
The Parliament of the Commonwealth of Australia

Discussion paper

**Inquiry into the impact on the agricultural sector of vegetation
and land management policies, regulations and restrictions**

House of Representatives
Standing Committee on Agriculture and Water Resources

April 2019



Contents

| | |
|--------------------------------------------------------------------|-----------|
| Introduction | 5 |
| Referral of the inquiry and context | 6 |
| Discussion paper – purpose and scope | 7 |
| Stakeholder acknowledgement | 7 |
| | |
| Land and vegetation management frameworks | 8 |
| Commonwealth | 8 |
| Environment Protection and Biodiversity Conservation Act 1999..... | 8 |
| Australia’s Native Vegetation Framework..... | 10 |
| Australia’s Biodiversity Conservation Strategy 2010–2030 | 11 |
| States and territories | 11 |
| New South Wales..... | 12 |
| Victoria..... | 13 |
| Queensland..... | 13 |
| Western Australia..... | 14 |
| South Australia..... | 14 |
| Tasmania | 15 |
| Northern Territory..... | 16 |
| Australian Capital Territory..... | 17 |
| Emergency management..... | 17 |
| Bushfire prevention | 17 |
| Firefighting | 18 |
| Committee comment..... | 18 |

| | |
|---------------------------------------------------------------------------------|-----------|
| Previous substantive Commonwealth inquiries..... | 19 |
| 2004 Productivity Commission..... | 19 |
| 2010 Senate inquiry..... | 21 |
| 2016 Productivity Commission..... | 22 |
| Committee comment..... | 25 |
| Evidence to the inquiry..... | 26 |
| Summary of evidence – themes..... | 27 |
| Overall Committee comment..... | 31 |
| Terms of reference..... | 32 |
| Review of implementation of inquiry recommendations..... | 32 |
| Final comment..... | 33 |
| Appendix A – Consultative bodies..... | 34 |
| Appendix B – List of submissions and public hearings..... | 36 |
| Submissions..... | 36 |
| Public Hearings..... | 38 |
| Appendix C – Commonwealth, state and local government interactions..... | 39 |
| Appendix D – Commonwealth, State and Territory emergency frameworks..... | 40 |



Membership of the Committee

Chair Mr Rick Wilson MP

Deputy Chair Ms Meryl Swanson MP

Members Hon Dr David Gillespie MP

Ms Justine Keay MP

Mr Matt Keogh MP

Mrs Nola Marino MP

Mr Tony Pasin MP

Mr Rowan Ramsey MP

Introduction

- 1.1 As a result of the separation of legislative responsibilities under section 51 of the Australian Constitution, responsibility for the legislative and regulatory frameworks relating to vegetation and land management rests largely with state and territory governments and with local councils.
- 1.2 After over a century of uncontrolled land-clearing since European settlement, state and territory governments introduced, and progressively strengthened, legislation to control the clearing of native vegetation on private land.¹
- 1.3 Vegetation and land management is the process of looking after all plant species, including trees, shrubs, herbs and grasses, indigenous to a particular area or habitat for the purpose of improving and protecting health and resilience of that area, protecting fauna and promoting biodiversity. Predominantly, vegetation and land management practices are used by landholders to improve agricultural productivity, sustainability and ultimately support stronger economic growth.²
- 1.4 Methods of management vary, ranging from machine clearing, such as tree lopping, to natural clearing through the use of controlled fires³, and chemical clearing by poisoning invasive species.⁴
- 1.5 Due to the legislative separation in the Constitution, the Commonwealth's main responsibility is provided for under the *Environment Protection and Biodiversity Conservation Act 1999 (Cwlth)* (EPBC Act). This empowers the Commonwealth to regulate protection of matters of national

¹ Productivity Commission 2004, *Impacts of Native Vegetation and Biodiversity Regulations*, Australian Government, p. xxiii.

² United Nations Convention to Combat Desertification 2016, 'Sustainable land management technologies: vegetation management', *Knowledge Hub*, United Nations, accessed 8 February 2019, <https://knowledge.unccd.int/knowledge-products-and-pillars/best-practices-sustainable-land-management/identifying-slm-1>.

³ Throughout submissions and evidence to the inquiry, using fire to reduce fuel-loads is referred to as controlled, fuel-reduction and hazard-reduction burning. Some submitters also incorrectly referred to this type of reduction activity as back-burning (see paragraph 1.114). This paper may use multiple terms, however, with the exception of back-burning, they are all intended to reflect the use of cool-burn fuel reduction.

⁴ Northern Territory Government 2016, 'Types of control methods: Land management methods', *Northern Territory Government information and services*, NT Government, accessed 8 February 2019, <https://nt.gov.au/environment/weeds/how-to-manage-weeds/types-of-control-methods/land-management-methods>.

environmental significance, including nationally threatened species, wetlands and ecological communities.⁵

- 1.6 The Commonwealth also has coordination and advisory roles via a number of consultative bodies across state and territory jurisdictions (as outlined in [Appendix A](#)), however none of these bodies have a policy mandate regarding national land and vegetation management.

Referral of the inquiry and context

- 1.7 The inquiry was initiated when, on 6 December 2018, the Minister for Agriculture and Water Resources, the Hon. David Littleproud MP, asked the Committee to inquire into and report on the impact on the agricultural sector of vegetation and land management policies, regulations and restrictions, with particular regard to:
- Past and current practices of land and vegetation management by the agricultural sector and regional industries;
 - The science behind activities such as back burning, clearing and rehabilitation;
 - The economic impact of vegetation and land management policies, regulations and restrictions;
 - The impact of severe fires on the agricultural landscape, agricultural production and industry in regional, rural and remote areas;
 - Factors that contribute to fire risk in regional, rural and remote areas; and
 - The role the agricultural sector has in working with emergency services and forestry management officials in managing fire risk.
- 1.8 At the outset, the Committee recognised that there were factors that would affect its capacity to comprehensively address the inquiry terms of reference, and progress the inquiry to completion.
- 1.9 Firstly, the Committee considered that the broad scope of the inquiry topic, and complexity of the issues set out in the terms of reference, would involve an extensive program of interstate public hearings. The referral of the inquiry on the final sitting day of 2018, with an indicated end date for the 45th Parliament in the first half of 2019, would not allow sufficient time to support these activities.

⁵ *Environmental Protection and Biodiversity Conservation Act 1999 (Cwlth).*

-
- 1.10 Another factor relating to the terms of reference was the extent to which a House of Representatives committee, with a focus on matters within Commonwealth jurisdiction, could inquire into the specific issues when responsibility for the legislative and regulatory frameworks rests almost exclusively with state and territory governments.
- 1.11 A third factor, which emerged soon after the inquiry was launched, and which influenced stakeholder engagement, was a focus in the media on land and recent vegetation management practices in Queensland and bushfire risk, particularly in the wake of destructive bushfires in that state which had occurred in late 2018.

Discussion paper – purpose and scope

- 1.12 In view of the factors outlined above, and in particular recognising that the inquiry could not be completed during the 45th Parliament, the Committee agreed to prepare this discussion paper.
- 1.13 The purpose of the paper is firstly to acknowledge the contributions of submitters and correspondents to the inquiry, and to provide a summary of the main themes emerging from evidence. In addition, the paper suggests a review of the inquiry's terms of reference should the issue of land and vegetation management practices be referred again in the 46th Parliament, and identifies topics for possible further investigation by a future committee in this circumstance.
- 1.14 The paper covers four key areas:
- A brief overview of current environment and biodiversity, and emergency management legislative and regulatory frameworks that exists at a Commonwealth and state and territory level;
 - A review of the key findings from previous inquiries undertaken at the Commonwealth level related to vegetation and land management regulation (or regulation of agriculture more generally), and other substantively relevant matters (e.g. bushfire inquiries etc)
 - The main themes identified in the evidence submitted to the current inquiry; and
 - Suggestions for narrowing the scope of the inquiry to address matters that lie within Commonwealth jurisdictional responsibility, and possible inquiries into related topics for future consideration.

Stakeholder acknowledgement

- 1.15 The Committee would like to thank all that contributed to the inquiry. A total of 51 submissions (listed at [Appendix B](#)) were received from various

stakeholders, including government agencies, non-government organisations, individual landholders and other interested parties. The Committee also held two public hearings in Canberra (details also at [Appendix B](#)).

- 1.16 In particular, the Committee thanks those submitters and correspondents, landholders and rural firefighters, who shared their experiences of dealing with significant bushfire events. The Committee understands that impact of natural disasters is substantial, even catastrophic, to individuals, to livelihoods and to the environment alike.

