

BIODIVERSITY CONSERVATION BILL 2015

Third Reading

Resumed from 23 June.

MR A.P. JACOB (Ocean Reef — Minister for Environment) [8.33 pm]: I move —

That the bill be now read a third time.

MR C.J. TALLENTIRE (Gosnells) [8.33 pm]: I rise to make a third reading contribution to the Biodiversity Conservation Bill 2015. I have to say that it is with a heavy heart and a sense of great disappointment that I rise to say, first of all, that the opposition will be voting against this bill because the government was not prepared to honour commitments it made to hearing amendments, considering amendments and eventually amending the bill. It is a great disappointment because our current Wildlife Conservation Act is seriously out of date. It does need revision. It is not serving us well. The opportunity we are missing here is enormous. We are missing the opportunity to have legislation that is fit for purpose and that will put at its core the conservation of our biodiversity. We are missing that opportunity, which is a tragedy and a great disappointment to me.

The opposition put forward sensible amendments, but not one of those amendments was accepted. I have correspondence, which I will turn to, from the Wilderness Society, I think, that says that the Premier would consider our amendments. At no stage were those amendments considered. The opposition went methodically through the bill; we debated points and highlighted the inconsistencies, including the internal inconsistency set out in the objects of the bill. On the one hand, the object of the bill is about biodiversity conservation but, on the other hand, it allows for ecologically sustainable use. We had to look at what that term implies. It potentially allows for the short-term decline of a species, which can lead to the elimination of a species. That is one reason that, unfortunately, we oppose this bill. Another reason that we have to oppose this bill is that it does not take on board scientific advice. It is not put in the legislation. The minister was quick to reassure us in debate that he would be taking scientific advice and he would have scientific advisory groups, but that is not in the legislation. The legislation does not spell out the processes—the processes for the nomination of a species to a threatened species list or how a species could be removed from that threatened species list. There is a need for good process here, because in that way the government can deliver transparency. It is essential to have transparency.

Let us look at other flaws with this legislation. It is a fundamental flaw of this Biodiversity Conservation Bill if it allows a minister to send a species extinct without the utmost transparency in the process by which that decision could be brought about. In fact, it is reasonable to say that any clause in the Biodiversity Conservation Bill that allows for the extinction of a species means that it is not a Biodiversity Conservation Bill at all and that we should not put it in this sort of legislation. There are other acts of Parliament, if it really is essential to allow a minister to send a species extinct. The worst of it is that those extinctions could be brought about without the public even knowing until after the event when an annual report is produced and papers are tabled in Parliament. I have said before that there is almost no reference to process in things like nominations of species to the threatened species list, but when it comes to the extinction process, some detail is provided. When members read through that, they will see there is every chance that an extinction would first of all be authorised and then occur, and the Parliament would be advised at its next sitting, which could be well after the event. They are fundamental flaws in this legislation.

Is this just the interpretation of the opposition? No, it is not. I want to quote some of the advice we have received on this bill, advice that we received from groups that did a lot of soul-searching. As the minister would know, when the bill was second read into this place, those groups initially came out with great enthusiasm. They were delighted to see at long last a Biodiversity Conservation Bill coming to the Parliament, but when they studied the legislation, they saw the fatal flaws. I want to quote some of the advice we received. The coordinator of the Wilderness Society, Peter Robertson, said —

... “This Bill was drafted without consultation and contains many fundamental flaws and omissions.

“In its current form it is not “fit for purpose” as 21st century biodiversity conservation legislation. The lack of any statutory public involvement, including third party enforcement rights, shows this legislation is outdated before it is even law.

“In our view the legislation is so deeply flawed that it should not be passed unless there are major amendments.”

Sadly, no amendments were allowed from this side of the house. Interestingly, though, the minister had his amendments and we were happy to see those go through.

The World Wide Fund for Nature has commented —

The last thing any government would want to do is to undermine key protections for WA's precious native animals, landscapes and plants ... But if passed in its current form, that's exactly what this Bill will do.

... the WA Government has a great opportunity to replace our state's aging environmental laws with something much better—and we're ready, willing and able to help them with that.

That comment was made in a media statement on 20 March, but to my knowledge the government made no effort to work with the WWF to improve things to make them acceptable.

