

FORESTS (WOOD PULP AGREEMENT) REPEAL BILL 2018

Statement of compatibility

Ms DUNN (Eastern Metropolitan) tabled following statement in accordance with Charter of Human Rights and Responsibilities Act 2006:

In accordance with Section 28 of the *Charter of Human Rights and Responsibilities Act 2006*, (the Charter), I make this statement of compatibility with respect to the *Forests (Wood Pulp Agreement) Repeal Bill 2018*.

In my opinion, the *Forests (Wood Pulp Agreement) Repeal Bill 2018*, as introduced to the Legislative Council, is compatible with human rights as set out in the Charter. I base my opinion on the reasons outlined in this statement.

The Bill repeals the *Forests (Wood Pulp Agreement) Act 1996* to terminate the agreement set out in the schedule to that Act and to provide that any rights, privileges, obligations or liabilities under that agreement cease to exist on that termination. The Bill repeals previous Acts that remain on the statute book that implemented prior versions of the agreement.

The agreement is between the State of Victoria and a corporation. As per the Note in Section 6(1) of *Charter of Human Rights and Responsibilities Act 2006*, corporations do not have human rights. There are no Charter rights limited by the Bill.

Second reading

Ms DUNN (Eastern Metropolitan) (10:32)—I move:

That the bill be now read a second time.

I rise to speak on the *Forests (Wood Pulp Agreement) Repeal Bill 2018*.

It is critical for this state that we maintain a timber and paper products industry well into the future. We want furniture manufactured in Victoria from Australian-grown timber in our retail stores. We want to see Australian-made paper in our stationery shops and Australian-made cardboard in our packaging. I'm sure every member in this house can agree on that.

This bill is about completing the transition of these timber and paper products industries into the future.

It is not about litigating the past or cutting an industry down.

This bill will help the pulp and paper industry to adapt to a steep decline in native forests that has been caused by over logging and bushfires.

The over logging has been due to government mismanagement and a lack of appropriate oversight of the government business enterprise, VicForests.

Persistently unsustainable levels of logging have increased the risk of bushfire in the context of a changing climate. This has increased the pressure on the remaining state forests, which drives further over logging. It is a destructive feedback loop which is endangering our native forests.

The state of Victoria's native forests

There is nothing environmentally sustainable about native forest logging currently occurring in Victoria.

It involves cutting down the most carbon-dense forests in the world, releasing huge amounts of carbon dioxide through the incineration of large volumes of forest debris left behind after each logging operation. Up to 60 per cent of the total biomass goes up in smoke.

Through a state-owned enterprise, VicForests, the state government logs our water catchments and imperils the water security of Melbourne. This is surely one of the most short-sighted actions possible considering the increasing duration and severity of drought predicted due to climate change.

The most economically valuable trees that are logged are the ‘ash forests’ consisting of *Eucalyptus delegatensis*, commonly known as alpine ash, and *Eucalyptus regnans*, commonly known as mountain ash. Mountain ash is the tallest flowering plant in the world and the second tallest tree after the sequoias of California. Timber from these trees are marketed as ‘Victorian ash’.

The mountain ash forest provides important habitat for a range of threatened faunal species that rely on intact multi-age forests, large old trees and minimal disturbance. At least 40 of these faunal species need tree hollows to live and breed and it takes around 150 to 200 years to create hollows in such habitat trees.

One of these species, the Leadbeater’s possum—*Gymnobelideus leadbeateri*—is the state faunal emblem and is found only in the existing mountain ash forest in the Central Highlands.

The threat from logging and bushfire has become so dire that the mountain ash ecosystem is now listed as critically endangered by the International Union for Conservation of Nature. This entire ecosystem is heading towards collapse.

Supply to Maryvale pulp mills is the principal driver of native forest logging

The Forests (Wood Pulp Agreement) Act 1996, the act that will be repealed by this bill, legislates that at least 300 000 cubic metres of pulp logs must be sourced annually from these ash forests and delivered to the Maryvale pulp mills.

The Maryvale pulp mills were originally established in 1938 with a 50-year legislated supply of pulp logs from Victoria’s state forests. That legislated agreement has been replaced multiple times by acts of this Parliament.

The present agreement was ratified by the Forests (Wood Pulp Agreement) Act 1996 on the premise that the Maryvale pulp mills, then owned by Amcor, reduce their dependence on sourcing pulp logs from native forests and substitute these with pulp logs from plantations.

Today the Maryvale pulp mills are owned by Nippon Paper group, a Japanese conglomerate, through its subsidiary, Paper Australia. All up there are three pulp mills, five papermaking machines, a bleach plant, a pulp lapping machine, a finishing facility, a waste paper processing plant, waste water treatment ponds and chemical recycling facilities. Two of the mills—the bleached hardwood kraft pulp mill and the neutral sulphite semichemical mill—are currently tooled to use hardwood woodchips sourced from native forests.