Land and vegetation management frameworks

Commonwealth

Environment Protection and Biodiversity Conservation Act 1999

- 1.17 While states and territories have the primary responsibility for environmental protection (through land and vegetation management regulation and fauna protection), the Commonwealth has responsibility for matters of national environmental significance under the *Environment Protection and Biodiversity Conservation Act 1999 (Cwlth)* (EPBC Act).⁶
- 1.18 The Department of Environment and Energy administers the EPBC Act, providing a legal framework to protect and manage nationally and internationally important flora, fauna, ecological communities and heritage sites – defined as matters of national environmental significance⁷, which include:
- world heritage properties;
 - national heritage places;
 - wetlands of international importance (often called 'Ramsar' for the Ramsar Convention);

⁶ Department of Environment and Energy, 'About the EPBC Act', accessed 7 March 2019, <http://www.environment.gov.au/epbc/about>.

⁷ Department of Environment and Energy, 'Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act)', accessed 7 March 2019, <http://www.environment.gov.au/epbc>.

-
- nationally threatened species and ecological communities;
 - migratory species;
 - Commonwealth marine areas;
 - the Great Barrier Reef Marine Park;
 - nuclear actions (including uranium mining); and
 - a water resource, in relation to coal seam gas development and large coal mining development⁸.
- 1.19 The EPBC Act potentially affects numerous government, industry and individual stakeholders, but only when proposed actions are likely to have a significant impact on a matter of national environmental significance.
- 1.20 While the Act includes a mechanism to ensure (as far as possible) that the Commonwealth, and state and territory governments do not duplicate their environmental protection functions, it is the responsibility of landholders to determine whether proposed actions are subject to state and territory and local government legislative and regulatory requirements (discussed in more detail later), and whether they also require approval under the EPBC Act.
- 1.21 Commonwealth, state and territory governments may enter into bilateral agreements, where the state or territory is responsible for the relevant assessment of impacts of any activities on EPBC Act matters, as well as their own jurisdictional requirements. To that end, the Commonwealth will not intervene unless the relevant state or territory assessment and conditions are determined as ‘egregiously deficient’.⁹
- 1.22 Importantly, with regard to the integration of these frameworks, it should be noted that the EPBC Act does not empower the Federal Minister to act as a general ‘court of appeal’ on any state or local government decision affecting the environment. State and territory governments have the ultimate authority on land and vegetation management *except* where the EPBC Act applies.¹⁰

⁸ Department of Environment and Energy, ‘What is protected under the EPBC Act?’, accessed 7 March 2019, <http://www.environment.gov.au/epbc/what-is-protected>.

⁹ Mr James Tregurtha, Environment Standards Division, Department of the Environment and Energy, *Committee Hansard*, Canberra, 14 February 2019, p. 3.

¹⁰ Department of the Environment and Energy, Frequently asked questions, ‘Can the Australian Government environment minister overturn a state decision?’, accessed 12 March 2019, <https://www.environment.gov.au/epbc/publications/factsheet-epbc-act-frequently-asked-questions>.

Australia's Native Vegetation Framework

- 1.23 While Commonwealth legislative authority is bound primarily to environmental protection through the EPBC Act, the Commonwealth government does have a limited coordination and streamlining responsibility, alongside state and territory, to harmonise vegetation and biodiversity regulation as much as possible.
- 1.24 In 2012, the then Council of Australian Governments (COAG) Standing Council on Environment and Water, released its *Australia's Native Vegetation Framework*, to guide national policy on sustainable native vegetation management. The framework recognises that native vegetation is crucial for a healthy environment, supports economic growth and productivity, as well as biodiversity and is embedded within Australian cultural identity.
- 1.25 By focusing on five national goals, the framework aims to provide information on how governments, the private sector and community can work together to improve native vegetation health, as well as monitor and evaluate progress.¹¹ These goals are:
- **Goal 1** – Increase the national extent and connectivity of native vegetation.
 - **Goal 2** – Maintain and improve the condition and function of native vegetation.
 - **Goal 3** – Maximise the native vegetation benefits of ecosystem service markets.
 - **Goal 4** – Build capacity to understand, value and manage native vegetation.
 - **Goal 5** – Advance the engagement and inclusion of Indigenous peoples in management of native vegetation.¹²

¹¹ COAG Standing Council on Environment and Water, *Australia's Native Vegetation Framework*, p. iii, accessed 7 March 2019, <https://www.pc.gov.au/inquiries/completed/native-vegetation/submissions/190/sub190.pdf>.

¹² COAG Standing Council on Environment and Water, *Australia's Native Vegetation Framework*, p. vii, accessed 7 March 2019, <https://www.pc.gov.au/inquiries/completed/native-vegetation/submissions/190/sub190.pdf>.

Australia's Biodiversity Conservation Strategy 2010–2030

- 1.26 Through the Department of Environment and Energy, the Commonwealth has responsibility for *Australia's Biodiversity Conservation Strategy 2010–2030*. The strategy functions as a policy 'umbrella' over other more specific national frameworks. These include:
- Australia's Native Vegetation Framework
 - The Australian Weeds Strategy
 - Australian Pest Animal Strategy
 - Australia's Strategy for the National Reserve System 2009–2030
- 1.27 The strategy acts as a guiding framework for biodiversity conservation, attempting to bring common direction to the diverse mix of Commonwealth, state, territory and local government approaches, as well as those being undertaken by the private sector.¹³
- 1.28 The strategy was reviewed and revised in 2017, with the revised version released in draft and submissions invited. To date there is no indicated final response from government.

States and territories

- 1.29 In most state and territory jurisdictions there is a range of legislation that can affect native vegetation clearing and management on private land, including:
- soil conservation;
 - environmental protection;
 - coastal protection;
 - water and catchment management;
 - fisheries;
 - heritage;
 - national parks (especially where private land abuts public land);
and
 - weeds and vermin.

¹³ Department of the Environment and Energy, 'Australia's Biodiversity Conservation Strategy 2010–2030', accessed 7 March 2019, <http://www.environment.gov.au/biodiversity/publications/australias-biodiversity-conservation-strategy>.

- 1.30 State and territory native vegetation and biodiversity legislation typically sets out (on a jurisdiction-wide basis) when permits or approvals must be obtained by landholders intending to clear native vegetation. In all jurisdictions, the onus for determining whether approval is required to clear or modify native vegetation lies with the landholder.
- 1.31 In most jurisdictions, state and territory government agencies provide considerable information on the necessary requirements to comply with legislative regimes. However, the demands placed on landholders to understand the operation and interactions of these regimes are often significant. Particularly when determining which, if any, regime applies to proposed activities, be that local government planning orders, state and territory legislation (threatened species or native vegetation controls) or the EPBC Act. A diagram produced by the Productivity Commission, summarising the interactions and obligations, is included at [Appendix C](#).
- 1.32 It is of note that there is a clear focus on land clearing in vegetation management legislation in a number of states and territories. This is reflective of the historical practice of land clearing for agricultural purposes, which has drawn criticism from some submitters to this inquiry (highlighted later in this paper). The balance between land clearing approval and environmental assessments and management are an inconsistent characteristic of the different frameworks in each state and territory.
- 1.33 The following section presents summaries of publicly available information provided by state and territory departments that administer the relevant legislative or regulatory land and vegetation management responsibilities, or information taken from submissions to this inquiry. All authority and detail for the relevant rights, obligations and responsibilities under those regimes is empowered by the relevant Acts referred to in this summary. For more complete (and potentially up to date) information, the Committee encourages interested readers to refer to the relevant legislation and departmental website.

New South Wales

- 1.34 NSW environmental legislation and resultant frameworks are administered by the Office of Environment and Heritage, Local Land Services, the Biodiversity Conservation Trust, and the Department of Planning and Environment. These include:
- *Biodiversity Conservation Act 2016*;
 - *Local Land Services Act 2013*; and
 - *State Environmental Planning Policies*.

- 1.35 The *Local Land Services Act 2013* provides a framework for clearing of native vegetation that does not require development consent (generally associated with extensive agriculture) on rural land in NSW. Landholders who intend to clear native vegetation on rural land and who do not meet the requirements of Allowable Activities, or the *Land Management (Native Vegetation) Code 2018* of the *Local Land Services Act 2013*, may apply for a native vegetation clearing approval.¹⁴

Victoria

- 1.36 Overarching land and vegetation management legislation in Victoria is the *Planning and Environment Act 1987*, which is administered by local government and the Minister for Planning (as policy responsibility).
- 1.37 From this Act stems the native vegetation removal regulations as the rules governing the removal of native vegetation in Victoria. These regulations are generally implemented through all Victorian local government planning schemes, in accordance with the Guidelines for the removal, destruction or lopping of native vegetation. The regulations require landholders to obtain a planning permit to remove, destroy or lop native vegetation.¹⁵
- 1.38 The *Flora and Fauna Guarantee Act 1988* aims to ensure that Victoria's flora and fauna can 'survive, flourish and retain their potential for evolutionary developments in the wild'.¹⁶

Queensland

- 1.39 The *Vegetation Management Act 1999* (VMA) regulates vegetation management across Queensland, and is administered by the Queensland Department of Natural Resources, Mines and Energy (DNRME). The

¹⁴ New South Wales Government, 'Approval for Clearing native vegetation under Division 6 and the Native Vegetation Panel', *Local Land Services, Sustainable land management, fact Sheets*, accessed 6 March 2019, <https://www.lls.nsw.gov.au/sustainable-land-management/facts-sheets2/approval-for-clearing-native-vegetation-under-division-6-and-the-native-vegetation-panel>.

