

**STANDING COMMITTEE ON
ENVIRONMENT AND PUBLIC AFFAIRS**

**INQUIRY INTO THE SANDALWOOD INDUSTRY
IN WESTERN AUSTRALIA**

**TRANSCRIPT OF EVIDENCE
TAKEN AT PERTH
WEDNESDAY, 11 DECEMBER 2013**

Members

**Hon Simon O'Brien (Chairman)
Hon Stephen Dawson (Deputy Chairman)
Hon Brian Ellis
Hon Paul Brown
Hon Samantha Rowe**

Hearing commenced at 10.42 am

Mr JIM SHARP,
Acting Director General, Department of Parks and Wildlife, sworn and examined:

Mr KEVIN MORRISON,
Acting Manager, Nature Protection Branch, Department of Parks and Wildlife, sworn and examined:

Mr RICK DAWSON,
Senior Wildlife Officer, Department of Parks and Wildlife, sworn and examined:

The CHAIRMAN: On behalf of the committee, I welcome you to the meeting. Before we begin, each witness must take the oath or affirmation.

[Witnesses took the oath.]

The CHAIRMAN: Gentlemen, you will have signed a document entitled "Information for Witnesses". Have you read and understood that document?

The Witnesses: Yes.

The CHAIRMAN: These proceedings are being recorded by Hansard. A transcript of your evidence will be provided to you. To assist the committee and Hansard, please quote the full title of any document that you refer to during the course of the hearing for the record. I remind you that your transcript will become a matter for the public record. If for some reason you wish to make a confidential statement during today's proceedings, you should request that the evidence be taken in closed session. If the committee grants your request, any public and media in attendance will be excluded from the hearing. Please note that until such time that the transcript of your public evidence is finalised it should not be made public. I advise you that the publication or disclosure of the uncorrected transcript of evidence may constitute a contempt of Parliament and may mean that the material published or disclosed is not subject to parliamentary privilege.

Mr Sharp, would you like to make an opening state to the committee as we pursue our inquiry into the sandalwood industry?

Mr Sharp: It is my understanding that you want to particularly pursue the regulation of the sandalwood industry. As has been raised in previous inquiries, three acts intersect as far as our agency is concerned in managing sandalwood. The Sandalwood Act 1929, the Wildlife Conservation Act 1950 and the Conservation and Land Management Act 1984 interact in different settings as the basis on which we manage and regulate the industry. However, in more recent times the pursuit of regulation and management of the illegal taking of sandalwood has been pursued under the Criminal Code, so we have been working extensively with the Western Australia Police using the provisions relating to stealing and receiving to deal with illegal sandalwood harvesting. We can move forward and explain how they interact, but essentially those are the three acts we use and the situations in which we would use them. Both Kevin and Rick can outline how we go about our responsibilities in identifying where it might be occurring and how we go about pursuing illegal activity and where it ends up.

The CHAIRMAN: We would be interested in hearing about this week's developments. I do not know the sensitivity of the matter and whether you would prefer to tell us in camera.

I note that you or your predecessor has assisted the committee and its predecessor committee in the last Parliament on a number of occasions—thank you for that. We will drill down into a few matters about your compliance activities more specifically today. How many officers are there in the Department of Parks and Wildlife?

Mr Sharp: In total?

The CHAIRMAN: Yes.

Mr Sharp: There are 1 590.

The CHAIRMAN: It is a large department. Can you sketch a breakdown of how many people are involved in the various things that DPaW does?

Mr Sharp: Of the 1 590 people, 800 are based regionally. Those figures are based on recollections, so I might need to be corrected. That is an indicative figure. In terms of the breakdown in activities of wildlife officers, those specifically in the regulatory activity, Kevin can give an indication.

Mr Morrison: We have 18 wildlife officers on the ground at the moment, but there are a number of vacant positions. All up we are probably looking at 23 or 24 wildlife officer positions throughout the state.

The CHAIRMAN: Are wildlife officers involved in compliance?

Mr Morrison: Yes, with sandalwood in particular. Other officers, rangers and CALM officers deal with more regulatory matters on CALM land. Wildlife officers have jurisdiction over all land, regardless of tenure, and we specifically have responsibility for enforcing the Wildlife Conservation Act.

The CHAIRMAN: So you have about 23 officers. Do you characterise those as enforcement officers?

