



National Parks And Wildlife Amendment (Licences) Bill

Second Reading

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NATIONAL PARKS AND WILDLIFE AMENDMENT (LICENCES) BILL

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Bill introduced and read a first time.

Second Reading

The Hon. RICHARD JONES [11.59 a.m.]: I move:

That this bill be now read a second time.

I am pleased to introduce the National Parks and Wildlife Amendment (Licences) Bill, which allows for strictly non-lethal licences to be issued in respect to fauna.

Pursuant to sessional orders business interrupted.

Debate resumed from an earlier hour.

The Hon. RICHARD JONES [2.30 p.m.]: I am pleased to introduce the National Parks and Wildlife Amendment (Licences) Bill. The bill allows for strictly non-lethal licences to be issued in respect of fauna and is designed to better preserve our native wildlife populations without obstructing farmers' ability to carry out their business. This provision will be in addition to the existing provisions in sections 120 and 121 for licences to be issued to harm fauna lethally. The bill has been developed in accordance with the recommendations of the RSPCA, the Humane Society International [HSI], the peak environment groups of New South Wales, the World League for the Protection of Animals, the Wildlife Information and Rescue Service [WIRES], Animal-Liberation and wildlife research scientists.

The bill contains two simple amendments: provisions for a non-lethal type of general licence and occupiers licence; and requirements that all licences issued under those sections be kept on a central register available for public inspection. The National Parks and Wildlife Act 1974 currently provides for the issuing of an occupiers licence under section 121, which authorises an owner or occupier of specified lands to harm—that is, to hunt, shoot, poison, net, snare, spear, pursue, capture, trap, injure or kill—a specified number of fauna found on those lands. Section 120 of the Act permits protected fauna to be harmed.

New subsection (1) is inserted into section 121. It creates another type of occupiers licence under which owners or occupiers of specified lands are authorised to remove or chase away fauna of a specified class found on those lands, but the licence holder will not be permitted to injure or kill the fauna. New subsection (1) inserts mirror amendments into section 120 to create another type of general licence which authorises the holder of the licence to remove or chase away protected fauna without injuring or killing the protected fauna. These provisions will allow the National Parks and Wildlife Service [NPWS] to issue licences that are strictly non-lethal, as well as lethal licences. Changes are necessary as currently the Act does not provide for strictly non-lethal options in respect of mitigation of commercial crop damage. Sections 120 and 121 licences are licences to kill and they have been issued to kill thousands of vulnerable flying foxes, and many other species of fauna.

With regards to flying foxes, there are three species in New South Wales: the black flying fox, the little red flying fox and the grey-headed flying fox. The black flying fox and the grey-headed flying fox are both listed as a "vulnerable" under the Threatened Species Conservation Act 1995. In addition, the grey-headed flying fox is listed federally under the Environment Protection and Biodiversity Conservation Act. Legal harm to flying foxes may occur only where a licence has been issued by the National Parks and Wildlife Service under sections 120 or 121. However, governments—both State and Federal—clearly recognise the need to change these policies.

In 1999 Environment Australia published "The Action Plan for Australian Bats". It identified the need to develop non-lethal techniques to protect fruit crops from flying foxes that should be developed and implemented in conjunction with the fruit growing industry. Similarly, the National Parks and Wildlife Service policy of flying fox mitigation of commercial crop damage for the 2000-2001 fruit-growing season states:

The NPWS advocates the use of exclusion netting as the only reliable means to avoid crop damage by flying foxes. However, it is understood that netting is not always feasible for all farmers and the NPWS Policy includes provisions for licences to be issued under s121 of the NPW Act to harm a limited number of Grey-headed and Little Red Flying fox by gunshot only. Licences have been issued with the proviso that farmers are to shoot to scare and it is accepted that this practice will lead to some direct and/or indirect mortality.

The Minister for the Environment advised me in correspondence of 24 September 2001 that the National Parks and Wildlife Service is revising this policy, stating:

The NPWS will continue to encourage orchardists to "shoot to scare" wherever practicable, or to net their crops to protect them from damage.

The NPWS interim policy will be in place for three years during which it is expected that farmers will take all reasonable means to adopt non-lethal alternatives.

The Minister is "encouraging" orchardists not to kill flying foxes. This is all that can be done at present as the Act does not codify the National Parks and Wildlife Service policy to adopt strictly non-lethal alternatives. The process that allows for both lethal and non-lethal measures to be undertaken in order to avoid crop damage by flying foxes is maintained under this bill. I am not removing orchardists' and other farmers' rights to kill flying foxes and other species of fauna for which they may obtain a licence. This bill simply allows for the introduction of strictly non-lethal alternatives. The National Parks and Wildlife Service already clearly advocates this in its policies and acknowledges that amendments are required. When, in May 2001, the New South Wales Scientific Committee made a final determination to list the grey-headed flying fox as a vulnerable species, it responded:

This has several management implications for NPWS, namely the current policy is no longer appropriate for the Grey-headed Flying fox.

