



Law Council  
OF AUSTRALIA

*Legal Practice Section*

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Chair  
Standing Committee on Agriculture and Water Resources  
PO Box 6021  
Parliament House  
CANBERRA ACT 2600

By email: [agriculture.reps@aph.gov.au](mailto:agriculture.reps@aph.gov.au)

Dear Chair

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

1. This submission has been prepared by the Australian Environmental and Planning Law Committee of the Law Council's Legal Practice Section (**the AEPL Committee**).<sup>1</sup> The AEPL Committee welcomes the opportunity to comment on the above Inquiry, and seeks to respond briefly to the following terms of reference:
  - The science behind activities such as back burning, clearing and rehabilitation;
  - The economic impact of vegetation and land management policies, regulations and restrictions; and
  - Factors that contribute to fire risk in regional, rural and remote areas.
2. The 2016 Commonwealth *State of the Environment* report concluded that "Australia's biodiversity is under increased threat and has, overall, continued to decline".<sup>2</sup> Following similar findings in the 2011 *State of the Environment* report, the COAG Standing Council on Environment and Water endorsed the following key goals in *Australia's Native Vegetation Framework*:
  - (i) Increase the national extent and connectivity of native vegetation;
  - (ii) Maintain and improve the condition and function of native vegetation;

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<sup>1</sup> The Law Council of Australia is a peak national representative body of the Australian legal profession. It represents the Australian legal profession on national and international issues, on federal law and the operation of federal courts and tribunals. The Law Council represents 60,000 Australian lawyers through state and territory bar associations and law societies, as well as Law Firms Australia.

<sup>2</sup> Cresswell, I & H. Murphy, *State of the Environment 2016: Biodiversity, Independent report to the Australian Government Minister for the Environment and Energy* (2017).

- (iii) Maximise the native vegetation benefits of ecosystem service markets;
- (iv) Build capacity to understand, value and manage native vegetation; and
- (v) Advance the engagement and inclusion of Indigenous peoples in management of native vegetation.<sup>3</sup>

Given the continuing national decline across biodiversity indicators, the Committee strongly supports these goals.

3. Many research institutions, including the Bushfire and Natural Hazards CRC and its predecessor, have accumulated decades of research into bushfire hazards in Australia and methods of dealing with those hazards. Predictably, many inquiries have followed significant bushfire incidents. In his evidence to the 2010 Senate Inquiry into Bushfires in Australia, Professor Peter Kanowski notes:

*....a repeated cycle of response by governments and the community to major fire events: first, suppression and recovery processes are always accompanied by assertions, accusations and allocations of blame, even while the fires are still burning; second, inquiries are established and report; third, recommendations are acted upon, to varying degrees; fourth, the passage of time sees growing complacency and reduced levels of preparedness... and the cycle begins again with the next major bushfire event....*

The Professor's frustration highlights the need for a holistic and sustained long-term approach to bushfire management in Australia. The Committee supports efforts to achieve this.

4. For the reasons outlined below, the AEPL Committee advocates for the adoption of the precautionary principle and cautions against a sector-specific review of vegetation, land or fire management strategies or one which prioritises short term economic factors over the community-wide benefits of a long-term improvement in resilience across all tenures and land uses.
5. The Committee encourages the government to review the effectiveness of fire management responses and their interaction with native vegetation management regimes as part of the statutory review of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (**EPBC Act**) and implementation of *Australia's Biodiversity Conservation Strategy 2010-2030* (Cth).

### **Science behind back burning, clearing and rehabilitation**

6. It is the experience of members of the AEPL Committee that backburning activities carried out by fire authorities, or mandated by local authorities to be carried out by landowners, may differ from the backburning activities promoted by ecologists. This confirms the importance of establishing a sound scientific basis for backburning requirements.