I look at the Leeuwin Group. As I have said already today, the minister met with the Wentworth Group of Concerned Scientists, and WA has its own WA-focused group of concerned scientists. Their comment in a public media statement states —

... "taking" a threatened species even if it becomes extinct or to allow a threatened ecological community to be destroyed must be removed.

That power must be removed from the legislation. I turn to the Western Australian Forest Alliance's submission to the minister, which was copied to me and which concludes —

The unanimous decision was reached to work towards significant improvements to the Bill because it was not acceptable to the sector in its current form.

When the groups were making their comments, they were opening the door to the government to talk to them, to liaise with them and to tap into their expertise. Unfortunately, the government did not go through that open door and seek the advice of those groups; it did not want to take on board their advice. It is very much a case of the government knows best. That is the attitude we have seen in the preparation of this legislation, and that is one of the fundamental flaws of this legislation: it does not provide for transparency or public involvement. Instead, it allows for ministerial discretion and it allows for the Department of Parks and Wildlife to use internal processes to make decisions and to make the ultimate call on the fate of a species and on the fate of a recovery plan. It also makes possible the department's expenditure, and we know how short we are of public funds for things such as recovery species and recovery plants for threatened ecological communities. We know how scarce money is, yet there is no transparency provision in this legislation for the public to test or know how effectively that money is being spent. That is a great shame. We have to have transparency provisions so that we have good accountable use of public funds, so that we have good decision-making and so that we are not left to just ministerial discretion. We do not want a lack of transparency, community consultation and respect for the knowledge that resides outside the Department of Parks and Wildlife. We all know that we are in an era in which government agencies are soft targets for cuts and programs like those dedicated to the recovery of a species. Unless it is one of those charismatic megafauna perhaps—something that is a little less well known—those sorts of programs are vulnerable to funding cuts. It is all too easy to imagine how funds could suddenly dry up and a decision be made that the public would never know about and before we know it, a species would be gone—extinct.

The bill is a grave disappointment. It does not compare well with legislation in other places. It is clear that in other jurisdictions, much more sophisticated processes are in place that ensure a full airing of any serious decision and the transparency and accountability that I have spoken of. When we make that comparison with other contemporary legislation, this legislation just does not stack up. Going back to that fundamental flaw in the bill around one aspect of biodiversity conservation not being clearly defined as prevailing over the exploitation of biodiversity, there is a problem that we just cannot support.

I also wanted to touch on the sandalwood issue. The minister has made great play of this. At long last we will see decent penalties for the illegal taking of wild sandalwood. We welcome that but it is a concern that in ministerial statements that the minister has made, he said that he is looking at having a quota that is possibly six times more than the quota that the then Department of Environment and Conservation recommended when it appeared before the Standing Committee on Environment and Public Affairs in October 2012 and said that the greenwood sustainable harvest should not exceed 200 tonnes, yet we see the possibility for a quota of 2 500 tonnes in any given year. That is a further cause for concern. We know that the government will probably want to go into the election campaign saying that it has great environmental achievements under its belt, it has managed to do things for the Kimberley and at the same time it has brought in a biodiversity conservation bill. Any thinking member of the public will immediately say, "But why did the Liberal and National Parties put through legislation that was not properly endorsed by those people who look at this sort of legislation with any objectivity and without any sense of self-interest? They made comments to the government that there was a need for considerable improvement and it did not listen." I am sure that is what the commentary will be as we go into the state election. It is a serious disappointment.

I want to conclude by saying that the structure of the bill would lead to a fair degree of secrecy about the decision-making of government in relation to our biodiversity. I see that elsewhere. I see that when we fail to

produce a state of the environment report so we can see the trajectory on any one of a number of environmental indicators. The last report was prepared in 2007. This government has not even begun the process of preparing another state of the environment report. Similarly, the second biodiversity audit has been conducted. Some \$500 000 was spent on it. It is the perfect means by which the public can see how well funds are being used to help the recovery of various species and ecological communities. The second biodiversity audit is not available online for the public to view. The only way that people can view it is if they go into the Department of Parks and Wildlife and have someone possibly stand over their shoulder and watch what they use. I think that is unheard of in this day and age. If data is available to the public, it should be made available in some format online; it is not technologically difficult to do. It should be readily available for people to consult and critique, and to make their views on it known. This culture is creeping into the heart of the Department of Parks and Wildlife, as well as the minister and his office. It is all about keeping the public in the dark on a whole lot of environmental indicators, but particularly on biodiversity conservation.