¹⁵ Victoria State Government 2017 '2.5 Compliance and enforcement strategy', *Environment Land, Water and Planning Compliance and enforcement strategy Native vegetation removal regulations*, accessed 6 March 2019, https://www.environment.vic.gov.au/_data/assets/pdf_file/0015/91221/Compliance-and-enforcement-strategy-Native-vegetation-removal-regulations.pdf.

¹⁶ Victoria State Government 2018 'The Flora and Fauna Guarantee Act 1988' *Environment Land, Water and Planning, Conserving threatened species*, accessed 6 March 2019, <https://www.environment.vic.gov.au/conserving-threatened-species/flora-and-fauna-guarantee-act-1988>.

VMA provides for a number of options to clear vegetation for the purpose of environmental and social benefits, including, but not limited to, exempt clearing, self-assessed clearing for development purposes, and clearing approved by DNRME.¹⁷

- 1.40 The Qld vegetation management framework uses land tenure and the Regulated Vegetation Management Map to determine how vegetation is regulated. Areas are shown on the Regulated Vegetation Management Map as categories identified according to their classification for management.¹⁸ Some categories have more restricted clearing requirements.
- 1.41 Landholders may also opt to obtain a Property Map of Assessable Vegetation or PMAV, which shows vegetation categories at a property scale. The VMA contains a provision that ensures PMAVs override the Regulated Vegetation Management Map.¹⁹
- 1.42 Other legislation can affect land and vegetation management in Queensland, namely the *Planning Act 2016* and *Water Act 2000*.

Western Australia

- 1.43 Native vegetation management is regulated in Western Australia under the *Soil and Land Conservation Act 1945*, in conjunction with the *Conservation and Land Management Act 1984*, *Environmental Protection Act 1986*, and the *Environmental Protection (Clearing of Native Vegetation) Regulations 2004*.
- 1.44 Clearing native vegetation is an offence, unless done under a clearing permit granted by the Department of Water and Environmental Regulation, or the clearing is for an exempt purpose, such as low-impact, day-to-day activities related to prescribed activities.²⁰

South Australia

- 1.45 The *Native Vegetation Act 1991* and the *Native Vegetation Regulations 2017* are the main pieces of legislation related to managing native vegetation on private and public land in South Australia.

¹⁷ Queensland Government, *Submission 32*, p. 4.

¹⁸ Queensland Government, *Submission 32*, p. 3.

¹⁹ Queensland Government, *Submission 32*, p. 3.

²⁰ Western Australia Government, 'Clearing Permits' *Department of Water and Environmental Regulation, Environment Work*, accessed 6 March 2019, <https://www.der.wa.gov.au/our-work/clearing-permits>.

-
- 1.46 The key aim of the legislation and regulations is the conservation, management and regeneration of native vegetation. The legislation also seeks to ensure personal and public safety.²¹
- 1.47 The Act requires property managers, in matters not covered by exemption, to submit proposals to the Native Vegetation Council seeking approval for the clearance of native vegetation.
- 1.48 The Council, established as an independent statutory body under the Act, has responsibility for overseeing all issues concerned with vegetation, including providing advice and making decisions about the removal and re-establishment of native vegetation in line with the Act.
- 1.49 South Australia is the only state or territory that has a body such as this, noting that the Council has responsibility for managing funding for environmental projects, research and other heritage and conservation measures.²²

Tasmania

- 1.50 The Tasmanian *Forest Practices Act 1985* provides that non-commercial clearing of forests for the purposes of agriculture are subject to the same environmental regulation applying to the commercial harvesting and clearing of forests. Following a bilateral agreement with the Commonwealth in 2003, the Tasmanian Government announced its intention to strengthen regulation of non-forest communities and ‘vulnerable’ forest communities.
- 1.51 Land clearing controls apply to all land in Tasmania, both public and private. They apply to native forest through the *Policy for Maintaining a Permanent Native Forest Estate (30 June 2017)* which is implemented through the *Forest Practices Act 1985*. There are also controls on clearance and conversion of threatened native vegetation communities.
- 1.52 All such clearing and conversion operations must be done under a forest practices plan that has been certified by the Forest Practices Authority. According to the *Forest Practices Regulations 2017* there are some prescribed circumstances where a forest practices plan may not be required.

²¹ Government of South Australia, ‘Legislation and administration’ *Department of Environment and Water*, *Native vegetation*, accessed 6 March 2019, <https://www.environment.sa.gov.au/topics/native-vegetation/legislation-administration>.

²² Government of South Australia, ‘Native Vegetation Council’, *Department of Environment and Water*, accessed 6 March 2019, <https://www.environment.sa.gov.au/about-us/boards-and-committees/native-vegetation-council>

- 1.53 Under the Policy, broad-scale clearing and conversion of native forest on public or private land is not permitted from 1 July 2017. Broad scale clearance and conversion means clearance and conversion of more than 20 hectares.²³
- 1.54 Tasmania's biodiversity objectives are contained in the *Threatened Species Protection Act 1995*, including:
- to ensure the survival of native flora and fauna; and
 - to encourage the conserving of native flora and fauna through cooperative community endeavours.

Northern Territory

- 1.55 Native vegetation clearing controls for freehold and crown land are provided for under the Northern Territory's *Planning Act 1999*, which requires that landholders obtain a permit to clear native vegetation. Pastoral leases are subject to clearing controls under the *Pastoral Land Act 1992*.
- 1.56 Clearing of native vegetation requires application, assessment, and issue of a permit, apart from some minor exceptions set out in the relevant legislation for zoned, unzoned and pastoral land.
- 1.57 Assessments include consideration of all of potential impacts and ways of reducing impacts. Applications must provide information about all these issues. The application and assessment processes may therefore be quite demanding, especially for larger applications where risks are correspondingly increased.²⁴
- 1.58 The Northern Territory Government identifies that 'The Territory has to date avoided much of the poor land clearing practices that have degraded the southern environments, in some instances irreversibly'.²⁵ Compliance with controls is maintained through regular monitoring, including aerial and satellite imagery analysis.

²³ Tasmanian Government, 'Where in Tasmania do land clearing controls apply?' *Forest Practices Authority, Information on land clearing controls in Tasmania*, accessed 6 March 2019, https://www.fpa.tas.gov.au/_data/assets/pdf_file/0018/110286/Land_clearing_information_sheet.pdf.

²⁴ Northern Territory Government, 'Relevant legislation', *Land Clearing Guidelines, Northern Territory Planning Scheme*, accessed 6 March 2019, https://nt.gov.au/_data/assets/pdf_file/0017/262151/nt-land-clearing-guidelines.pdf.

²⁵ Northern Territory Government, 'Land clearing guidelines and management plans', *Department of Environment and Natural Resources*, accessed 6 March 2019, <https://denr.nt.gov.au/land-resource-management/rangelands/guidelines-and-management-plans/land-clearing-guidelines-and-management-plans>.

Australian Capital Territory

- 1.59 The *Land (Planning and Environment) Act 1991* establishes the Territory Plan, which sets out permit requirements for removing remnant native vegetation in the ACT. Since 1991, rural lessees have been required to enter into 5-year land management agreements with Environment ACT.
- 1.60 The *ACT Nature Conservation Act 2014* provides for the establishment of the Nature Conservation Strategy 2013–23, which communicates conservation objectives and strategies for the ACT. These include:
- protecting, conserving, enhancing, restoring and improving nature conservation, including;
 - native species of animals plants and their habitats; and
 - ecosystems, and ecosystem processes and functions.

Emergency management

- 1.61 State and territory governments are responsible for managing emergency responses in their own jurisdictions. See [Appendix D](#) for a list of the relevant legislation and management plans for each state and territory.
- 1.62 The Commonwealth government coordinates physical and financial support to communities or individuals affected by emergencies and disasters, including bushfires, as they happen or after the fact.²⁶
- 1.63 Emergency Management Australia, a division of the Department of Home Affairs, is responsible for the Commonwealth coordination role in emergency management and ‘collaborates with and assists the states and territories to improve the overall resilience of Australia’²⁷ in relation to emergency mitigation and preparedness.