Mr Sharp: Our regulatory functions essentially around that area of our business is conducted by wildlife officers. There are other regulatory functions where we would use CALM act officers, who are empowered under the CALM act generally. But it is really the wildlife conservation officers empowered under the Wildlife Conservation Act who primarily deal with sandalwood.

The CHAIRMAN: And there are 18 to 20 of those at the moment with about 23 positions available.

[10.50 am]

Mr Morrison: Yes.

The CHAIRMAN: I do not want to digress, but how many officers across the 1 600 or so are engaged in what we might call “compliance activities” apart from those just mentioned?

Mr Sharp: It depends on how one defines “compliance”. Every officer has a responsibility to observe and report on adherence to the various acts and the provisions of their regulations. It is a matter of what area of compliance we are dealing with. When it moves towards something that is considered an offence, then it depends on the specific activity. If someone is lighting a fire where they should not be lighting it, a wide range of staff are empowered to deal with that under the CALM act regulations, so it depends on the activity.

The CHAIRMAN: We will probably tease that out a bit more as we proceed. Are any of the staff that Mr Morrison mentioned essentially engaged in sandalwood-related activities or is that something they engage in as required?

Mr Morrison: It can involve any of those officers dealing with sandalwood, although the ones in the far north and the south west corner do not come in contact with sandalwood. Any of the officers in regions where sandalwood occurs are likely to be called on to deal with a sandalwood inquiry.

We have a couple of people based in Perth who have developed particular expertise in the sandalwood area and they tend to take the lead in sandalwood matters that come across our desk.

The CHAIRMAN: What training is routinely provided to DPaW officers who might be involved in sandalwood compliance and the monitoring of activities?

Mr Morrison: Most of the training in sandalwood is learnt on the job. When wildlife officers join, they go through a formal training program that gives them a broad base to compliance training. Sandalwood is a small component of a wildlife officer's role and is not dealt with specifically in the process of that training course. They tend to get specific training and mentoring by officers when they join our branch.

The CHAIRMAN: What sort of training is in that course? Does it cover the powers of officers under the law?

Mr Morrison: It is knowledge of the legislation, legal procedures, the gathering of evidence and the writing of briefs. In the case of wildlife officers, it can extend to executing search warrants and a range of powers that wildlife officers have. We have stronger powers under the Wildlife Conservation Act than do CALM officers and rangers under the CALM act and regulations.

The CHAIRMAN: How long is the basic training?

Mr Morrison: It is a 10-day course at the Joondalup police academy. That is the course that all departmental officers go through before they are authorised and it is followed up with more specific training on particular areas of their role.

The CHAIRMAN: So they might do another course or module that is more related to their specific duties as time goes by?

Mr Morrison: That is correct.

Hon BRIAN ELLIS: Does the 10-day training course cover the manual side of enforcement or knowledge of the acts?

Mr Morrison: It is both. It incorporates the knowledge base and the legislation, which plays a large part in it because the legislation can be fairly complex and they need to get their head around it. But they also need to have practical knowledge. They will go through scenarios and situations, they will do a court role where they may be required to give evidence in a mock court situation so that they experience what they have learnt as well as the classroom side of things.

Mr Dawson: We have what is called a designated wildlife officer. I am a designated wildlife officer and then the department has more wildlife officers. We have people who are authorised under the act because the Wildlife Conservation Act gives us quite strong powers. There are probably another 50 or 60 people who have authority under the Wildlife Conservation Act who can assist. So the wildlife officer out in the region, who is designated in that position, is trained, but he can help other people within the region and assist with that power because the act is quite specific. Indeed, without being a wildlife officer, a person cannot act in that position.

The CHAIRMAN: The sense I am getting here is that there is a large department with general duties and powers spread over very many officers, but you also have a smaller core group that Mr Morrison referred to earlier, which is specifically involved in what we might call enforcement, the investigation of possible offences and prosecutions.

Mr Morrison: That is correct. That is a good summary of the situation.

The CHAIRMAN: Is there a name for that group?

Mr Morrison: The Nature Protection Branch. I might just add that whilst the Nature Protection Branch picks up the wildlife officers in the metropolitan region, wildlife officers based in regional areas come under the jurisdiction of their respective district or region, but they still perform the same role as wildlife officers in Perth—they just enter through a different line of command.

