BIODIVERSITY LEGISLATION (PRIORITY REFORMS) BILL 2014

Introduction and First Reading

Bill introduced, on motion by **Hon Lynn MacLaren**, and read a first time.

Second Reading

HON LYNN MacLAREN (South Metropolitan) [10.24 am]: I move —

That the bill be now read a second time.

Although some of the world's most distinctive biodiversity is found in Australia, the most exceptional, I would say, is in Western Australia. Yet Western Australia's biodiversity is experiencing unprecedented pressure because of the cumulative impacts of land-use conversion, fragmentation of ecosystems, high population growth, high personal consumption levels, and changing climatic conditions, combined with a limited understanding and appreciation within the community of the state's impressive array of unique flora and fauna. In 2007, the Environmental Protection Authority reported that Western Australia had 379 threatened plants, 204 threatened animals, and 66 threatened ecological communities, although this list is not thought to be complete or representative of the exact number of threatened species and communities. Already known to have been destroyed and extinct at that point were 14 plants, 18 animals—mostly mammals—and three ecosystems.

The legislation that guides Western Australia's approach to biodiversity conservation is over 60 years old and is inconsistent with contemporary conservation practices. Combine this with a culture of improvised policy development, and the result is fragmented biodiversity protection efforts that are neither appropriate nor effective. Since 1992, successive governments have made various attempts to update the Wildlife Conservation Act. However, all efforts have failed to produce effective legislation, and Western Australia's current biodiversity laws fall way behind both the laws of other Australian jurisdictions and community expectations. We should recall that in its original iteration, the Wildlife Conservation Act 1950 was merely intended to be a controlling mechanism for hunting and fishing.

The Western Australian Auditor General determined in a 2009 report that the environmental agency was operating outside of its legislation. By the Auditor General's account, the Department of Environment and Conservation was making decisions and taking actions that were in effect unlawful, a situation that to date remains unchanged. At the same time, the decline in species diversity in Western Australia continues unabated. Not surprisingly, the then Department of Conservation was in agreement with the Auditor General that wide-ranging legislative change is essential to arrest the serious problem of biodiversity decline in the state. Specifically, the Auditor General found that threatened species are identified and recovered using the department's internal processes, but these processes lack the transparency and accountability of legislated processes. He further found that a lack of information and a time-consuming process mean that species are not protected as quickly as possible. A key recommendation was to identify opportunities to reduce the time required to nominate and list species as threatened. The report also said that many of the department's threatened species activities are not enabled by existing legislation and the department has created policies to cover these gaps. The Wildlife Conservation Act 1950 does not establish a process for listing and recovering threatened species and does not provide species with adequate protection.

The existing penalties under the Wildlife Conservation Act are wholly inadequate. For example, if someone were to travel down to Two Peoples Bay and hunt down and kill one of the approximately 80 remaining Gilbert's potoroos, the worst thing that could happen to that person would be a fine of $10 000. In 2012, when this bill was originally introduced, the equivalent penalty under the federal law was up to two years' imprisonment and a $110 000 fine.

Another significant and longstanding inadequacy in the law is the fact that the Wildlife Conservation Act applies differently to the Crown from the way it applies to any other legal entity in Western Australia. These types of inequities have gradually been removed from other parts of the WA statute book, but in this old act—still, in many ways, mostly about hunting and skinning—the anachronism remains. Among the problems this has generated is that in the case of the conservation of fauna, farmers are subject to much greater scrutiny than, for example, the Forest Products Commission is or the former Department of Conservation and Land Management was when it was simultaneously the forest logging and forest conservation arm of the government.

In 2002, the Greens' Dr Chrissy Sharp introduced a bill that sought to remedy this problem, but it was voted down by Labor, the Liberals, the Nationals and the now extinct One Nation party. The opposition to the bill by the then Labor government was particularly curious, given that Dr Geoff Gallop had come to power in 2001 promising the introduction of a comprehensive new biodiversity conservation bill as a priority of his government. Yet all that was generated on this priority reform during that term of Labor government was a consultation paper. In the 2005 election, this reform was promised again by Labor. That term of government

yielded only a discussion paper on a proposed biodiversity conservation strategy. No strategy was ever developed, and no bill, or even draft bill, ever came out. Such was the fate of this priority reform after two terms of Labor government.

Like the Labor government before it, the current Liberal–National government has promised legislative changes to protect WA's wildlife. My former colleague Giz Watson referred to that promise by the government in her valedictory speech given in this place nearly a year ago. The Premier reiterated that promise during a speech in the other place on 18 February 2014. However, like the Labor government before it, the Liberal–National government has made promises, but to date no biodiversity bill has been introduced.