Bushfire prevention

- 1.64 State and territory governments have primary responsibility for bushfire prevention activities. The EPBC Act does not regulate bushfire prevention measures, except in circumstances where they are likely to impact on matters of national significance. Exempt activities include those approved

²⁶ Department of Home Affairs, ‘Emergency management’, accessed 7 February 2019, <https://www.homeaffairs.gov.au/about-us/our-portfolios/emergency-management/about-emergency-management>.

²⁷ Mr Robert Cameron, Director General, Emergency Management Australia, *Committee Hansard*, Canberra, 21 February 2019, p. 1.

under Commonwealth or state/territory laws or lawful land uses occurring before July 2000. Lawful land uses that may fall within this category include:

- routine grazing activities, including cyclical activities such as periodic grazing;
- continuing cropping and crop rotation;
- slashing to maintain existing firebreaks;
- maintenance of existing dams, roads, fences etc; and
- continuing an existing weed control program.²⁸

Firefighting

- 1.65 As above, the EPBC Act does not generally restrict bushfire emergencies management and responses, nor does it regulate measures taken to fight fires.
- 1.66 However, actions undertaken during a fire emergency, such as back-burning or emergency clearing, may have an impact on national protected matters, affecting a protected habitat. The Department of Environment and Energy highlights that these activities, if undertaken only in a genuine emergency, are unlikely to attract penalties. Identification of nationally protected matters is encouraged as part of development of bushfire management plans and mapping.²⁹

Committee comment

- 1.67 The information presented above is a snapshot only, but illustrates the complexity of land and vegetation management frameworks, as well as bushfire emergency management and response frameworks, that exist across Australia.
- 1.68 In relation to land and vegetation management, landholders are required to determine which, if any, legislative requirements apply to proposed activity affecting their land, including local government planning orders,

²⁸ Department of the Environment and Energy, 'Prior authorisation and continuing use exemptions – Sections 43A and 43B', accessed 7 March 2019, <http://www.environment.gov.au/resource/prior-authorisation-and-continuing-use-exemptions-sections-43a-and-43b>.

²⁹ Department of the Environment and Energy, 'Bushfire management and national environment law', accessed 7 March 2019, <https://www.environment.gov.au/epbc/publications/factsheet-bushfire-management-and-national-environment-law>.

-
- state and territory legislation (threatened species or native vegetation controls) or the EPBC Act.
- 1.69 Complex regulatory regimes increase the costs to landholders in terms of the time and effort needed to understand the regulations. Uncertainty as to how regulations apply may also result in non-compliance due to incorrect interpretation of restrictions that apply.
- 1.70 The Committee notes evidence received from stakeholders identifying the complexity of these frameworks at an individual level (outlined later in this paper). The burden falls squarely on farmers, developers and landholders to comply with these multiple tiers of regulation.
- 1.71 It is likely that this complexity and resulting confusion may result in sub-optimal land management practices, potentially decreasing productivity, either due to deliberate avoidance of assessment requirements or reluctance to take action due to the burden of compliance.
- 1.72 The Committee notes again that the Commonwealth responsibility in this domain is very limited, but notes the cooperative coordination role that certain COAG mechanisms (listed at [Appendix A](#)) have facilitated.
- 1.73 The Committee also notes that over the years there has been a number of inquiries conducted at all levels of government on land and vegetation management regulation, as well as multiple reviews of responses to major bushfire events. The following section highlights key finding from of a number of these inquiries.

Previous substantive Commonwealth inquiries

2004 Productivity Commission

- 1.74 The Productivity Commission held an inquiry into the impacts of native vegetation and biodiversity regulations on landholders in 2004. This inquiry was primarily triggered by the introduction of the EPBC Act and the varying state of state and territory regimes.
- 1.75 The Commission concluded that state and territory regulatory regimes, as well as the EPBC Act, were not particularly effective at achieving environmental goals and in some cases were counter-productive. Additionally, a 'heavy reliance on regulating the clearance of native

vegetation on private rural land... has imposed substantial costs on many landholders who have retained native vegetation on their properties'.³⁰

- 1.76 Numerous concerns were highlighted during the inquiry, noting that restrictions placed on clearing native vegetation were 'compromised by a lack of clearly-specified objectives'.³¹ Furthermore, that the burden of compliance resting with landholders often seemed excessive, with information needing to be sourced from several government departments, resulting in inconsistent advice and permits 'not necessarily satisfy[ing all] agencies'.³²
- 1.77 The Commission made several recommendations, including:
- that costs to landholders could be lowered by clarifying landholder and community responsibilities;
 - regime effectiveness be increased by better regulatory practices that promoted transparency and accountability;
 - policies should be better targeted and promoted to achieve clearly-defined environmental outcomes; and
 - greater regulatory flexibility 'to allow variation in requirements at the local level'.³³
- 1.78 In response, the Australian Government agreed to the Commission's recommendations³⁴ and in 2006, following an examination of state and territory regimes relating to native vegetation and biodiversity, COAG agreed to reduce the regulatory burden across all levels of government, including addressing areas of jurisdictional overlap.³⁵

³⁰ Productivity Commission 2004, *Impacts of Native Vegetation and Biodiversity Regulations*, Australian Government, p. xxiii.

³¹ Productivity Commission 2004, *Impacts of Native Vegetation and Biodiversity Regulations*, Australian Government, p. xxii.

³² Productivity Commission 2004, *Impacts of Native Vegetation and Biodiversity Regulations*, Australian Government, p. xxviii.

³³ Productivity Commission 2004, *Impacts of Native Vegetation and Biodiversity Regulations*, Australian Government, pp. xxii–xlvi.

³⁴ Costello, P (The Treasurer) 2004, *Government welcomes native vegetation and biodiversity regulation report*, media release, 10 August, The Treasury, Canberra, accessed 25 February 2019, http://ministers.treasury.gov.au/Ministers/phc/Content/publications/pub_downloads/066_Government_response.rtf.

³⁵ Costello, P (The Treasurer) 2004, *Government welcomes native vegetation and biodiversity regulation report*, media release, 10 August, The Treasury, Canberra, accessed 25 February 2019, http://ministers.treasury.gov.au/Ministers/phc/Content/publications/pub_downloads/066_Government_response.rtf.

2010 Senate inquiry

- 1.79 In 2010, the Senate Finance and Public Administration References Committee conducted an inquiry into the impact of native vegetation laws on landholders. This inquiry found that the evidence received was not dissimilar to the Productive Commission 2004 inquiry.³⁶ Moreover, regulatory regimes continued to be ‘too rigid and in some instances, counterproductive’.³⁷
- 1.80 The Senate committee cited instances of inflexible application and compliance processes, a lack of consultation and dismissal of local knowledge, as evidence provided by stakeholders. Further emphasising that the relationship between landholders and government agencies is vital to improving environmental outcomes.³⁸
- 1.81 Believing that a more cooperative approach ‘would be in the best interests’ of all stakeholders to achieve critical land use regulation and environmental outcomes, as well as maintaining sustainable and secure food production,³⁹ the Senate committee suggested ‘steps be taken to rectify the deteriorating relationship between landholders and respective bureaucracies’.⁴⁰

³⁶ Senate Standing Committee on Finance and Public References Committee 2010, *Native Vegetation Laws, Greenhouse Gas Abatement and Climate Change Measures*, Commonwealth of Australia, p. 47, accessed 25 February 2019, https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Finance_and_Public_Administration/Completed_inquiries/2008-10/climate_change/report/index.

³⁷ Senate Standing Committee on Finance and Public References Committee 2010, *Native Vegetation Laws, Greenhouse Gas Abatement and Climate Change Measures*, Commonwealth of Australia, pp. 47–48, accessed 25 February 2019, https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Finance_and_Public_Administration/Completed_inquiries/2008-10/climate_change/report/index.

³⁸ Senate Standing Committee on Finance and Public References Committee 2010, *Native Vegetation Laws, Greenhouse Gas Abatement and Climate Change Measures*, Commonwealth of Australia, p. 62, accessed 25 February 2019, https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Finance_and_Public_Administration/Completed_inquiries/2008-10/climate_change/report/index.

³⁹ Senate Standing Committee on Finance and Public References Committee 2010, *Native Vegetation Laws, Greenhouse Gas Abatement and Climate Change Measures*, Commonwealth of Australia, p. 82, accessed 25 February 2019, https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Finance_and_Public_Administration/Completed_inquiries/2008-10/climate_change/report/index.

⁴⁰ Senate Standing Committee on Finance and Public References Committee 2010, *Native Vegetation Laws, Greenhouse Gas Abatement and Climate Change Measures*, Commonwealth of Australia, p. 62, accessed 25 February 2019, https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Finance_and_Public_Administration/Completed_inquiries/2008-10/climate_change/report/index.