Hon STEPHEN DAWSON: Are those wildlife officers—there will be 24 when the positions are filled—responsible for the illegal taking of flora and fauna and in animals being shipped out of the country?

Mr Sharp: That is correct. That is obviously done in concert with others authorities—they work in cooperation. In the case of sandalwood, it is done with the police and customs authorities in relation to illegal exports.

Hon STEPHEN DAWSON: Does the 10-day training course deal with the taking of rare animals?

Mr Morrison: It does, although for the officers to really get their head around what they are doing, they have to do follow-up training with our branch in Perth, because in terms of the 10-day course, the wildlife officer role is a single component of that course. We do not expect someone to go through that course and come out as a fully-fledged wildlife officer; he or she would need to do further training and mentoring with our group in Perth. We have the biggest core group of wildlife officers and we can expose them to the biggest variety of real-life situations so that they learn what they have to do as a wildlife officer on the job.

Mr Dawson: Most of our recruitment is being done with people who have some kind of law enforcement background and who have that type of knowledge. Although it is only a 10-day course, it is really about getting people to understand the legislation and our mode and operating procedures. It is a fine line. A wildlife officer deals with a lot of fauna-related issues and he or she sits in the middle of anything to do with the interaction between humans and animals. It is such a wide thing to get your head around. It is that enforcement and knowledge of animals and trying to get that base. If we can get someone with enforcement experience, which is what we try to do, that makes it easier.

The CHAIRMAN: So a lot of training is on the job and in the field and, depending on where the officer is posted, there are different flavours and different types of activity for different parts of the state.

[11.00 am]

Mr Morrison: We make a point of trying to bring regionally based wildlife officers to Perth to give them a week or two of training with us before sending them back to the regions. A single wildlife officer in a district or a region does not have the benefit that we wildlife officers in Perth have of being able to fall back on half a dozen people to bounce ideas off or benefit from their experience. We try to cover off on that by having newly appointed people who have done the 10-day training course go to Perth to work in with our group. That enables them to establish contacts, and when they do go back to their district, they know who we are and they can contact us and draw on us for advice, whether it be by email or telephone.

The CHAIRMAN: What powers do your officers have for compliance activities?

Mr Sharp: As was indicated, wildlife conservation officers have a wider range of powers under their act than do officers who are empowered under the CALM act as CALM act officers. They are very wide ranging and, as indicated, those powers extend beyond specifically wildlife officers to others who are accredited or designated under the act to have those powers. The powers are wide ranging in terms of capacity to enter and search.

Mr Morrison: Would you like me to elaborate a bit more?

The CHAIRMAN: Yes.

Mr Morrison: Section 20 of the Wildlife Conservation Act provides the main powers for wildlife officers and that includes the power to demand the name and address of any person who the officer believes, on reasonable grounds, has committed or is committing an offence. It also enables officers to stop and search any vehicle, vessel, aircraft or other means of conveyance if they have reason to believe that they may be involved in the commission of an offence. They can seize any fauna or

flora that they have reason to believe has been unlawfully taken and they can seize any item of equipment, including firearms and chainsaws. Vehicles can be seized, but not forfeited, if an officer has reason to believe that it has been used in the commission of an offence. They have a right of entry onto any land other than a dwelling house or a permanent residence if they have reason to believe that an offence is being committed on that land. We also have a right to obtain a search warrant to search a residential premises if we have reason to believe that there is evidence on that premises that will lead to the establishing of an offence.

The CHAIRMAN: You mentioned before that you occasionally act in concert with other agencies in the pursuit of your objectives. I am aware you have been doing operations in connection with sandalwood, but on the subject of your powers, are there any powers that you do not have that might benefit officers and their operations?