Upon enactment, contravention of a non-lethal licence as contained in this bill will bring with it the penalty provisions as outlined in section 98 of the Act, which already exists. This means that if a person is issued with a licence under sections 120 or 121 not to injure or kill the fauna and it does so, a maximum penalty of 30 penalty units or six months imprisonment or both for harming protected fauna under section 98 is applicable. The salient difference between the measures I am introducing and the current National Parks and Wildlife Service policy under which orchardists are "encouraged" not to kill flying foxes is in relation to the penalty provisions.

It is imperative for the conservation of the species that there are penalties for inappropriate and unwarranted killing. Threatened species information distributed by the National Parks and Wildlife Service in relation to the management of grey-headed flying foxes recommends implementing strict enforcement of licence conditions and taking appropriate action against unlicensed shooting. It is clear that this bill codifies this management recommendation. The National Parks and Wildlife Service states that the actual counts of the number of flying foxes killed and estimates of flying foxes harmed and crops damaged are at best minimum because not all return information requested of farmers is supplied either on their original application or on the flying fox record sheet [FFRS].

The National Parks and Wildlife Service concluded from its data that only a small proportion of fruit growers suffered significant damage from flying foxes statewide during 2000-01. This is because either a low percentage of orchards are affected each year, or not all farmers seek licences for flying fox damage mitigation. The National Parks and Wildlife Service acknowledges that research has indicated that in the past a number of farmers have operated outside the licensing system and this has resulted in a likely high, yet unquantifiable, annual mortality of flying foxes on fruit crops. New sections 120 (7), 120 (8), 121 (4) and 121 (5) require that all licences issued under sections 120 and 121 must be kept by the National Parks and Wildlife Service on a central register that is available for inspection by the public at no cost. Similar provisions are contained in Acts such as the Threatened Species Conservation Act. Implementing a publicly available central register of licence offers full transparency of horticultural practices, which will assist scientific research into all species, particularly vulnerable species.

In 1999 the Humane Society International [HSI] took legal action against the National Parks and Wildlife Service in the Administrative Decisions Tribunal [ADT] and won. The HSI considered that licensed culling was a threat to the survival of flying fox populations and that the National Parks and Wildlife Service was not adequately assessing or monitoring the impact of licensed culling activities. In particular, there were concerns that since many fruit growers cannot identify the species of flying fox that were being shot at night it would be impossible in some locations to ensure that the flying fox listed under the Threatened Species Conservation Act 1995, which are not included on the licence, are not accidentally culled.

The HSI requested that the tribunal provide it with access, under the Freedom of Information Act 1989, to the names and addresses of persons licensed by National Parks and Wildlife Service to harm flying foxes for the purposes of conducting research on them. This is the same kind of information I am requesting to be made public in this bill. In the process of its application, the HSI became aware of how decentralised and poorly administered this licensing process was. It became evident that a central register was absolutely essential because the current very decentralised and manual system of licence issuing makes it difficult to assess the impacts of this process on native wildlife populations and communities, and the accountability and transparency of administration of the Act is compromised by a lack of centralised reporting and assessment of the licence-issuing processes.

Without the access to locations, the HSI claimed that it would never have been able to link the applications for licences with the issued licence. The applications were not numbered or registered in any way and most had no notations to indicate whether they were successful and whether a licence was issued or an application was unsuccessful and was declined. The issued licences varied in terms of conditions attached by different officers and there was no stated sequential numbering system. When the HSI received the information for the period requested, there did not even appear to be any system to ensure that every licence that had been issued within the request period was in fact released to the HSI.

The National Parks and Wildlife Service had opposed public access to this information and was defeated. The ADT found that this kind of information was not unlike similar information available upon request or on a public register for threatened species. Clearly, this type of information has ongoing relevancy, particularly as two of the three species of flying foxes are listed now as vulnerable. The HSI did not intend to mount a public environment

campaign against individual licence holders or approach individual licence holders in relation to their individual activities, nor is that the intention of my proposed amendments. Clearly, this information will ensure that accountability and transparency of licensing processes is enhanced. It ensures that groups with an interest in particular locations or species can undertake information-gathering exercises to assess any possible adverse impacts. In addition, scientific inquiry would be assisted by providing information in an accessible, timely and economic format.