- 1.82 As such, the Senate committee recommended that COAG re-examine native vegetation laws, including the impact of various state and territory regimes, and initiate a review into best practice land stewardship to inform future policy and regulation.⁴¹
- 1.83 The 2012 Government Response acknowledged its commitment to promoting sustainable land management and outcomes through legislation, policies, programs and consultative forums. However, the response noted that management of native vegetation rests primarily with state and territory governments. Furthermore, stating that it had conducted a review of the EPBC Act and announcing reforms to the Act in 2011, setting out a new national approach to protecting the environment and biodiversity, as well as improved cooperation between governments, industry and the community.
- 1.84 The Government Response also noted the release of the Government's consultation draft on its biodiversity policy, and the Australian Bureau of Agricultural and Resource Economics and Sciences (ABARES) survey of land managers to increase understanding of the various management regimes and barriers impacting vegetation management decisions.⁴²

2016 Productivity Commission

- 1.85 The Productivity Commission's inquiry, and subsequent report in 2016, into the regulation of Australian agriculture, highlighted several areas of concern and identified areas for reducing regulatory burdens, including those that negatively impacted productivity and competition.⁴³
- 1.86 The Commission noted that farmers and farm businesses were confounded by burdensome and complex regulatory responsibilities.⁴⁴ A lack of coordination and overlap between government jurisdictions, as

⁴¹ Senate Standing Committee on Finance and Public References Committee 2010, *Native Vegetation Laws, Greenhouse Gas Abatement and Climate Change Measures*, Commonwealth of Australia, pp. 84–85, accessed 25 February 2019, https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Finance_and_Public_Administration/Completed_inquiries/2008-10/climate_change/report/index.

⁴² Australian Government 2012, *Australian Government Response to the Senate Committee on Finance and Public Administration – Native Vegetation Laws, Greenhouse Gas Abatement and Climate Change Measures*, pp. 2–4, accessed 4 March 2019, https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Finance_and_Public_Administration/Completed_inquiries/2008-10/climate_change/index.

⁴³ Productivity Commission 2014, *Regulation of Australian Agriculture*, Australian Government, p. v.

⁴⁴ Productivity Commission 2014, *Regulation of Australian Agriculture*, Australian Government, p. 2.

well as duplicate and inconsistent regulatory frameworks make it difficult for farmers to understand their obligations and increased their costs.⁴⁵

- 1.87 As a result, the Commission identified a number of areas for reform, including native vegetation and biodiversity conservation, animal welfare and road access arrangements, recommending that regulatory burdens could be reduced by:
- improving consultation and engagement practices to support landholders in understanding environmental regulations, as well as reducing duplicate information gathering;
 - better coordinating agencies and governments actions; and
 - ‘ensuring that good regulatory impact assessment processes are used as an analytical tool to support quality regulation making, not as a legitimising tool or compliance exercise’.⁴⁶
- 1.88 In response (2019), the Government welcomed the Commission’s report, but reiterated that primary regulatory responsibilities lie with state and territory governments. However, the Government noted its commitment to ‘work closely with [the states and territories] to improve regulation, particularly where national action is preferable or required’.⁴⁷
- 1.89 Recommendations included advising that all levels of government should review their engagement with landholders on environmental regulation to better assist and facilitate understanding of frameworks, as well as build capability and trust in administrative organisations.⁴⁸
- 1.90 The Government’s response highlighted the Department of the Environment and Energy’s 2018 review of the EPBC Act’s effect on the agricultural sector, as well as the department’s work with stakeholders to ‘develop targeted guidance material to improve clarity, engagement and understanding of regulatory requirements’.⁴⁹ The review aimed to identify

⁴⁵ Productivity Commission 2014, *Regulation of Australian Agriculture*, Australian Government, p. 11.

⁴⁶ Productivity Commission 2014, *Regulation of Australian Agriculture*, Australian Government, p. 2.

⁴⁷ Australian Government 2019, *Productivity Commission inquiry into Regulation of Australian Agriculture: Australian Government Response*, p. 2, accessed 4 March 2019, <https://www.pc.gov.au/inquiries/completed/agriculture/agriculture-government-response.pdf>.

⁴⁸ Productivity Commission 2014, *Regulation of Australian Agriculture*, Australian Government, p. 36.

⁴⁹ Australian Government 2019, *Productivity Commission inquiry into Regulation of Australian Agriculture: Australian Government Response*, p. 6, accessed 4 March 2019,

practical solutions to assist farmers in meeting their responsibilities under the Act, and Government is currently considering the recommendations.⁵⁰

Bushfire inquiries

- 1.91 Regarding the bushfire aspects of this inquiry's terms of reference, since 1939 there have been over 40 state, territory, Commonwealth or independent inquiries into Australian bushfires or bushfire preparedness (excluding coronial inquiries) – all exploring common themes.⁵¹ Focus, to varying degrees, has rested on:
- knowledge and education;
 - development planning and building design;
 - fuel reduction burning;
 - the role of volunteer firefighters and emergency warning systems;
 - response and recovery processes; and
 - effective allocation of resources.
- 1.92 A number of inquiries concluded that there was both scope and need for more effective fuel reduction burning to protect native vegetation and infrastructure. However, the 2002–03 Victorian inquiry noted that this is 'not necessarily about burning substantially more land, but rather, burning smarter'.⁵²
- 1.93 Following its 2004 inquiry into bushfire mitigation and management, COAG noted that 'bushfires have a fundamental and irreplaceable role in sustaining...Australia's natural ecosystems...and are a valuable tool for achieving land management objectives'.⁵³ However, if fires are too frequent/infrequent, severe/mild or mistimed they can lead to the erosion

<https://www.pc.gov.au/inquiries/completed/agriculture/agriculture-government-response.pdf>.

⁵⁰ Department of Environment and Energy, *Submission 37*, p. 3.

⁵¹ Department of Industry, Innovation and Science, Cole L, Dovers S & Eburn M (2017), 'Major post-event inquiries and reviews: review of recommendations', Bushfire and Natural Hazards CRC, pp. 25–29.

⁵² Espillin, B., Gill, M. and Enright, N. 2003, *Report on the Inquiry into the 2002–2003 Victorian Bushfires*, Victorian Government, p. iv, accessed 5 March 2019, <http://royalcommission.vic.gov.au/getdoc/e9af877b-fae7-4dd1-99dc-d696fa2c8c04/INF.018.002.0001.pdf>.

⁵³ Ellis, S., Kanowski, P., Whelan, R 2004, *National Inquiry on Bushfire Mitigation and Management*, Council of Australian Governments, p. xi.

of ecosystems and biodiversity, as well as compromise land management.⁵⁴

1.94 The COAG inquiry stated that Australia does not have a consistent approach to bushfire mitigation and management, and therefore recommended the adoption of national principles to form the basis of national bushfire policy. Noting that bushfires can be an important tool for land management, these principles focused on a number of areas, including:

- Bushfires are understood, accepted and respected;
- Shared responsibility;
- Decisions within a risk management framework;
- Integration of learning and knowledge;
- Manage fire according to landscape objectives;
- Consistency of purpose and unity of command;
- Protection of lives as the highest consideration; and
- Monitoring performance.⁵⁵

Committee comment

1.95 As highlighted above, Commonwealth inquiries into land and vegetation management have primarily reported the same outcomes. That is that Commonwealth responsibility in this area is very limited, and the best impact can be achieved by improving cooperation across jurisdictions to lower the burden on landholders, and to increase understanding of the need for regulation and protections, and the value to all of appropriate land and vegetation management practices.

1.96 However, as indicated by the repetitive nature of findings and recommendations of those inquiries over a 15 year period, and also reflected in the evidence received from affected landholders to this inquiry, it is unclear to what extent recommendations, which have been ostensibly supported by the Australian Government, have been implemented.

⁵⁴ Ellis, S., Kanowski, P., Whelan, R 2004, *National Inquiry on Bushfire Mitigation and Management*, Council of Australian Governments, p. xi.

⁵⁵ Ellis, S., Kanowski, P., Whelan, R 2004, *National Inquiry on Bushfire Mitigation and Management*, Council of Australian Governments, p. xix.

- 1.97 Inquiries into bushfires have in the majority found that effective land and vegetation management is an essential tool in bushfire risk mitigation. However, the Committee notes that for effective risk management, consistent understanding and application of the foundations of vegetation management must be a shared responsibility. The themes of evidence received to this inquiry suggest that this shared understanding is far from a reality.