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<sup>3</sup> COAG Standing Council on Environment and Water, *Australia's Native Vegetation Framework* (2012), Australian Government, Department of Sustainability, Environment, Water, Population and Communities, Canberra (Available at [www.environment.gov.au/system/files/resources/76f709dc-ccb3-4645-a18b-063fbbf0a899/files/native-vegetation-framework.pdf](http://www.environment.gov.au/system/files/resources/76f709dc-ccb3-4645-a18b-063fbbf0a899/files/native-vegetation-framework.pdf))

7. There has been considerable research undertaken in relation to prescribed burning and its efficacy. The Committee commends the following recent reports to the Committee:
  - *Simulating the effectiveness of prescribed burning at altering wildfire behaviour in Tasmania* (2017) <sup>4</sup>
  - *To burn or not to burn?* (2015)<sup>5</sup>
  - *National Position on Prescribed Burning* (2016) <sup>6</sup>
  - *Victorian Code of Practice for Bushfire Management on Public Land* (2012)
8. These reports emphasise the need to balance the economics of burning, the environmental impacts across varied types of landscapes, and the acceptance of prescribed burning by rural and urban-fringe communities.
9. Critically, the Bushfire and Natural Hazards CRC and Australasian Fire and Emergency Service Authorities Council (**AFAC**) reports confirm that there is “no universal ‘right’ level of prescribed fire” and urge that regional circumstances be factored in and the science on which prescribed burning programs are based be regularly reviewed to account for changing climatic conditions. The CRC concludes:

*It is important that whatever burning targets are in place are based on the best available evidence and scientific research. They should be measurable, achievable and articulated in such a way that the community can understand their residual risk.*
10. AFAC note that prescribed burning is “more effective where used alongside complementary risk reduction measures.” For example, the 2017 Tasmanian study notes the importance of using a range of measures in conjunction with prescribed burning regimes, including clever planning and landscape designs to provide green fire breaks in rural townships.
11. The AEPL Committee urges the Committee to advocate risk-based burning strategies, rather than volumetric targets, and to consider prescribed burning amongst a suite of tools available to mitigate and manage fire hazards, rather than in isolation.
12. The Committee also strongly endorses the objectives under the *Native Vegetation Framework* and the AFAC *National Position on Prescribed Burning* seeking to integrate indigenous practices into vegetation management and hazard planning.

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<sup>4</sup> Furlaud, J, G. Williamson & D. Bowman, “Simulating the effectiveness of prescribed burning at altering wildfire behaviour in Tasmania, Australia” (2017). *International Journal of Wildland Fire* 27(1) 15-28 (Available at [www.publish.csiro.au/wf/WF17061](http://www.publish.csiro.au/wf/WF17061))

<sup>5</sup> Bushfire and Natural Hazards CRC, “To Burn or Not to Burn? (2015), Available at [www.bnhcrc.com.au/news/2015/turn-or-not-to-burn](http://www.bnhcrc.com.au/news/2015/turn-or-not-to-burn)

<sup>6</sup> Australasian Fire and Emergency Service Authorities Council Limited (AFAC), *National Position on Prescribed Burning* (2016). Available at <https://knowledge.aidr.org.au/media/4869/national-position-on-prescribed-burning.pdf>

## Economic impacts of vegetation and land management policies, restrictions and regulations

13. The AEPL Committee notes the economic costs associated with some vegetation and land management policies, but also notes the opportunities presented for farmers to gain benefits for stewardship of their native vegetation (such as those offered by carbon sequestration and vegetation / biodiversity offsetting programs).

One example is the *Carbon Credits (Carbon Farming Initiative – Savanna Fire Management – Emissions Avoidance) Methodology Determination 2018*, which recognises the co-benefits of regulated savanna burning practices for biodiversity and hazard reduction.

14. However, these opportunities are often poorly understood by landowners and perceived as unwelcome interventions. The Committee would welcome Commonwealth and State governments establishing and promoting advisory services to assist rural landowners (whether large, medium or small) to understand the benefits and responsibilities associated with sequestration and offsetting programs.