For those reasons, we cannot support this legislation. It is a serious disappointment. A campaign is being mounted in the other place by people who are passionately interested in biodiversity conservation for the bill to be sent to a committee. Perhaps those very detailed and carefully drafted amendments that I moved can be considered through the committee process. The minister found one or two typographical errors in the amendments, but the broad thrust of those amendments was very well conceived. Through that committee process, it will also be possible for various stakeholders such as the Environmental Defenders Office, the Wilderness Society, the Conservation Council of Western Australia, the WWF, the Leeuwin Group and others to appear before the committee and provide their expert advice. By the minister's own admission, the last time that this legislation was out for public comment was in 2004. Many things have changed since then. Members can consider that in 2004, substantial parts of the legislation were about a state biodiversity conservation strategy, the biodiversity commission and an element known as bio-regional planning. They were very important elements of the bill. None of that is in this legislation, yet the government is pretending that it has consulted on this legislation because the last round of consultation was done in 2004. I have never heard of it. I have been in this place since 2008 and I have never heard the government say that the consultation of a bill was done over 10 years ago and it is relevant to the debate going on in this place today. It has never happened before and I do not know why we are our treating biodiversity so shabbily that we should imagine that consultation done so long ago is still relevant today, especially when some of the key components we discussed 12 years ago are gone anyway! It makes a mockery of the notion that this bill has been the subject of consultation. I am disappointed and we will vote against this legislation.

MR D.J. KELLY (Bassendean) [8.53 pm]: I, too, will rise to briefly make some comments on the Biodiversity Conservation Bill 2015. The member for Gosnells expressed a sense of disappointment about this legislation. I completely understand where he is coming from. Being a Minister for Environment and coming into this place to introduce new biodiversity conservation legislation would have to be one of the best opportunities an environment minister could have. I would think that the minister would listen to all the experts about how that legislation should be crafted. Unfortunately, with this minister and this government, we have the complete opposite. There was a tremendous opportunity to introduce new legislation to protect our state's biodiversity in an environment in which, firstly, he would have had an opposition that was eager to join with him and achieve that result and, secondly, he had conservation groups in the community that would have been equally enthusiastic about the legislation. The minister could have had a piece of legislation that was broadly supported by both sides of the house and by the conservation community and it would have been a fabulous achievement for this government. But, instead, the minister has brought in a bill that is not supported by anyone, apart from members opposite. When we had discussions during the second reading and consideration in detail stages, the minister was asked whom he had talked to and who else had put up their hand to say that this legislation was satisfactory, and I do not remember the minister being able to point to anyone.

The notion that the minister relied on consultation that took place in 2004 to craft this bill is just staggering. A different government was in office in 2004. I have never heard a government say that it relied on consultation undertaken by the other party more than a decade ago—I do not think the current minister was even in Parliament at that time—to justify what it is doing today, especially when there is such a uniform view from groups that this legislation is not satisfactory. They are not ratbag groups; they are groups that are well respected.

Just last week, I went to an event in Mandurah hosted by the Minister for Fisheries, Joe Francis. He was spruiking the government's achievement of the Peel-Harvey blue swimmer crab fishery's recognition as being ecologically sustainable. The tick given to that fishery is not an internal tick by the government, but a tick given by the Marine Stewardship Council, an internationally recognised body on these issues. The minister referred to it in his speech as being the top of the wazza for an environmental tick of approval. The Marine Stewardship Council is the coming together of commercial fishers and the World Wide Fund for Nature. The Minister for Fisheries was spruiking the credibility and achievements of the Marine Stewardship Council, which is a creation

of the WWF and commercial fishers, but the Minister for Environment completely ignored the concerns that the WWF raised about this legislation. The government has committed \$14.5 million of taxpayers' money to get the Marine Stewardship Council's accreditation for all the state's fisheries. It is spending all this money to get the Marine Stewardship Council to give WA's fisheries the tick of approval, and that is effectively the tick of approval from the WWF. Yet when the WWF says that this legislation is fundamentally flawed and should not be passed, certainly not without amendment, this minister just brushes it off and ignores it and basically does not listen and does not take into account any of the issues that an organisation such as the WWF has raised. The minister's performance with the Biodiversity Conservation Bill shows how lacking this government is in credibility on issues around the environment.