Evidence to the inquiry

- 1.98 The Committee received 51 submissions to the inquiry. 27 submissions were from individuals, with the majority identifying as being farmers, or operating agricultural interests. The majority of these individual submissions were from Queensland, reflecting the contemporary focus on the 2018 bushfires in that state, and concerns that restrictive regulations and reduced controlled burns have increased fire risk and severity.
- 1.99 Ten submissions were from various farming and agricultural peak bodies. Six submissions were from environmental peak bodies and research centres. Four submissions were from fire and emergency services departments and organisations. These organisation submissions were largely representative of the two interest focuses related to this topic – one being that current land management and vegetation frameworks are too restrictive and hamper agriculture and habitat management, and the other considering them appropriate or not restrictive enough for achieving a balance between agricultural and environmental and biodiversity conservation.
- 1.100 Four submissions were from various state and Commonwealth departments, outlining their legislative and regulatory responsibilities.
- 1.101 The Committee conducted two public hearings with witnesses representing the relevant Commonwealth Government departments, noting again the very limited jurisdictional and legislative responsibility related to the inquiry's terms of reference. Witnesses representing CSIRO also presented information on the relevant research and scientific activities being undertaken in this area. Details of the hearings are at [Appendix B](#).
- 1.102 Due to the broad terms of reference for the inquiry, few of the submissions addressed all the terms of reference, with most focusing on one or two issues. The following information draws out the primary themes of the evidence received in relation to the terms of reference, vegetation and land

management in general and evidence presented relevant to bushfire risk management.

Summary of evidence – themes

Results of past land clearing practices

- 1.103 In response to the first point in the inquiry's terms of reference, a number of submitters highlighted that the wholesale clearing of native vegetation in the early-20th century has had lasting and profound effects on the ongoing ability for governments and individual landholders to manage vegetation.
- 1.104 As an example, Ms Dixie Nott, who operates a beef cattle operation in coastal central Queensland, acknowledged that early practices of ringbarking and chemical or mechanical clearing has led to thickening of vegetation and loss of native grass layers. She noted that this has led to the requirement for active management of fuel loads on her property through hazard-reduction burns. She indicated that her experience in being burnt-out in early years of their property management 'hardened our resolve to actively use fire and not be its victim'.⁵⁶

European farming methods may not suit the Australian landscape and ecosystems

- 1.105 Whilst not being a universally expressed opinion, the acknowledgement that European-style farming methods may not be viable longer-term in Australia was one raised by some submitters.
- 1.106 The Centre for Ecosystem Science at the University of New South Wales strongly argues that land in Australia has been utilised past its capacity, resulting in irreversible biodiversity and ecosystem damage. This damage was created with the transposition of European, North American and Asian farming practices into an ecosystem characterised by 'infertile, erodible soils and a climate with very high inter-annual variability'. Modern farming practices have improved the use of land, but 'technological advances have simply accelerated agricultural intensification and associated degradation, and extended the footprint of degradation into more marginal landscapes and different ecosystems'.⁵⁷

⁵⁶ Ms Dixie Nott, *Submission 12*, pp. 1–3.

⁵⁷ Centre for Ecosystem Science (UNSW), *Submission 43*, pp. 3–4.

- 1.107 A number of submitters acknowledged that land clearing has had a lasting impact on the vegetation that all landholders now have to manage.⁵⁸

The effects of inappropriate management of either native vegetation or agricultural land

- 1.108 Vegetation and land management regulations and legislation are intended in the states and territories to achieve a balance between the conservation of native vegetation and ecosystems, and the ability to utilise appropriate arable land for agricultural purposes.
- 1.109 However, as the Ecological Society of Australia outlined, the impacts on the native ecosystem and biome of inappropriate management (especially fire regimes) can be just as destructive as a natural disaster. Soil effects, such as altered water repellency and increased erosion, paired with water quality deterioration and biodiversity alteration can have significant and long-lasting impacts on local ecosystems.⁵⁹
- 1.110 In contrast, others argue that invasive species are out of control – reducing productivity and increasing the risks of severe fire events – which ultimately does more damage to the environment than if regulations were less restrictive.⁶⁰

Complexity of vegetation management can limit existing operations, or discourage entry to agricultural enterprise

- 1.111 Some submitters highlighted that the responsibility on landholders to comply with complex and confusing vegetation and land management regulations could have negative impacts on existing operations or discourage entry into the sector by others.
- 1.112 This is a theme that was evident in the Productivity Commission’s reports of 2004 and 2016, where observations were made that regulation can discourage entry into agricultural enterprise and therefore must be balanced between conservation and flexibility for land use.
- 1.113 Additionally, the Queensland Farmers Federation identified that vegetation management changes and restrictions can affect farm design, especially when paired with other infrastructure requirements. This can ultimately reduce the ability to open new land for production.⁶¹

⁵⁸ Dr Bill Burrows, *Submission 14*, p. 1; Ms Kylie Slack, *Submission 25*, p. 1; Centre for Ecosystem Science (UNSW), *Submission 43*, p. 3.

⁵⁹ Ecological Society of Australia, *Submission 41*, pp. 6–7.

⁶⁰ Green Shirts Movement, *Submission 26*, p. 2.

⁶¹ Qld Farmers Federation, *Submission 36*, pp. 2–3.

Evidence-based and appropriate hazard-reduction burns and fire-breaks

- 1.114 As an extension of the stewardship and management practices outlined above, many submitters identified the difference between back-burning (undertaken during a fire to create containment areas) and hazard/fuel reduction burns undertaken in colder months (cool-burns).
- 1.115 These hazard-reduction burns are essential to managing the fuel-load available in an area if a bushfire does occur, however the evidence received was inconsistent about the ability to do these types of burns.
- 1.116 The majority of submissions were received from Queensland, where recent changes to vegetation management legislation have seen increased regulation, including restrictions on broad scale clearing. Commentary in many of these submissions related to the difficulty of getting approval to clear vegetation for fire breaks or for conducting hazard-reduction burns.
- 1.117 However, according to the submission made by the Queensland Government, hazard-reduction burns and the ability to apply for permits to undertake them, has not changed with recent vegetation management legislation amendments in that state.⁶²
- 1.118 Regardless of the mechanism in each state and territory to allow for these hazard-reduction burns to occur or for fire-breaks to be created, a number of submitters supported the importance of these burns and breaks in managing fuel load and the risk that unmanaged areas pose.⁶³
- 1.119 The Ecological Society of Australia outlined the additional benefits of hazard-reduction burning as not only reducing fuel load, but to maintaining biodiversity, controlling weeds, improving pastures and in embracing traditional indigenous burning practices.⁶⁴ Paired with appropriate mechanical fuel reduction, building standards, general property maintenance and emergency warning and response systems, this can address many existing hazard and risk profiles.

⁶² Queensland Government, *Submission 32*, p. 6.

⁶³ Susan Cunningham, *Submission 1*; Ross Bensted, *Submission 2*; Clem Wheatley, *Submission 6*; Stanley Collins, *Submission 7*; Peter Jones, *Submission 8*; Miriam Daley, *Submission 10*; Dixie Nott, *Submission 12*; Colin Lawrie, *Submission 15*; Property Rights Australia, *Submission 16*; Warren Page, *Submission 17*; Michael Lonergan, *Submission 22*; Law Council of Australia, *Submission 23*; AFAC, *Submission 24*; Landholders Driving Change, *Submission 33*; Stretch Devine, *Submission 34*; Cane Growers Mackay, *Submission 38*; James Beale, *Submission 40*; Ecological Society of Australia, *Submission 41*; Wayne Wheatley, *Submission 48*.

⁶⁴ Ecological Society of Australia, *Submission 41*, p. 4.

Understanding and incorporating Indigenous fire management practices

- 1.120 As mentioned above, a number of submitters advocated for a better understanding and incorporation of indigenous burning and fire management practices of the Australian landscape.⁶⁵
- 1.121 The inherent connection between First Nations peoples and the land is an important foundation to build future fire-management upon. Even with the change in native vegetation density and type, the lessons of the past should help to inform the future.

The majority of fires that affect agricultural landholdings occur/originate on the properties

- 1.122 The origin and spread of fires that affect agricultural properties was a contested point within submissions to the inquiry. Many of the individuals that were affected by the 2018 Queensland bushfires, or other major fire incidences, suggested that origin of fires in poorly managed national parks or state forests were the reason for the scale of destruction, or the uncontrollable nature of the fires.
- 1.123 However, some submitters prefer a different explanation. The Ecosystem Science Council highlights that approximately 50 million hectares of land are burned across Australia, with the majority in northern savanna regions; however, stating that the majority of fires start outside parks and cross into them.⁶⁶
- 1.124 The Western Australia Department of Fire and Emergency Services outlined that during the period 2008/9 to 2017/18 inclusive, of the 3,409 fires that impacted farmland in Western Australia, 3,152 (92.5 per cent) started on those farms or adjacent farming properties.⁶⁷
- 1.125 Whilst this statistic may not be a universal indication of similar trends in other states and territories, the indication is that fire risk management on both farmland and parkland is required to reduce hazards appropriately.