The Maryvale pulp mills currently consume over 500 000 cubic metres of logs per year from state forests, which is secured under the legislated agreement and a timber sales agreement. They also consume about 130 000 cubic metres per year of offcuts from timber mills that use native forest sawlogs. Based on a report by industry consultants Pöyry in 2011, these mills consume 456 000 cubic metres of pulp logs from the ash forests and 174 000 cubic metres from mixed species forests annually.

According to Paper Australia this represents around 30 per cent of the pulp mills’ needs, with the remaining 70 per cent coming from plantations and sourced from recycling streams.

This volume of consumption vastly exceeds that used by other mills. The second largest customer for VicForests’ logs from the endangered ash forests is the state government owned Heyfield mill, which consumes 80 000 cubic metres per annum. The remaining 73 000 cubic metres of ash logs allocated by VicForests are distributed amongst multiple small timber mills. The total of 153 000 cubic metres of ash sawlogs supplied to all the state’s timber mills is only a third of the volume of ash forest logs consumed by the Maryvale pulp mills.

Therefore, if we are to transition from native forest logging to 100 per cent sustainable plantation supply, the largest customer of native forest logs needs to be a significant part of that equation. The Nippon Paper group, as owners of Paper Australia and the Maryvale pulp mills, must lead the transition. The repeal of the Forests (Wood Pulp Agreement) Act 1996 is the first necessary step to decouple the Maryvale pulp mills from native forests.

The act is counter to the interests of the state

The Forests (Wood Pulp Agreement) Act 1996 is a very peculiar piece of legislation, because no other business in the Victorian timber and pulp industry has legislation binding the state government to provide fixed log volumes for 34 years. Every other business in the industry is subject to short-term rolling contracts, which are reviewed regularly.

At its heart, the act is a take-or-pay contract. Under section 16 of the act, Paper Australia must purchase 85 per cent of the assigned log volumes as specified under section 14 subsection (2), which from now until the year 2030, the end of the agreement, is 350 000 cubic metres per year. Failure to take delivery of 85 per cent of this volume, or 297 500 cubic metres, results in a penalty applied to Paper Australia at the rate equal to the average pulpwood royalty paid that year.

Take-or-pay contracts are common in the energy and mining sectors. They give the owners of a wind farm or the operator of a rail line the certainty they require in order to make the considerable investment to build the infrastructure.

Take-or-pay contracts are not appropriate for the supply of a natural resource under immense pressure from bushfire and overlogging. This is because it is simply not possible to maintain a constant output as specified in take-or-pay contracts such as the wood pulp agreement, which has an exceptionally blunt and inflexible specification of how much will be delivered. Due to the overlogging and bushfire pressures on the forest area defined in the annexure to the act, VicForests is forced to go further afield and harvest other areas of native forest to meet supply levels to Paper Australia.

The force majeure clause

It is this very impact of bushfire which should have already terminated the ratified agreement under the act.

Section 32 under division D of the act provides for the suspension of both parties' obligations under the ratified agreement. Paper Australia would have no claim for compensation as a result, where either fire damages forest to such an extent that it is impracticable for the state government to comply with supply commitments, or where, and I quote:

having regard to the situation of those forests and of the company's mills and other circumstances relevant to such damage or destruction it is impracticable for the company to obtain under this Agreement supplies of pulpwood of sufficient quantity...

The 2009 Black Saturday fires should have been the trigger for this force majeure clause, as they destroyed much of the forest area specified in the annexure to the act. The government of the day and subsequent governments have failed to enact this clause.

This Parliament must act where the executive has failed and terminate the ratified agreement by passing this bill and repealing the Forests (Wood Pulp Agreement) Act 1996.

The act provides an opportunity for rent-seeking

The Maryvale pulp mills are an adaptable facility. Over the decades the workers and management have expanded and adapted the manufacturing chain to include plantation pulp. They also opened a de-inking plant in 2015, meaning they can recycle 80 000 tonnes of paper from Victoria and interstate

to produce 50 000 tonnes of pulp. They have launched new product lines to meet changing consumer expectations, including 100 per cent recycled copy paper.

The Maryvale pulp mills have a future investment plan which includes the manufacturing of bioplastics in addition to the continuing production of paper and cardboard products.

It should not be basing its market expansion and product diversification plans on the basis of an unrealistic expectation of continuing supply of native forest logs.

The Nippon Paper Group no doubt understands this. Hence, they are wise to the fact that the volumes specified in section 14 subsection (2) of the Forests (Wood Pulp Agreement) Act 1996 cannot, and will not, be fulfilled.

The only reason Nippon Paper Group would seek to perpetuate the illusion that the log volumes specified can be fulfilled is to collect compensation payments from the state government due to the failure of VicForests to deliver the specified volume of logs from inside the forest area as per section 13 subsection (5) of the act.