The ADT was satisfied that the expressed fears, suspicions and concerns of the National Parks and Wildlife Service, the New South Wales Farmers Association, and other licence holders that the HSI would turn up at their properties and mount a campaign were unfounded. That did not happen. Quite simply, the ADT determined that in 1999 farmers had no reason to fear the information being made public. Similarly, they have no reason to fear this bill. The ADT found that: the information is licence information in respect of a matter of public regulation of protected New South Wales fauna and it is an offence to kill protected fauna; the applicant was not just curious or seeking to profit from the information; and public release of such or similar government information is not unprecedented. This Parliament has recognised that at least in relation to threatened species, a public register must be set up containing relevant licence information. The information in the present case is not unlike that information.

Freedom of information [FOI] applications have also been lodged in which applicants have been prepared to accept information with only postcodes to provide location information. However, it is clear that the preference of the HSI, and of all other animal, environmental and conservation groups I have liaised with, is that a public register of each licence in force be available. Licences are issued for a variety of reasons and species, and there is limited accountability of this function to government or the public. A centralised register would allow all applications and licences to be tracked. It would be in line with government policy on the use of technology to assist government in servicing the public. Assessment of impacts on species would have a starting point as information could be regularly reported from the database relating to how many, which, and why species were being killed or harmed.

Presently, to get information about issued licences requires a manual search of each officer's licence-issuing records, and thus an FOI application is made very expensive and time consuming. Thus in this bill new sections 120 (7), 120 (8), 121 (4) and 121 (5) are congruent with the 1999 verdict of the Administrative Decisions Tribunal, the provisions contained in the Threatened Species Conservation Act 1995, and the recommendations and requests of peak animal and environmental organisations. The National Parks and Wildlife Service has acknowledged that the impact of lethal harm for fruit crop damage mitigation purposes on the abundance of grey-headed, black, and little red flying foxes is unknown. For the 2000-2001 fruit-growing season, compliance with the condition that farmers return a flying fox record sheet was 67 per cent. The items most likely not to be included were animal gender and species, and number of flying foxes in the crop per night. It is quite clear that not enough research is being done.

In October last year the Federal Court of Australia ruled that the killing of hundreds of flying foxes per night had a significant impact on World Heritage listed rainforest and that fruit farmers electrocuting flying foxes had breached the Federal Environment Protection and Biodiversity Conservation Act. Quite aside from concern about the possible extinction of certain species of flying foxes, we must consider the probable impact on regeneration of Australia's hardwood forests. A large proportion of the country's most ecologically and economically important trees rely heavily on flying foxes for pollination or seed dispersal. Without the large populations required to propagate forests, whole ecosystems could suffer with potentially serious consequences for other wildlife, as well as humans.

Numbers of flying foxes have plummeted due to habitat loss, shooting, disease and lead pollution. Flying foxes are thus tending to rely more on orchards or urban habitats as their natural habitats have been lost. The New South Wales Scientific Committee, on handing down its determination to list the grey-headed flying fox as a vulnerable species, stated that it was of the opinion that the species is likely to become endangered unless the circumstances and factors threatening its survival or evolutionary development cease to operate. The committee noted that the species is at risk from uncontrolled culling activities such as shooting. Scientists Greg Richards and Leslie S. Hall have each studied bats for more than 30 years and report that:

Every scientist who has studied flying foxes in Australia has reported declining numbers, dating back to 1932. That was when Dr. Francis Ratcliffe, a distinguished British biologist, estimated that the grey-headed flying fox (*Pteropus poliocephalus*) already had declined by 50 percent since European settlement 140 years earlier.

Their report notes that lowland native forests continue to shrink and are rapidly being replaced by housing developments and orchards. For example, more than 70 per cent of the melaleuca swamps, a critical food source for flying foxes, has diminished significantly in just the last 20 years. Furthermore, habitat disruption by humans appears to have given black flying foxes a competitive advantage that has further displaced grey-headed flying foxes, forcing them southward into areas of even greater conflict with humans. It is clear that these conflicts threaten the very existence of the species.

In New South Wales alone there are about 1,500 orchards growing fruits attractive to flying foxes. Survey results indicate an average of 30 flying foxes shot per night in many of these orchards during problem periods, which can last for several weeks. Estimates run as high as 100,000 annually over the bats' range, not counting the young that die orphaned. The truth is that killing is simply not necessary in every situation. Flying foxes and waterfowl may be repelled by exclusion netting, agricultural practices such as land preparation, time and method of sowing, visual deterrents such as scarecrows and flashing lights, auditory deterrents such as shooting blanks, and any mechanical noise-making device placed in a field such as recorded distress calls.