Stewardship of land balanced with appropriate risk reduction and hazard management enabled by evidence-based regulation

- 1.126 In order to draw the observations together from submitters regarding the impact of the land and vegetation management frameworks, acknowledgement of the sentiment expressed by some submitters is appropriate. Governments and landholders need to acknowledge the

⁶⁵ Stanley Collins, *Submission 7*; Law Council of Australia, *Submission 23*; AgForce Queensland, *Submission 31*; James Beale, *Submission 40*; Ecological Society of Australia, *Submission 41*.

⁶⁶ Ecosystem Science Council, *Submission 19*, p. 4.

⁶⁷ WA Department of Fire and Emergency Services, *Submission 46*, p. 3.

stewardship of the land they manage, for the benefit of their own interests, as well as future generations and those that may be affected by mismanagement of that land (fires, erosion etc).

- 1.127 The Law Council of Australia acknowledged that some vegetation and land management policies incurred costs for landholders in compliance, but also offered benefits from appropriate stewardship of native vegetation on their properties, through carbon credits programs and other biodiversity opportunities. However, the Law Council points out that while these opportunities exist, many landholders do not understand them and see them as ‘unwelcome interventions’.⁶⁸
- 1.128 Often these opportunities will complement fuel reduction activities, and the National Farmers’ Federation outline the acknowledged coordination and shared responsibility required between ‘landholders, emergency services and the community’.⁶⁹ Evidence-based regulation and risk-reduction activities, undertaken in an appropriate manner for the locale, will help enable this cooperation and engender the stewardship required.

Overall Committee comment

- 1.129 As noted earlier in the paper, the Committee was concerned that factors relating to the timing of the referral, the scope of the inquiry, and issues associated with government jurisdictional responsibilities would affect its ability comprehensively address the terms of reference and complete the inquiry in the available time.
- 1.130 It is for these reasons that the Committee resolved to publish this discussion paper, as well as to acknowledge the contributions from stakeholders and to inform possible future consideration of the inquiry topic by a future committee.
- 1.131 In response to the identified issues above, the identified complex regulatory framework across Australia, and the themes of evidence received in submissions and at hearings, the Committee makes a number of observations and suggestions for potential future work.

⁶⁸ Law Council of Australia, *Submission 23*, p. 4.

⁶⁹ National Farmers’ Federation, *Submission 27*, p. 2.

Terms of reference

- 1.132 The Committee notes that the scope of this inquiry was broad, making it challenging for submitters to comprehensively respond to the breadth of issues. Furthermore, a difficulty for the Committee, as a House of Representatives committee, was the focus in the terms of reference on matters that are largely outside of Commonwealth jurisdictional responsibility.
- 1.133 To address these issues, the Committee suggests that if a future committee is to inquire further into the topic of land and vegetation management or related issues, that serious consideration be given to narrowing the scope of the inquiry to address matters within Commonwealth jurisdictional responsibility.
- 1.134 The Committee considers that in the agriculture and water resources sphere, the only aspect of the current terms of reference that could be reliably inquired into is an analysis of the economic impact of vegetation and land management policies, regulations and restrictions. This could be framed specifically in relation to data collected and analysis undertaken by the Australian Bureau of Agricultural and Resource Economics and Sciences (ABARES).
- 1.135 Alternatively, while not specifically covered by the current terms of reference, there is also scope for an analysis of the coordination role that the Emergency Management Authority, part of the Department of Home Affairs, undertakes in emergency management and preparedness. However, the agricultural perspective of this topic is limited, and therefore as an inquiry subject might be more appropriately conducted by a different parliamentary committee with a more direct interest in the Home Affairs portfolio.
- 1.136 There is also potentially scope for analysis of development and implementation of recommendations from previous inquiry reports, as outlined below.

Review of implementation of inquiry recommendations

- 1.137 The Committee received evidence from submitters and witnesses at public hearings regarding the past Productivity Commission inquiries into regulation of land and vegetation management and of agriculture, as well as the recent independent review of the EPBC Act.

- 1.138 Given the limited Commonwealth responsibility for the wider inquiry topic, and the observation that the findings of most of the previous inquiries were along the same lines, there would seem to be little value in covering the same ground again without undertaking first an analysis of the development, implementation and review of agreed outcomes from previous reviews.
- 1.139 Given the Australian Government response to the 2016 Productivity Commission report was only released in January 2019, the Committee believes that an inquiry could be narrowed to future analysis of the delivery of Productivity Commission recommendations, with a particular focus on land and vegetation management policy impacts.

Final comment

- 1.140 Again, the Committee thanks all of the stakeholders that submitted to the inquiry, particularly those that were impacted by recent bushfire events in Australia. The Committee hopes that issues considered in this paper help to support the argument that land and vegetation management regulation, while a vexed issue, is an important one for the agricultural and environmental future of Australia.
- 1.141 While the Commonwealth responsibility for these matters is limited, the Committee acknowledges that through promoting research and increased jurisdictional cooperation, the Commonwealth can assist states and territories in creating evidence-based land and vegetation management frameworks, both for agricultural and environmental benefits.
- 1.142 Should a future committee be tasked to inquire into land and vegetation management or related topics, the Committee urges it to consider carefully the points raised regarding inquiry scope, focus of the terms of reference and possible areas for further inquiry.

Appendix A – Consultative bodies

Meeting of Environment Ministers

The Meeting of Environment Ministers (MEM), established via COAG in 2013, comprises Commonwealth, state and territory Ministers for the Environment and Energy. In April 2014, the ministers agreed to meet as needed, with a view to focus on streamlining multi-jurisdictional environmental work, discuss strategic issues and agree cross-government actions to improve the environment.

MEM operates alongside the National Environmental Protection Council (NEPC)⁷⁰.

National Environmental Protection Council

The NEPC, established under the *National Environmental Protection Council Act 1994 (Cwlth)* and mirror state and territory legislation, has two primary functions:

1. to make National Environment Protection Measures (NEPMs); and
2. to assess and report on the implementation and effectiveness of NEPMs in participating jurisdictions.⁷¹

Agricultural Industry Advisory Council

The Agricultural Industry Advisory Council (AIAC) provides the Minister for Agriculture and Water Resources with information, advice and recommendations from a cross-section of industries and stakeholders on contemporary issues affecting Australia's agricultural, fishing, forestry and water sectors. This includes advice on:

- initiatives to foster investment, growth and sustainability of Australian agribusinesses;
- increasing agricultural efficiency and identifying barriers to efficiency improvements;
- regulatory reform, including targets for reform and reduction of regulatory burdens;

⁷⁰ Department of the Environment and Energy, 'Meeting of Environment Ministers (MEM)', Australian Government, accessed 7 March 2019, <https://www.environment.gov.au/about-us/mem>.

⁷¹ National Environment Protection Council, 'National Environmental Protection Council', Commonwealth Government, accessed 7 March 2019, <http://www.nepc.gov.au/>.

- strategic priorities and long-term planning for research and development investments; and
- approaches to addressing the agricultural production and communication challenges arising from changing consumer and community values.⁷²

⁷² Department of Agriculture and Water Resources, 'Agricultural Industry Advisory Council – Terms of reference', Australian Government, accessed 7 March 2019, <http://www.agriculture.gov.au/about/who-we-are/portfolio-agencies/aiac-tor>.

Appendix B – List of submissions and public hearings

Submissions

1. Ms Susan Cunningham
2. Mr Ross Bensted
3. Mr Greg Reynolds
4. Ms Helen Wyland
5. David and Raeleen Wright
6. Mr Clem Wheatley
7. Mr Bruce Collins OAM
8. Mr Peter Jones
9. Mr Grahame Hirning
10. Ms Myriam Daley
11. Mr Andrew Rea
12. Ms Dixie Nott
13. Mr Norm Ladley
14. Dr Bill Burrows
15. Mr Colin Alexander Lawrie
16. Property Rights Australia Inc.
17. Mr Warren Page
18. Mr Larry Coleman
19. Ecosystem Science Council
20. Mr Tom Marland
21. Rural Fire Association of Queensland
22. Mr Michael Lonergan
23. Law Council of Australia
24. Australasian Fire and Emergency Service Authorities Council (AFAC)
25. Ms Kylie Slack
26. Green Shirts Movement

27. National Farmers' Federation
28. Bush Heritage Australia
29. Victorian Farmers Federation
30. Ms Josephine Angus
31. AgForce Queensland
32. Queensland Government
33. Landholders Driving Change Project
34. Stretch Devine
35. Bluewater Airport
36. Queensland Farmers Federation
37. Department of Environment and Energy
38. Cane Growers
39. Environmental Defenders Office (Qld) Inc
40. Mr James Beale
 - 40.1 Supplementary
41. Ecological Society of Australia
42. Northern NSW Agricultural Alliance
43. Centre for Ecosystems Science – University of New South Wales (UNSW)
44. Australian environmental scientists – group submission
45. Mr Mark Gardner
46. Department of Fire and Emergency Services, Western Australia
47. Mr and Mrs Graham and Lyn Elmes
48. Mr Wayne Wheatley
49. Commonwealth Scientific and Industrial Research Organisation (CSIRO)
50. New South Wales Government
51. Ms Heather Dewar