In other words, Nippon Paper Group is holding out for compensation payments.

You can't make paper or cardboard out of compensation payments.

You can't sustain jobs or support country towns on compensation payments.

But you can boost a profit line with compensation payments.

This practice, whereby a multinational corporation seeks to increase its own wealth while not creating any value, is a classic case of rent-seeking. Rent-seeking results in reduced economic efficiency through poor allocation of resources, reduced actual wealth creation and lost government revenue.

This Parliament must ensure that this rent-seeking opportunity is extinguished immediately. The way to do that is by passing this bill and repealing the Forests (Wood Pulp Agreement) Act 1996.

The Nippon Paper Group has sufficient alternative supplies available in Australia

Victoria has a burgeoning hardwood plantation pulp log sector. From statistics compiled by the Australian Bureau of Agriculture and Resource Economics and Sciences (ABARES), in 2017 Victoria produced nearly 4 million cubic metres of pulp logs from plantations, compared to less than 800 000 cubic metres from native forests: meaning five out of every six pulp logs produced in Victoria came from plantations.

The majority of hardwood plantation pulpwood produced in Victoria is exported following woodchipping. Of the 3.3 million cubic metres of hardwood plantation pulp logs produced in 2015, over 90 per cent of it was exported.

Plantation pulp logs are already a more reliable source than native forests: ABARES forecasts show that hardwood plantation pulp log production in Victoria and South Australia will remain above 2.5 million cubic metres beyond 2035, which is five times greater than the current consumption of native forest pulp logs by the Maryvale pulp mills.

In 2016, according to its sustainability report, the Nippon Paper Group imported nearly 600 000 tonnes of woodchips from Australia to Japan. Some of this volume would have come from plantations that the Nippon Paper Group owns in Western Victoria. I remind the house that woodchip density is about 380 kilograms per cubic metre, hence the tonnage imported to Japan by Nippon paper Group exceeded 1.5 million cubic metres, or roughly three times the pulp log consumption of the Maryvale pulp mills under the legislated agreement and timber sales agreement combined.

Woodchip export markets generally do not have long-term contracts in place with overseas customers. The contracts typically consist of agreements with short term negotiations to determine prices and volumes. No contractual impediments exist to the Nippon Paper Group acquiring these woodchips for use at the Maryvale pulp mills.

Furthermore, if it is cost effective to transport plantation pulp logs from plantations across western Victoria by truck to Portland or Geelong and then ship them to Japan by sea, then it is cost effective to haul them from western Victoria to Maryvale.

By simply using resources within its existing group of companies and subsidiaries, the Nippon Paper Group could easily redirect plantation woodchips to its Maryvale pulp mills and cease its dependency on native forest pulp logs.

The Nippon Paper Group knows it can do this. Indeed, they bought the Maryvale pulp mills off PaperlinX in 2009. In their 2005–06 annual report, the CEO of PaperlinX stated that following the upgrade of its manufacturing lines and facilities, the Maryvale pulp mills would reduce their use of pulp logs and other residue from native forests and move to use 100 per cent plantation-sourced fibre for printing and communications papers by 2017.

Clearly Nippon Paper Group had a different idea, and the transition has not been completed.

I note that timber mills in regional Victoria that currently use native forest timbers could also make the transition to sustainable plantation hardwoods. Their cumulative demand—153 000 cubic metres per year—can be sourced from interstate, specifically Tasmania, which has a private hardwood plantation estate that produced 364 000 tonnes of sawlog, veneer and ply in 2016–17.

The bill

Through the repeal of the Forests (Wood Pulp Agreement) Act 1996, this bill will terminate the legislated agreement ratified by that act.

This bill neutralises the take-or-pay and other compensatory and penalty mechanisms by dissolving all rights, privileges, obligations and liabilities provided by the legislated agreement.

The bill voids any claim by the Nippon Paper Group or its subsidiary, Paper Australia, against the state government, and vice-versa.

The bill repeals an earlier version of the act that remains on the statute book to avoid unintended consequences regarding rights contained in the agreement ratified by that previous act.

Finally, the bill removes the references to the legislated agreement from other acts on the statute book, including the Sustainable Forests (Timber) Act 2004.

This bill is an essential step in completing the transition of the pulp and paper sector away from the declining native forest logging industry and to sustainable supply.

Public policy and investment must assist this transition. The state government must create jobs in sectors that rely on native forests for their ecological services and intrinsic values. We can create thousands of jobs in ecotourism, hospitality, horticulture, viticulture and beekeeping in regional Victoria by protecting our native forests, not woodchipping them for paper production.

The Nippon Paper Group and its subsidiary, Paper Australia, and the workers and managers at Maryvale pulp mills, need to be part of this transition plan.

I commend the bill to the house.

Debate adjourned on motion of Ms PULFORD (Minister for Agriculture).

Debate adjourned until Wednesday, 29 August.