There is a suite of ministers on the other side who do not understand these issues. During budget estimates, I asked the Minister for Water about the impact of climate change on Western Australia's water supplies, and she seemed surprised that I expected the Department of Water to have a view and to be vocal around the issue of climate change. I find that staggering. The Minister for Fisheries is very keen on Marine Stewardship Council certification, because that was in his script, but when I asked him in estimates about coral bleaching due to climate change, he looked across the chamber as though I had asked him something outside his portfolio area. I think he said that he had a watching brief on coral bleaching. Someone else had to point out that reefs are where a lot of fish live, so he should pay a bit more attention to it.

This government has ministers who do not really understand this stuff. Caring for the environment is more than a picture opportunity with an iconic species. It is about putting in place a framework to ensure that our Western Australian environment is well protected. Unfortunately, all the experts are telling the minister that this legislation will not achieve the desired result and will not meet the desired priorities.

Therefore, it is with great disappointment that those of us on this side have been put in a position in which we will be voting against this bill. This is just another area that we will have to remedy should we get the opportunity to form government after the next election.

MR A.P. JACOB (Ocean Reef — Minister for Environment) [9.01 pm] — in reply: I want to address some of the closing comments on the third reading of the Biodiversity Conservation Bill 2015, because this is the first I have heard that the opposition will be voting against this bill. That is very interesting. Almost every Labor government in my lifetime has committed to replacing the Wildlife Conservation Act 1950. However, no Labor government has ever managed to get a conservation bill into this place.

Mr D.J. Kelly interjected.

The SPEAKER: Do you want to have a rest at this time of night, member for Bassendean?

Mr A.P. JACOB: Today, members opposite have the opportunity to do something that the Labor Party has often aspired to do but has never achieved, yet for some sort of tokenistic opposition, they want to vote against it. It reminds me of that well-known moment in environmental politics in this country when the Greens decided to vote against the emissions trading scheme in federal Parliament. This is the WA Labor Party's moment, when it could have supported a bill that has been within its policy framework —

Mr D.J. Kelly: That's a great analogy.

Mr A.P. JACOB: It is a perfect analogy, member for Bassendean.

Mr D.J. Kelly: Do you support an ETS?

Mr A.P. JACOB: That is irrelevant, member for Bassendean.

The SPEAKER: Member for Bassendean, I just want to remind you that you are on three calls. If you want to take an early night, carry on.

Mr A.P. JACOB: That is irrelevant; the member for Bassendean supports a biodiversity conservation bill.

The SPEAKER: I do not want you to talk to the member for Bassendean. Talk to me.

Mr A.P. JACOB: The Labor Party has committed at every election, virtually for my lifetime, to a replacement biodiversity conservation bill. This is a bill that for the first time recognises threatened ecological communities, a bill that for the first time recognises critical habitat, a bill that has a modernised legislative approach —

Mr C.J. Tallentire interjected.

The SPEAKER: Member for Gosnells!

Mr A.P. JACOB: — and a bill that allows us to use the International Union for the Conservation of Nature red list criteria for threatened species. This is a bill that actually, in fact, does pretty well everything that has been raised in all the conversations, in all the comments and in all the public consultation. Yet, for some kind of pathetic and tokenistic opposition, the opposition is going to vote against this bill. That, for me, just shows how petty and jealous the opposition is that it is a Liberal-National government, after only three years of committing

to a biodiversity conservation bill, that is delivering this bill, which on every single legislative measure is a vast improvement on the current Wildlife Conservation Act, and members opposite know it.

Ms L.L. Baker interjected.

Mr A.P. JACOB: No, member for Maylands. That is not even a subjective statement. I challenge the member to find a single area in the existing Wildlife Conservation Act 1950 in which our ability to enhance the biodiversity conservation of this state is not significantly enhanced with this biodiversity bill. Yet the Labor Party stands to oppose it out of petty jealousy.

Mr C.J. Tallentire interjected.