Full exclusion netting is recommended by New South Wales Agriculture and the National Parks and Wildlife

Service because netting prevents significant damage caused by birds and hail storms and precludes the need to kill. The New South Wales Rural Assistance Authority administers the scheme, which allows growers to take out low-interest loans for netting to prevent crop damage from flying foxes. In terms of cost and effectiveness, the CSIRO sustainable ecosystems compared the various management options for medium to small waterbirds and found exclusion netting rates to be high in effectiveness and very high in cost; visual deterrents and auditory deterrents, medium in effectiveness and low in cost; and agronomic practice and decoy crops, medium in effectiveness and medium in cost.

None of the abovementioned has an impact of population viability. Shooting was recognised by the CSIRO as only rating medium in effectiveness and medium in cost. It was the only method with a negative impact on population viability. The National Parks and Wildlife Service analysis of the problem of ducks on rice in New South Wales found that on the rice fields, shooting is a very ineffective method of population management. It found that shooting as a scaring tool is more effective. Its analysis was that ducks, when scared from rice crops, need a safe area to move to where they can rest and feed undisturbed. If they can be repeatedly scared from rice to a decoy area then this area will become extremely attractive and the problem may be contained.

The report concludes that shooting to scare in a planned manner, disturbing and varying other scaring devices, and providing areas in the form of decoy crops or local swamps and creeks that remain undisturbed for ducks to take refuge would be the best solution available. Auditory deterrents also have had a high level of proven success in stone fruit orchards, where systems exclude flying foxes at night and birds during the day. A successful independent trial conducted by the National Parks and Wildlife Service of the phoenix bat Wailer system in a nashi pear crop concluded that it excluded wallabies from the crop, as well as birds and bats. It is possible to generate many different sounds such as predator calls, shotgun blasts and distress calls.

The failure of shooting to kill is plainly evident. It devastates the population, it is extremely labour intensive, and when unsuccessful the bats simply move to another part of the orchard. As there are viable alternatives to killing, such as netting or deterrents, the National Parks and Wildlife Service quite clearly need not only be issuing licences with the authority to kill. As outlined earlier, this bill has the support of and has been developed in accordance with the RSPCA, the Humane Society International, the Environment Liaison Office, the World League for the Protection of Animals, the Wildlife Information and Rescue Service [WIRES], Animal-Liberation, and wildlife research scientists. I would like to individually cite their comments for the House. The RSPCA stated:

The Society totally agrees with Mr Richard Jones' notion to remove the reference to harm.

The Society would totally support the introduction of a formalized licensing provision, so as to monitor and regulate those that are licensed. As you would appreciate, without an appropriate licence tracking measure, the issuing of licences is an otherwise ticket to conduct untoward actions or inactions, if one so desired.

Animal-Liberation stated:

We write to support the amendment to the NPWS Act ... the provision of an alternative is particularly welcome. Lethal control of any species is both inhumane and self-defeating.

WIRES concluded:

The establishment of non-lethal licences is in line with the objectives and principles of WIRES and the establishment of a central register which is available for inspection is a positive move from an administrative perspective.

The protection of our fauna is vital. In the past 200 years, more species have become extinct in Australia than in any other country on earth. We must reverse this appalling record.

The ability for the National Parks and Wildlife Service to issue non-lethal licences for the first time is a big step in the right direction. Such a move would be applauded by all environmental groups throughout Australia.

The Environment Liaison Office said:

The peak environment groups of NSW strongly support the National Parks & Wildlife Amendment (Occupiers' Licences) Bill 2002 ... The expanded scope of the occupiers licence will provide greater flexibility for finding innovative, humane and ecologically beneficial solutions to relieve the problems caused by native animals to landholders; and at the same time, ensure that an attempt is made to minimise the impacts of our native animals.

The World League for the Protection of Animals stated:

The use of non-lethal mechanisms to address problems has many advantages, especially in relation to protected and vulnerable animals, but also in relation to the environment as a whole ... There is enormous community concern at some of the methods used to address issues of animals seen as "pests". For these reasons and for the increased level of transparency that would result, we support the Bill.

The HSI, the world's largest animal welfare organisation, stated:

In making the register inspectable by the public, the accountability and transparency of these processes would be enhanced. Groups with an interest in particular locations or species could undertake information

gathering exercises to assess possible deleterious impacts occurring, and scientific enquiry would be assisted by providing information in an accessible, timely and economic format. Wildlife rehabilitation groups would be able to check that animals were not being released into locations where those species were perceived as causing problems, and locations of and reasons for conflicts between native animals and humans would be highlighted.

HSI fully supports these long overdue amendments to the NPWS Act, and believes that they can only further the efforts of conservation within NSW.

I sincerely thank these organisations for their support. I urge all honourable members to sincerely consider the irreversible damage we are doing to our native wildlife populations and to support this bill. It is quite clear that if we do nothing, ultimately we will have no native species left to protect. I commend the bill to the House.