Public Hearings

Thursday 14 February 2019 – Canberra ACT

Department of Agriculture and Water Resources

Ms Sally Standen, First Assistant Secretary, Rural Policy and
Farm Performance Division

Ms Emma Cully, Assistant Secretary, Climate and Resilience Policy Branch

Mr Peter Gooday, Assistant Secretary, Agricultural Commodities and Trade,
ABARES

Department of Environment and Energy

Ms Kylie Jonasson, First Assistant Secretary, Biodiversity Conservation Division

Mr James Tregurtha, First Assistant Secretary, Environment Standards Division

Thursday 21 February 2019 – Canberra ACT

Department of Home Affairs

Mr Robert Cameron, Director General, Emergency Management Australia

Commonwealth Scientific and Industrial Research Organisation (CSIRO)

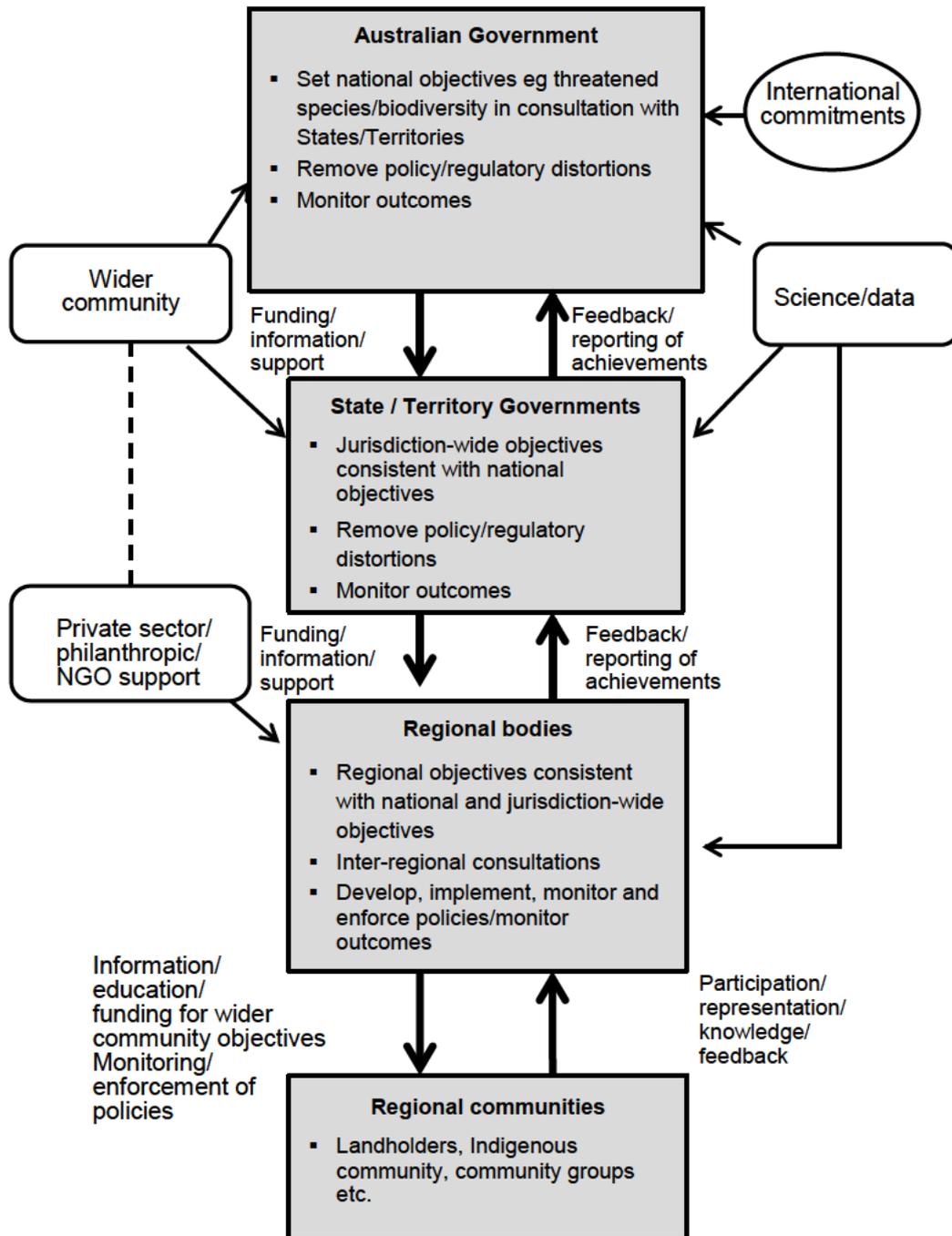
Dr Michael Battaglia, Research Director, Agriculture and Global Change,
Agriculture and Food

Dr Rebecca Bartley, Research Scientist, Catchment Processes, Land and Water

Mr Justin Leonard, Research Leader, Bushfire Urban Design, Land and Water

Dr Martin Cope, Principal Research Scientist, Aerosol and Chemistry Modelling,
Oceans and Atmosphere

Appendix C – Commonwealth, state and local government interactions



Source Productivity Commission 2004 'Impacts of Native Vegetation and Biodiversity Regulations', Australian Government, Figure 2, p. xlv.

Appendix D – Commonwealth, State and Territory emergency frameworks

| Jurisdiction | Legislation | Plans |
|--------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Commonwealth | | <ul style="list-style-type: none"> ▪ National Strategy for Disaster Resilience 2011 ▪ Australian Government Disaster Response Plan (COMDISPLAN) ▪ National Catastrophic Natural Disaster Plan (NATCATDISPLAN) ▪ Australian Emergency Management Manuals ▪ Australian Government Emergency Management Plans |
| ACT | <ul style="list-style-type: none"> ▪ Emergencies Act 2004 (includes all services) | <ul style="list-style-type: none"> ▪ Emergencies (Emergency Plan) 2004 (No 1) |
| NSW | <ul style="list-style-type: none"> ▪ Fire and Rescue NSW Act 1989 ▪ Fire Services Joint Standing Committee Act 1998 ▪ Health Services Act 1997 (Ambulance) ▪ Rural Fires Act 1997 ▪ State Emergency Services Act 1989 ▪ State Emergency and Rescue Management Act 1989 | <ul style="list-style-type: none"> ▪ State Emergency Management Plans |
| NT | <ul style="list-style-type: none"> ▪ Bushfires Management Act 2016 ▪ Emergency Management Act 2013 (includes State Emergency Services) ▪ Fire and Emergency Act 1996 | <ul style="list-style-type: none"> ▪ Territory Emergency Plan |
| Qld | <ul style="list-style-type: none"> ▪ Ambulance Service Act 1991 ▪ Disaster Management Act 2003 ▪ Fire and Emergency Services Act 1990 (includes State Emergency Services) ▪ Public Safety Business Agency Act 2014 ▪ Public Safety Preservation Act 1986 | <ul style="list-style-type: none"> ▪ Current Disaster Management Plans |
| SA | <ul style="list-style-type: none"> ▪ Emergency Management Act 2004 ▪ Emergency Services Funding Act 1998 ▪ Fire and Emergency Service Act 2005 (includes State Emergency Services) ▪ Health Care Act 2008 (Ambulance) | <ul style="list-style-type: none"> ▪ State Emergency Management Arrangements |
| Tas | <ul style="list-style-type: none"> ▪ Ambulance Services Act 1998 ▪ Emergency Management Act 2006 (includes State Emergency Services) ▪ Fire Service Act 1979 | <ul style="list-style-type: none"> ▪ Tasmania Emergency Management Plan |

| Jurisdiction | Legislation | Plans |
|--------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------|
| Vic | <ul style="list-style-type: none"> ▪ Ambulance Services Act 1986 ▪ Country Fire Authority Act 1958 ▪ Emergency Management Act 1986 ▪ Emergency Management Act 2013 ▪ Metropolitan Fire Brigades Act 1958 ▪ Non-Emergency Patient Transport Act 2003 ▪ Victoria State Emergency Service Act 2005 | <ul style="list-style-type: none"> ▪ Emergency Management Manual Victoria |
| WA | <ul style="list-style-type: none"> ▪ Bushfires Act 1954 ▪ Emergency Management Act 2005 ▪ Fire and Emergency Services Act 1998 (includes State Emergency Services) ▪ Fire Brigades Act 1942 | <ul style="list-style-type: none"> ▪ Office of Emergency Management— Legislation, Policy, Plans, Procedure and Guidelines |

Source Eburn M 2017, 'Emergency Management Legislation', Table, Australian Emergency Law, accessed 7 March 2019, <https://emergencylaw.wordpress.com/emergency-management-legislation/>.