Mr Morrison: Yes, there are. For a start, we do not have the power of arrest. The power of arrest previously existed, but it was dropped when the legislation was amended some time back. That would certainly be of value, particularly when dealing with people who are a flight risk or who may hop on a plane and disappear after we have stopped them with fauna that they were about to illegally export. If we relate it to a sandalwood scenario, we are currently dealing with people from interstate who have come here to illegally harvest sandalwood, and although we might catch them with the sandalwood, by the time the matter reaches court, they are back home in Queensland or somewhere else and we have to look at extradition and that sort of thing. The power of arrest is certainly one such power. We also need to make a direct connection between our general power of search and our search warrant powers because there is a disconnect between the two. On the one hand, under the general power of search we can only search for things that have been used in the commission of an offence, whereas under the search warrant powers, which apply only to a residence, we can search for anything that may afford evidence as to the commission of an offence. In other words, if we went onto a person's property, we could look for only fauna or flora or a chainsaw or something like that that has been used in the commission of the offence. If we are searching a house under a warrant, we could look at seizing perhaps the person's smart phone, computer et cetera that may not have been used in the commission of the offence but are very likely to contain evidence that may lead to the establishment of an offence. We are at a bit of a disadvantage when we enter a commercial premises. It is not a residence; therefore, our general powers apply, and if there is documentation et cetera in that commercial residence, we cannot seize it or do anything with it, which puts us at a big disadvantage.

Hon SAMANTHA ROWE: In your opinion, would harsher penalties for those who commit the illegal acts be a good deterrent for what is happening at the moment?

Mr Sharp: As I said, there is an interaction of several acts and the Wildlife Conservation Act has the higher penalties, which is why it is primarily used as the vehicle by which illegal activities are pursued. Yes, higher penalties would be effective and, as I mentioned last time I spoke to a sandalwood inquiry, the government has made a commitment to a biodiversity conservation act review to replace the Wildlife Conservation Act. The Premier made a commitment to a quite significant increase in penalties. That will be reflected in that space. There is a general belief that an increase in penalties across the board, which are more consistent across other jurisdictions, will have a significant impact.

The CHAIRMAN: You mentioned on a previous occasion the relative inadequacy of penalties under the Sandalwood Act. You expressed a preference earlier today to pursue sandalwood offences under the Criminal Code where possible. Is there a possibility that a court might not agree with that course of action if more specific penalties for sandalwood are provided, which could set a prosecution back?

Mr Sharp: We are quite positive that the Criminal Code will be effective. I cannot offer legal advice about the prospect, but the police have pursued this approach with confidence, and we think

it is a major step forward. I have met with the Commissioner of Police previously and discussed it, and the effort and commitment put in is a very positive move. That will deal with the end of the business, which is about receiving and processing, and I think it is where the law should be applied in that space. In terms of prospect, I cannot comment in that space. I can only assume that there is a high prospect it will come to a successful conclusion.

The CHAIRMAN: It was probably a little unfair to ask you. I wanted to get a feel about what you think.

Mr Sharp: Obviously, since the last time I spoke, action has been underway. There has been a greater commitment of effort and resources since that time. It is now progressing to a point at which we will have greater clarity and better outcomes. That does not mean, however, that we will not be pursuing the question about improved penalties and improvements to the acts under which we operate. We expect the Wildlife Conservation Act will be significantly improved in relation to penalties dealing with flora and fauna.

The CHAIRMAN: And the Sandalwood Act.

Mr Sharp: We have indicated that we are looking at some of the outcomes of this inquiry as well, because we think it will be helpful and guide us. We are seeking views about whether we try to consolidate the management of sandalwood under one act rather than spread it across three acts and under different circumstances. It could be a consolidation with a significant increase in penalties—that is a beneficial way to go.

[11.10 am]

The CHAIRMAN: Would that also help your wildlife officers who are equipped with general but wide-ranging powers to deal with a whole lot of flora and fauna issues?

Mr Sharp: Yes, it would, if there are much more significant penalties and consolidation in the one act. That would be preferential and we will be examining this. We look forward to learning what your inquiry finds.

Hon BRIAN ELLIS: I go back to your powers. I know you are working well with the police at the moment. If you had the powers of arrest, would that do away with some of the necessity for police involvement, because they already have a heavy workload?

Mr Sharp: In deference to my colleagues, I think we need to look carefully at those powers. There would be some instances, as Kevin indicated, in which they would be necessary. They may be necessary and may be advantageous. We would have to look at whether that is supported across the wide range of activities and in how many instances it would be necessary to use those powers.

I still think we would still want to interact with the Criminal Code as well, if we could, in those cases. That is why it is important to follow this through.

Hon BRIAN ELLIS: Would listening powers be advantageous?

Mr Sharp: There is always that balance between obtaining additional powers and some of the responsibilities and concerns that come with that, yes.

