

Legislative Council Hansard – 19 October 2017 – Proof

FORESTRY AMENDMENT (PUBLIC ENFORCEMENT RIGHTS) BILL 2017*First Reading*

Bill introduced, and read a first time and ordered to be printed on motion by Ms Dawn Walker.

Second Reading

Ms DAWN WALKER (11:57): I move:

That this bill be now read a second time.

In New South Wales, we have a serious issue in our forestry industry. We have a statutory organisation that continues to breach environmental laws, and that organisation is not being held to account. This bill will restore the rights of third parties to bring legal proceedings against Forestry Corporation. Currently, only a "relevant Minister" or the NSW Environment Protection Agency [EPA] may bring proceedings or issue fines for breaches of environmental protection law. The culture of non-compliance and continuing evidence of breaches by Forestry Corporation make it clear that the current safeguards are not working. Laws are not being enforced, and when they are breached there is little or no consequence for Forestry Corporation.

This Government has failed the community when it comes to governance and guardianship of these public natural resources, and it continues to fail them by refusing to regulate Forestry Corporation adequately. But our community has a strong history of standing up for our forests, and it is time to restore the community's judicial rights. By restricting who is able to bring actions against it, Forestry Corporation's compliance is dependent on the ability and capacity of the EPA to police it. And it simply does not have resources to do this. In 2015 Forestry Corporation was audited 40 times by the EPA, resulting in more than 60 notices including official cautions and penalty notices. Despite this enormous number of breaches, this year the EPA conducted significantly fewer audits.

This was despite reports from communities around New South Wales of practices which are in clear breach of environmental laws, forestry agreements and indeed its own harvest plans. Each time it is audited, there is something amiss. This shows the clear, consistent and widespread culture of noncompliance in Forestry Corporation. It also shows that the EPA with its current resources does not have the capacity to regulate and monitor Forestry Corporation. These alarming numbers should not be leading to less auditing and less monitoring, but rather to closer, continued scrutiny to ensure that these destructive practices do not continue.

In 2013 Forestry Corporation was fined \$35,000 for causing environmental damage near Batemans Bay. Ash and charcoal sediment was washed into the waterways of a marine park after an illegal burn-off was conducted in protected zones along the creeks of Mogo State Forest. Justice Pepper delivered a scathing judgement, outlining that the destruction for the protected bushland was caused by "systematic corporate procedural and operational failures and inadequate training and supervision of employees". She also pointed out that the organisation has a long history of convictions for bad forestry practices. She noted that "evidence of past convictions for environmental offences" showed that it had not been a "good corporate citizen with respect to environmental statutory compliance".

Damningly, that assessment is still true today. In Mogo State Forest, endangered species are at risk because Forestry Corporation is still refusing to comply with environmental protections and regulations. Because it has not adequately conducted the required surveys, it is now logging in an area that is home to the endangered greater glider. The only reason we know about this is through the continued efforts of community. Locals have been out in the forests, surveying for animals and critical habitat. Community surveys regularly report a number of breaches in Forestry Corporation logging operations, including refusals to identify legally required buffers around endangered plants, logging in exclusion zones, reckless damage of hollow-bearing and recruitment trees, and illegal logging of "unmapped" streams. These breaches have serious and ongoing consequences—well beyond the initial devastation. It leads to the decimation of threatened populations of flora and fauna, the erosion of the landscape and, ultimately, worsening the effects of climate change. These are serious consequences that will be felt for generations.

Forestry Corporation is getting away with damaging our environment and decimating our endangered species. We know it is breaching laws, we know that the courts are prepared to hold it to account in a way that this Government is not and we need to ensure that charges can be brought forward. Serious breaches by Forestry Corporation in Cherry Tree State Forest have been clearly documented. These include roading and logging 95 hectares of endangered ecological communities, and recklessly and illegally bulldozing endangered rainforest. The EPA has been aware of these breaches for 22 months but has failed to take any action. There is no clearer example of how the current system is failing. One government agency is wantonly and illegally damaging the environment and another is unable or unwilling to fulfil its duty to regulate it. As a result, there is a real danger that Forestry Corporation will not be prosecuted at all. The two-year window for the EPA to take action is rapidly closing. If it does not act, Forestry Corporation will be allowed to get away scot-free with breaking serious environmental protection laws.

The community has lost hectares of endangered rainforest—the equivalent of 90 rugby fields—because of this illegal action. What is being done by Forestry Corporation is both destruction of property and theft from the people of New South Wales of their State forests. It is patently ridiculous that the community cannot enforce its rights in the face of such blatant disregard for the law. This exclusion of the public has not always been part of forestry regulation. Until 1998 members of the public had the ability to take legal action to "restrain and remedy" breaches of environmental protection laws in publicly owned native forests. Those rights were taken away in 1998 on the promise that the Environmental Protection Authority would regulate and police the Forestry Corporation on behalf of the people of New South Wales.

The Greens opposed this legislation at every turn, as we foresaw the flaws and the destructive outcomes it would bring to our forests. I thank my Greens colleagues for their legacy of standing strongly against injustice and for the community. Ian Cohen, the first Greens member elected to State Parliament, stood in this place nearly 20 years ago and fought hard against the public having their rights stripped from them. He fought for the people of New South Wales to be able to enforce the laws of this State when they were breached. He fought for State-owned corporations to be held to the same standard as everyone else. He fought for the most basic thing: for the ability to take action when the law has been broken, by anyone. Ms Jan Barham continued this good work, advocating strongly for these rights to be reinstated after they were stripped away.

I introduce this bill to continue this legacy of genuine community representation. I have been out in the forests and I have seen this destruction for myself. That is why there is such urgency to give the community back its power. I have seen trees that were clearly marked as habitat trees knocked down and thrown into log dumps. I have seen endangered rainforest with clear logging tracks right through the middle of them. I have seen ancient trees knocked by Forestry Corporation's logging equipment and damaged in a way that will take hundreds of years off their lives. I have walked through koala habitat, picked up koala scats and looked at their scratches on the trees only to be told that it was planned to fell that very area the following week. I have seen waterways clogged with debris and fallen logs as a result of noncompliance with stream buffers. I have sat with concerned locals who are pulling their hair out and feel completely powerless as they watch these environments being illegally logged and they are unable to do anything about it.

The EPA has not been an adequate watchdog when it comes to the culture of noncompliance in the logging industry. A lack of prosecutions, combined with soft penalties for breaches, has led us to a situation where breaches continue to escalate in number and severity—but no-one is being held to account. It is a failure of this Government that its own people are so disempowered. It is a failure of this Government that it has allowed the state-sanctioned actions which show such contempt for our environments and our laws. It is a failure of this Government that the ecological heritage of this State is being illegally destroyed without repercussions. Restoring the rights of third parties to bring legal proceedings is a step in the right direction. It will not fix the past failures, but it will ensure that the completely unacceptable current situation can be addressed. It will ensure that we live in a State where the community can again protect public resources through access to the judicial system. I commend the Bill to the House.

Debate adjourned.