The SPEAKER: Thank you!

Mr A.P. JACOB: I am going to pick up on a particular point that fired me up, because the member for Gosnells in his closing comments made some vague reference to a mounting campaign to send this bill to a committee of the upper house. What the member for Gosnells did not tell this house is that I offered the member for Gosnells the opportunity to send the bill to a committee of this house. I would have happily sat there for days —

Mr C.J. Tallentire interjected.

Mr A.P. JACOB: I offered the member the opportunity to send it to a committee.

Mr C.J. Tallentire interjected.

Mr A.P. JACOB: That was the consideration in detail stage. I offered that to the member for Gosnells. The member for Gosnells said that there is a mounting campaign to send this bill to a committee. Let the record show that before we even got to the second reading debate on this bill, I offered the member for Gosnells —

Mr C.J. Tallentire interjected.

Mr A.P. JACOB: Let the record show that I offered the member for Gosnells the opportunity to send this bill to a committee and he turned me down. Do not try that on in this place with me. Let the record show that when the moment has arrived, when the opportunity has come for the Australian Labor Party in Western Australia to do something that it has always aspired to do—to support a Biodiversity Conservation Bill—it is about to vote against it.

Ms L.L. Baker: We wanted a good one, though.

Mr A.P. JACOB: What is one area, member for Maylands, where this is not a significant improvement on the existing Wildlife Conservation Act?

Ms L.L. Baker: I think we have heard the details.

Mr A.P. JACOB: I do not think the member knows. This bill allows for the protection of critical habitat. This bill, for the first time in this state, allows for the recognition of threatened ecological communities. This bill increases the current laughable penalty for numbat hunting. Do members know the penalty under the current Wildlife Conservation Act for someone who hunts a numbat? It is \$10 000. Under this bill, the penalty is \$500 000. The maximum penalty in this bill is \$1 million.

Mr C.J. Tallentire interjected.

The SPEAKER: Member for Gosnells!

Mr A.P. JACOB: In closing, let the record show that the most significant conservation legislation achievement in generations, the one that all successive governments in my lifetime have aspired to—the replacement of the Wildlife Conservation Act of 1950 with a brand-new modern Biodiversity Conservation Bill—is an achievement of the Liberal–National government and the Labor opposition is about to vote against it.

Division

Question put and a division taken with the following result —

Ayes (28)

Mr P. Abetz	Ms M.J. Davies	Mr C.D. Hatton	Mr N.W. Morton
Mr F.A. Alban	Mr J.H.D. Day	Mr A.P. Jacob	Mr J. Norberger
Mr I.C. Blayney	Ms E. Evangel	Dr G.G. Jacobs	Mr D.T. Redman
Mr I.M. Britza	Mr J.M. Francis	Mr S.K. L'Estrange	Mr A.J. Simpson
Mr G.M. Castrilli	Mr B.J. Grylls	Ms L. Mettam	Mr M.H. Taylor
Mr V.A. Catania	Dr K.D. Hames	Mr P.T. Miles	Mr T.K. Waldron
Mr M.J. Cowper	Mrs L.M. Harvey	Ms A.R. Mitchell	Mr J.E. McGrath (<i>Teller</i>)

Extract from *Hansard*
[ASSEMBLY — Wednesday, 29 June 2016]
p4348b-4353a
Mr Albert Jacob; Mr Chris Tallentire; Mr Dave Kelly

Noes (14)

Ms L.L. Baker
Ms J.M. Freeman
Mr W.J. Johnston
Mr D.J. Kelly

Mr F.M. Logan
Mr M. McGowan
Mr P. Papalia
Mr J.R. Quigley

Ms M.M. Quirk
Ms R. Saffioti
Mr C.J. Tallentire
Mr P.B. Watson

Mr B.S. Wyatt
Mr D.A. Templeman (*Teller*)

Pairs

Ms W.M. Duncan
Mr A. Krsticevic
Dr M.D. Nahan
Mr R.S. Love
Mr W.R. Marmion
Mr C.J. Barnett

Ms J. Farrer
Ms S.F. McGurk
Mr M.P. Murray
Dr A.D. Buti
Mr P.C. Tinley
Mr R.F. Johnson

Question thus passed.

Bill read a third time and transmitted to the Council.