Hon STEPHEN DAWSON: Mr Morrison, you spoke to us about section 20 of the Wildlife Conservation Act or you outlined some of the powers that are in that section; notwithstanding the fact that you could do with some more powers, the provision in the section seems quite strong. Do you use those powers enough? One of the criticisms is that you might not have a compliance culture, unlike some other agencies. Can you give me your views on that?

Mr Morrison: I think the Nature Protection Branch certainly does have a compliance culture. We are probably seen as the compliance group within the whole agency. We do the more difficult investigations as distinct from day-to-day regulation. The minor regulation that occurs in national parks, nature reserves and marine parks et cetera is done by our rangers and our conservation and

land management officers. But certainly when it comes to the more serious investigations, I pride myself with the quality of the investigative skills that wildlife officers do have. They have been commended highly by police whom we have worked with. In fact, they have seen the quality of briefs that our people have produced, and those briefs have actually formed the basis of current matters that the police are proceeding with. I think there is no doubt that wildlife officers have the required culture, if you would like to use that term—certainly, they have the required training and skills. They have a great depth of experience and knowledge of wildlife matters generally, to be able to deal with these situations in an effective manner.

The CHAIRMAN: How many prosecutions would you institute in a year?

Mr Morrison: That is variable; in terms of cases, we probably prosecute, I should think, in the vicinity of between 30 and 50 cases a year, I suppose. But there are a lot of other cases that are dealt with at a lower level than prosecution.

The CHAIRMAN: Infringement notices —

Mr Morrison: Yes.

The CHAIRMAN: — and things issued by rangers, that sort of thing?

Mr Morrison: Caution notices, letters of warning—that sort of thing.

The CHAIRMAN: You are talking about 30, 40, 50 serious —

Mr Morrison: Prosecutions, yes.

Hon PAUL BROWN: Fisheries is well known for having a very good culture, particularly within the industry of enforcement and compliance. How would you compare DPaW and your position within the wide industry of sandalwood and other flora and fauna industries with that of fisheries? They have got pretty good powers and they have got a very well-respected perception within the industry. Could you elaborate on that for me?

Mr Sharp: This is my comment, and I will throw it to the others, but our business is different in many respects. It is very much more wide-ranging in terms of what range of, if you like, regulations we are dealing with. We have something like 16.4 million visits from the public to national parks and other areas we visit. There is a whole range of what you might call incidental activities that infringe on regulations. We really would see our role—around the majority of those—to be around education, improved awareness in that space. That is a lot of the activity of our rangers and our CALM officers. I think when it comes, as Kevin has indicated to that end of the activity, which borders on severe insignificance, I think we would have a similar reputation in that space. As Kevin has indicated, it is well recognised in terms of the behaviours and the skills sets that our wildlife officers have in terms of bringing prosecutions forward. But that is relatively small, in numerical terms, in dealing with the range of activities that we need to deal with. We need to get that balance there about not being seen, if you like, as a police force in that natural environment as such. That is the end point where we need to deal with activities, and sandalwood is a very specific one which has an industry implication. But most of what we manage is not an industry-related implication; it is about people's behaviour in the natural environment.

Now that is longwinded, but I think in the part that we have to pursue through to prosecution, we do it very properly and effectively in that space. Certainly, in terms of illegal export of wildlife—the illegal taking of wildlife, that is where we specialise in that area of doing it well. I think the wildlife officer is well recognised in that space. They also have to carry the whole span of responsibility. So our wildlife officers are very much often engaged. Our regional wildlife officers or our local wildlife officers would be also working in schools with animals to show school groups why you should not interfere with animals, or how you care for them, or how you behave in relation to operating with wildlife. Then it moves towards even where we have tourism licences. If there is a

right to interact with animals, then the wildlife officers would operate in that space of setting conditions on how people should behave in relation to them.

Moving to a prosecution is not so much as the next step. The next step is to say, “You’ve got a licence condition. Your licence is in jeopardy if you behave in the wrong way in terms of the way you treat the animals.” It is a very broad continuum of activity. But in that area which needs to be pursued to prosecution, I think they do it very well and they are well regarded.

