In reality, though, things are very different today. Audits of logging operations that have been undertaken by environmentalists on the north and south coasts over the past two to three years allege the systematic breaching of virtually every threatened species prescription. In March this year I visited the Styx River State Forest, east of Armidale. The area is prime habitat for the rufous scrub-bird, a small, secretive, understory bird that lives in the highland wet forests of north-east New South Wales. It is a living fossil, with a lineage dating back over 65 million years, to the age of the dinosaurs.

It is now listed as vulnerable to extinction on the New South Wales schedule of threatened species. Burning and logging are recognised as primary threats to its survival. Locals became concerned when they visited the Styx River State Forest and found it had been burned and was being logged. The area is modelled as rufous scrub-bird habitat in the integrated forestry operations approval. Further, in 2007 a Forests NSW ecologist saw rufous scrub-birds at seven locations in compartment 502 of Styx River State Forest. Forests NSW identified these records as extremely reliable, and they were included in the New South Wales wildlife atlas.

When locals complained about the logging occurring in the habitat of the rufous scrub-bird Forests NSW explained it had deleted the records from the New South Wales wildlife atlas without consultation with the Office of Environment and Heritage. Our threatened species need better care than this, both from Forests NSW and from the Office of Environment and Heritage. Our threatened species deserve that there be consequences for reckless mistakes such as this one. Last year I was first alerted to the seriousness of the problem. The then Department of Environment, Climate Change and Water had prosecuted Forests NSW for contravening its threatened species licence by undertaking a bushfire hazard reduction burn in a smoky mouse exclusion zone in Nullica State Forest, in southern New South Wales.

The smoky mouse is a furry little rodent that is in deep trouble. The International Union for the Conservation of Nature has it on its international red list for endangered species and notes that fewer than 2,500 are left in the wild: the population of the smoky mouse, which was once common across eastern Australia, continues to decline. We are in real danger of losing this creature. Forests NSW was found guilty in the case I referred to earlier, but the penalty was a fine of merely \$5,600. However, it was the judge's comments that struck me. In her judgement in June 2011 Justice Pepper wrote, with respect to Forests NSW:

[The number of convictions] suggests either a pattern of continuing disobedience in respect of environmental laws generally or, at the very least, a cavalier attitude to compliance with such laws.

Her Honour also wrote:

Given the number of offences the Forestry Commission has been convicted of and in light of the additional enforcement notices issued against it, I find that the Forestry Commission's conduct does manifest a reckless attitude towards compliance with its environmental obligations.

The penalty is exceedingly low compared to penalties for other environmental offences, particularly given the seriousness with which the community has come to view environmental offences. However, any increase in the penalty is a matter for Parliament.

That is what this bill is about. In New South Wales if a corporation pollutes a waterway it is liable to a \$1 million fine and \$120,000 for each day the offence continues. If an individual illegally clears bush on their own property they are liable to a \$1 million fine. If you

contravene the Environmental Planning and Assessment Act you are liable to a \$1.1 million fine and \$110,000 for each day the offence continues. If you hurt a threatened species in any context—apart from Forestry—the maximum fine is \$220,000 and/or two years imprisonment. However, if you take the life of a smoky mouse or a long-footed potoroo by contravening the threatened species licence under an integrated forestry operations approval the maximum penalty is a paltry \$22,000.

This inequity in the respective penalties for breaches of environmental laws is ludicrous. Forests NSW is failing the people of New South Wales in its obligation to manage the forests. The lack of any real incentive to stick to the rules is one important part of this problem. That is why this bill increases the penalties for breaching the provisions of an integrated forestry operations approval tenfold. The bill amends the National Parks and Wildlife Act 1974 to create a new offence that involves contravening a provision of that Act or the regulations in the course of carrying out forestry operations. The new offence under the Act will attract a maximum penalty of 2,000 penalty units—that is \$220,000—or imprisonment for two years, or both, which is in most cases substantially higher than the existing penalties for contravening a provision of the National Parks and Wildlife Act 1974 or the regulations.

The bill also increases the penalties applying to the offence under the National Parks and Wildlife Act 1974 of contravening any condition or restriction attached to a licence or certificate issued under part 6, licensing, of the Threatened Species Conservation Act 1995. The maximum penalties applying to the offence will be increased in the case of an individual from 100 penalty units—that is \$11,000—and 10 penalty units for each day the offence continues to 1,000 penalty units and 100 penalty units respectively, and in the case of a corporation from 200 penalty units and 20 penalty units for each day the offence continues to 2,000 penalty units and 200 penalty units respectively.

Section 8A of the Forestry Act 1916 defines the objects of the Forestry Commission. In essence, it is charged with three key objects: to deliver timber, to provide for recreation and to care for the resource it manages. This third object specifically requires the Forestry Commission to "conserve birds and animals" in our State forests. It is time for Forests NSW to fulfil its legal obligations. It is time for the Office of Environment and Heritage to fulfil its obligation to ensure that the rules are obeyed and to prosecute when they are not. It is time for the Parliament to step up and call a halt to illegal forestry without real consequences.

Earlier this year I visited Boambee State Forest, just outside Coffs Harbour. Boambee is home to one of the last koala populations on the coast. I was shown a litany of prescription breaches including, perhaps most startlingly, the intensity of logging. There are prescriptions which govern the volume of the forests that can be logged, called the basal area. Logging is meant to be limited to 30 to 40 per cent of the basal area of the forest. I can attest that the volumes logged were much greater than that. Further, trees that were meant to be retained as habitat and feed trees for koalas were logged. Our koalas deserve better than this. It was in reference to the logging of Boambee State Forest that environment Minister Robyn Parker said last year in budget estimates that "logging protects koalas".

The koala is becoming an emblem of what is at stake here. Quite a bit of attention has been directed towards the koala of late. When those first white folk landed in Sydney Cove an estimated 10 million koalas lived in Australia. The current New South Wales koala population is estimated to be around only 10,000. That is a tragedy. The current scale of illegal logging is one of the key threats to this Australian icon. The bill addresses this problem by creating appropriate penalties for environmental crimes in our forests. I commend

the bill to the House.

Debate adjourned on motion by the Hon. Dr Peter Phelps and set down as an order of the day for a future day.