There is a clear and urgent need for a renewed push on biodiversity law reform, heightened by the rapid onset of climate change and the drying of the south west. As stated earlier, in 2007, the Environmental Protection Authority reported that at least 649 plants, animals and ecological communities were endangered, and 35 more were extinct. Five years later, on 27 September 2012, the Minister for Environment stood in Parliament and said that Western Australia's list of endangered species and communities now numbered 750, an increase of 101 over a mere five years. In addition, parliamentary questions asked by the Greens showed that six species moved to a higher threat category while the last forest management plan was in operation—namely, the red-tailed black-cockatoo, noisy scrub-bird, brush-tailed phascogale, woylie, Australasian bittern and Baudin's black-cockatoo. The need for biodiversity law reform is urgent, and becomes more urgent with every year that passes, but the Liberal–Nationals and Labor have been giving it only lip-service while sitting on their hands and delivering nothing to protect our unique flora and fauna.

Indeed, in some cases the government has not been content to merely sit on its hands, but has instead taken a wrecking ball to biodiversity protection. One example is the planned extension of Roe Highway between Kwinana Freeway and Stock Road, which will wreak irrevocable damage to the Beeliar wetlands. The government plans to go ahead with the extension, notwithstanding that the Environmental Protection Authority has argued that any road alignment through this area should be rejected due to the serious impacts on biodiversity. Over 80 per cent of the wetlands on the Swan coastal plain have already been destroyed; the Beeliar wetlands is amongst the few that remain. It is a wildlife sanctuary that provides habitat for, amongst others, rare and endangered species, including the Carnaby's black-cockatoo, forest red-tailed black-cockatoo, southern brown bandicoot, graceful sun moth, lined skink, peregrine falcon, spotless crake, buff-banded rail and king spider orchid. It includes *Banksia attenuata* woodland, which is listed as endangered under federal legislation. It is also visited by migratory wading birds that are protected by bilateral agreements, including greenshanks, dotterels, red-necked stints, plovers and sharp-tailed sandpipers.

Another example of this government's wrecking ball approach to biodiversity protection is the shark cull program. Not only is it entirely unclear how removal of apex predators will affect the balance of our oceans, but also great white sharks are listed—I remind members—as a vulnerable, migratory species under both federal and Western Australian laws. In addition, several vulnerable and endangered species that are not the target of the cull are nonetheless at risk of being killed through being caught on the drum lines used for the cull. These include grey nurse sharks; green and freshwater sawfish; loggerhead, leatherback and green turtles; humpback and southern right whales; Australian sea lions; and dolphins. To date, the drum lines have mostly caught tiger sharks, including many juveniles. They have been killed or returned to the water half-alive, yet the government's Shark Smart website, launched in January, states, "tiger sharks may only have been responsible for one shark bite in WA since 1980."

This bill introduces a number of relatively simple amendments to both the Wildlife Conservation Act and the Environmental Protection Act, recognising that an attempt to pursue a comprehensive new biodiversity conservation act will be a longer process. The bill addresses the three key problems outlined. Firstly, a simple statutory mechanism for listing threatened species is provided in the bill. The process has reasonable but compelling time lines to ensure that decisions are actually taken and not left to languish. Secondly, penalty levels are brought into line with comparable offences under federal law—that is, the Environment Protection and Biodiversity Conservation Act 1999. When there is no equivalent federal offence, this bill raises the WA penalty by a factor of 11 to achieve parity with the key "taking threatened species" offences contained in federal law. Thirdly, the bill provides for the Wildlife Conservation Act to apply to the Crown the same as for everyone else in respect of indigenous fauna; currently, the act applies to the Crown in respect of indigenous flora but not fauna.

One cannot amend the Wildlife Conservation Act without thinking about consequentially amending at least the clearing provisions of the Environmental Protection Act. Therefore, this bill makes those consequential changes, and contains some additional reforms to the clearing rules. The bill creates an appeals process to the State Administrative Tribunal for the most environmentally significant clearing proposals. Leaving the Minister for Environment to deal with appeals against the granting of the most controversial clearing permits, when the clearing principles have been flagrantly breached, has clearly not worked. SAT, on the other hand, is a well-

respected arbiter in a range of technically challenging areas and is up to the task of taking on this additional jurisdiction.

It is my hope that in this term the government will deliver on its promise to bring to Parliament a biodiversity conservation bill. In the meantime, I call on the house to support this bill, which addresses the most urgent and most elementary changes. On 18 February 2014, the Premier stood in Parliament and promised that his government would enact significant increases in penalties for harming endangered species. This bill delivers that reform and I call on the Liberal–National government to support it. As for Labor, that party identified biodiversity law reform as a priority in 2001 and again in 2005 but never delivered, despite two terms in power. This bill introduces the type of changes that Labor promised but failed to deliver. It is time—well past time—for the house to support this bill. WA's precious and unique native biodiversity cannot afford any further delays.

This is not a uniform legislation bill for the purposes of Legislative Council standing order 126(1). I commend the bill to the house, and table the explanatory memorandum.

[See paper 1325.]

Debate adjourned, pursuant to standing orders.