Mr Dawson: Being a wildlife officer on the ground and being involved in sandalwood and a number of things, you questioned us before about whether we have that will or whatever. Probably some of the problems we have is that we have some very strong powers in the wildlife conservation acts and major powers to be able to go on someone’s commercial premises. So apart from the house, if I have reasonable grounds to believe—I can walk into your backyard, I can go into your shed. I can use my powers—very strong. But then I get my wings clipped when I want to take any evidence that affords the offence. That has been one of our biggest problems. It is one of the things that causes us our biggest issues. So if I take out a warrant and I do your house, I can then get your computer and your information. This sandalwood is a fraud—it is really about fraud. So you have got to have that paper. You go to someone’s commercial premises—we do not have that power to take the document. The reason why we have not been able to act as well as we could have is because we did not have that power. That is where the connection comes between us and the police and customs.

So in the last 16 years that I have been with the department, we have done more smuggling jobs than any other wildlife agency in Australia. We are leading. That is because of the connection between us and customs. Now we are having the best sandalwood—because we have a great connection with the police. So we are using the strong part of our power. So our power of seizure is so strong because it is 1950 legislation, which is just wonderful. Some call it draconian, but it allows you to do that. But then it has weaknesses because it has not moved with the times. So when you are on the ground, these are the things that you work through. So we do have the will, may I say, sometimes we do not have all the tools that allow us.

[11.20 am]

The biggest change in sandalwood to answer you is—like, I have been doing it now for some 13 or so years. It was \$2 500 to \$3 000 a tonne; it is now \$15 000 a tonne. You can leave that statement alone. One of the biggest things, I do not know if you know, is that sandalwood—the normal rule of thumb is a sandalwood puller can pull a tonne of sandalwood, that is the term they use, pull it out of the ground because most of the value is in the butt. You pull it out of the ground. Then, you clean it and then you pack it. It takes three days, roughly, to do a tonne. The reason you have to clean the sandalwood is that you de-bark it because, within three days, the bark sticks to the plant and you cannot get it off. You virtually cannot get it off for 18 months. What has changed is that some of the people now have got into tumblers. They use these massive big tumblers, probably as big as this table in size. They can put the sandalwood in and tumble the bark off. Then it can be processed. So before, it had to be out in the field—about 10 years ago, low price, you had to have pressure cleaners. Now, it has changed; it can be pinched in the bush, taken to another site, tumbled and processed. These are some of the big changes that have gone on, and why it has just escalated overnight.

Hon STEPHEN DAWSON: Mr Chair, I want to ask a question back to the penalties again. Obviously, the wildlife trade penalties are quite significant. I think there is a maximum penalty of 10 years in prison and there is a fine of up to \$170 000 for individuals and \$850 000 for —

Mr Morrison: Not under the wildlife act.

Hon STEPHEN DAWSON: Is that under the —

Mr Morrison: The EPC.

Mr Sharp: That would be under the commonwealth act.

Hon STEPHEN DAWSON: That is a commonwealth act.

Mr Sharp: We are wanting to align the state legislation more closely to those penalties. That is what has been committed to by the government in terms of introducing and upgrading those penalties.

Hon STEPHEN DAWSON: A new biodiversity conservation bill will include similar penalties to those?

Mr Sharp: Yes, that is what is intended—to follow those penalties.

Hon STEPHEN DAWSON: Are you in a position to tell us where we are? It has been a number of months since we have seen you, how far away are we from any bill?

Mr Sharp: It is continuing to be worked on in terms of bringing it forward. There is a commitment; it is one of the primary commitments in the environment policy.

The CHAIRMAN: The committee has a series of questions. We are seeking an update on some recent operations that you have been conducting. Would you like to request that we go into private session?

Mr Morrison: If this relates to developments in the last couple of weeks that you are referring to, sir, yes, I would request that.

The CHAIRMAN: Okay.

Mr Sharp: It depends on the questions to some degree, but —

Hon STEPHEN DAWSON: Just to be safe.

Mr Morrison: My only concern, sir, is that I have been co-opted to sign a secrecy agreement with the police in terms of what I can disclose. I do not know how that crosses over with the powers that you have to impose me to answer, but I am more than happy to certainly—short of getting into the police procedures and things like that.

Mr Sharp: Through you, the Chair, that could easily be done by the questions being answered through Mr Dawson.

The CHAIRMAN: I think there is a confirmation that you would wish to go behind closed doors if the committee is prepared to resolve along those lines.

It is so resolved, we will go into private session.

[The committee took evidence in private]