An example is recent efforts by the Western Australian Government to promote opportunities under the *Carbon Credits (Carbon Farming Initiative) Act 2011* (Cth) and to assist farmers to navigate the approvals process.<sup>7</sup>

15. The National Farmers Federation has called for compensation to be paid in respect of vegetation clearing restrictions or requirements.<sup>8</sup> The Committee notes the recommendation from the ALRC's *Traditional Rights and Freedoms Inquiry* (para 20.138):

*The next scheduled independent review of the EPBC Act is to be completed by 2019. The Department of the Environment submitted that that review 'may provide a suitable opportunity for more detailed consideration of the EPBC Act's interaction with property rights'. The ALRC considers that the next review could reassess whether interferences with property rights are proportionate and could explore a range of compensatory mechanisms. This review may also afford an opportunity for consideration of the interrelationship of Commonwealth and state laws, as this ALRC Inquiry heard that Commonwealth and state environmental laws should be considered in an integrated way.*<sup>9</sup>

16. The AEPL Committee agrees that the upcoming review of the EPBC Act is a suitable opportunity to consider the appropriateness or otherwise of compensatory measures in relation to vegetation clearing, including when mandated for fire management purposes. This Inquiry ought not make any findings that would pre-empt a full consideration of the complex legal and policy issues this raises.

17. The Committee also notes the escalating costs of bushfire management and losses under climate change (including restoration and rehabilitation). These costs are borne across the community, including not just the agricultural sector but government, health

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<sup>7</sup> <https://www.mediastatements.wa.gov.au/Pages/McGowan/2018/12/WA-pastoralists-register-20-new-carbon-farming-projects.aspx>

<sup>8</sup> See, for example, submissions to the Traditional Rights and Freedoms Inquiry

<sup>9</sup> Australian Law Reform Commission. *Traditional Rights and Freedoms—Encroachments by Commonwealth Laws* (ALRC Report 129), Published March 2016, p556 (footnotes removed). Available at <https://www.alrc.gov.au/publications/freedoms-alrc129>

services, tourism, emergency services, infrastructure and conservation organisations. For example, in a recent opinion piece, the CEO of the Tasmanian Tourism Council stated that:

*The tourism industry across Australia is learning a hard truth; more frequent and unusual extreme weather events and changes in weather patterns will increasingly impact on our industry.*<sup>10</sup>

18. The Climate Council has estimated that the annual costs associated with bushfires in New South Wales is likely to double by 2050 to \$100 million.<sup>11</sup>
19. The AEPL Committee recommends that the Committee consider any economic impacts of land management practices on individual landowners in that context.

### **Factors that contribute to fire risk in regional, rural and remote areas**

20. The Committee considers that it is beyond doubt that intensifying climate change is a significant factor in increasing the scale and intensity of bushfire threats across Australia. Longer fire seasons and larger, more regular fires impose a significant burden on firefighting services and reduce the window of opportunity for hazard reduction activities.<sup>12</sup>
21. The AEPL Committee urges the Committee to call for strong, scientifically-based policies to address climate change as a critical step towards more effective management of bushfire threats.

### **Contact**

22. The AEPL Committee would welcome the opportunity to discuss this submission with the Committee. In the first instance, please contact AEPL Committee Chair, Robyn Glindemann on [robyn.glindemann@lantegy.com.au](mailto:robyn.glindemann@lantegy.com.au)

Yours sincerely



**Jonathan Smithers**  
**Chief Executive Officer**

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<sup>10</sup> Martin, L. "Talking Point: A burning question for Tasmanian tourism", *The Mercury* (29 December 2018). Available at <https://www.themercury.com.au/news/opinion/talking-point-a-burning-question-for-tasmanian-tourism/news-story/bb0b76064aa8c132055c11a4c7f5119e>

<sup>11</sup> Climate Council, *Australian Bushfire Threat: Longer, More Dangerous Seasons* (20.03.18). Media release available at <https://www.climatecouncil.org.au/resources/australian-bushfire-threat-longer-more-dangerous-seasons/>

<sup>12</sup> See, for example, Doyle, K. *Prescribed burning debate rages as Australia finds there's no time to burn going into peak fire season*, ABC News, 13 September 2018