



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: RIC/EPD/IIC: RHce: 1919003

21 May 2020

Senator Tim Ayres
Committee Chair
Senate Finance and Public Administration References Committee
PO Box 6100
Parliament House
Canberra ACT 2600

By email: fpa.sen@aph.gov.au

Dear Senator,

Lessons to be learned in relation to the Australian bushfire season 2019-20

The Law Society of NSW appreciates the opportunity to make a submission to the Finance and Public Administration References Committee ('the Committee') inquiry into *Lessons to be learned in relation to the Australian bushfire season 2019-20*. The Law Society's Rural Issues, Environmental Planning and Development and Indigenous Issues Committees contributed to this submission.

1. The respective roles and responsibilities of different levels of government and government agencies.

The Law Society supports adopting a co-ordinated approach to bushfire planning, mitigation, response and recovery. We emphasise the need for a more co-ordinated bushfire response from all levels of government from the initial crisis response phase through to recovery and rebuild.

The Commonwealth Government has certain responsibilities that impact on bushfire management through a number of initiatives, largely related to providing assistance to responsible state agencies through emergency management and co-ordination support, education and training, research and information sharing, scientific and technical assistance, and public awareness.

In NSW, there is no one department or agency that is responsible for bushfire planning, mitigation, response and recovery. Roles and responsibilities are dispersed across several bodies, including Resilience NSW, the Rural Fire Service, National Parks and Wildlife Service (NPWS), State Forests of New South Wales, NSW Fire Brigades and local councils.

We note that some strategic coordination initiatives are already in place. For example, the NSW State Emergency Management Plan provides a strategic overview of emergency management in NSW and has been prepared with input from all NSW government agencies that have responsibilities and functions in disaster response and recovery. Even so, we see

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potential for an overarching national approach which articulates the roles and responsibilities of relevant bodies across jurisdictions. A transparent approach may reduce duplication, inadequate responses, and a possible loss in accountability and transparency.

In our view, there is an opportunity for increased coordination across jurisdictions, particularly in circumstances where natural disasters exceed a state or territory's capacity to respond. We recommend that the Committee consider options to establish a comprehensive national framework for bushfire management. Importantly, the emphasis should be not on increasing regulation but on better coordination and administration of existing laws and structures.

As part of this, the important role of local communities and community bushfire planning should be recognised and incorporated into any national framework. Recommendation 1 of the 2009 Victorian Bushfire Royal Commission recommended that "local solutions are tailored and known to communities through local bushfire planning". At section 1.6.3, it stated that "A continued focus on providing frank and meaningful advice on the risks and what is required to adequately prepare for and survive a bushfire is essential. Local planning and emergency management processes are also essential if this advice is to have a sound basis".¹

2. The Federal Government's response to recommendations from previous bushfire Royal Commissions and inquiries

Between 1939 and 2013, there were 51 inquiries relating to bushfires and bushfire management undertaken across Australia, with over 1700 recommendations.² The Australian National University and the Bushfire and Natural Hazards Cooperative Research Centre conducted a review of these inquiries, noting several thematic concerns with the implementation of recommendations and management of 'lessons learned'.³

In NSW, the implementation of numerous critical recommendations arising out of previous bushfire inquiries could be improved. In our view, increased accountability, transparency, and clear delineation of roles and responsibilities could help to improve implementation and ensure a cohesive and coordinated approach to bushfire management and crisis response.

Noting the significant cost of conducting new inquiries, we recommend that the Committee consider auditing outstanding recommendations from previous inquiries to identify and action those which it considers should be implemented. Moving forward, we recommend consistent monitoring of, and reporting on, the implementation of recommendations. The Commonwealth Government could issue national reporting guidelines and procedures to provide transparency and accountability in the implementation of bushfire inquiry recommendations, including a publicly available register of recommendations, a timetable for implementation, and a report on progress by federal, state and territory, and local governments.

3. The adequacy of the Federal Government's existing measures and policies to reduce future bushfire risk

The Deloitte Access Economic Report *Building Australia's resilience to natural disasters 2017* identified that investment in resilience measures can reduce the costs of a natural

¹ *Royal Commission into 2009 Victorian Bushfires* (Final Report, July 2010) vol 2, pt 1, 1.6.3.

² Michael Eburn, David Hudson, Ignatious Cha and Stephen Dovers, 'Learning From Adversity: What has 75 Years of Bushfire Inquiries (1939-2013) Taught Us?' (Research Report No 2015.019, Australian National University and the Bushfire & Natural Hazards CRC, January 2015) 2
<<https://bnhrcr.com.au/publications/biblio/bnh-1558>>.

³ Ibid.

disaster and improve economic growth and wellbeing.⁴ It is possible that land management investment can be more cost effective when compared to significant bushfire crisis response and recovery costs and can greatly reduce the impacts upon the environment.

In addition, we are concerned that initiatives at the Commonwealth level, such as the National Burning Project, which sets out a framework and best practice principles for controlled burning, may lack adequate oversight mechanisms to ensure implementation at the state and territory level.

The Law Society recommends that the Commonwealth Government work closely with state and territory governments to ensure that national guidelines and best practice principles for controlled burning are implemented through rigorous oversight, national reporting and data sharing arrangements, as well as the provision of further financial support to the states and territories. Adequate funding should be allocated to the NPWS to ensure they are able to fulfill their legislative obligations without reliance upon a volunteer workforce. Adequate funding must also be provided to ensure necessary updates to fire trails and the provision of necessary equipment that enables firefighters to perform their responsibilities efficiently and safely.

4. Engagement of Indigenous people and knowledge

The recent catastrophic bushfire season has underscored the potential for incorporating Indigenous land management knowledge into mainstream environmental stewardship practices, in respect of fire, water and harvesting management.

In our view, this requires a whole-of-process change in approach. A new approach might, for example, require that Indigenous people with the relevant expertise are members of relevant advisory or steering committees. Indigenous advice and knowledge should be embedded throughout the process, such that the integration of Indigenous people, knowledge and practices issue is part of “business as usual”, rather than a retrofitted afterthought.

This requires a commitment by government to consult comprehensively to, at the first instance, identify and connect with existing expertise. Government must further commit to working in partnership with Indigenous people, to ensure that Indigenous views and decision-making genuinely informs the wider policy and practice. This might be implemented through, for example, requiring the agreement of Indigenous peoples in the relevant areas before actions are taken that affect their lands.

Ensuring that Indigenous people and knowledge are actively incorporated within governing arrangements should be considered a fundamental part of the process. A consequence of these governance arrangements should be an approach to programming and funding that allows for effective implementation of Indigenous knowledge. This requires knowledge sharing and skill and capacity building for land management staff, as well as for community education. In our view, there should be periodic regional workshops to both build and share land management knowledge and expertise as a change in cultural approach should be supported at all levels. Consideration might be given to including some aspect of Indigenous land management knowledge in every relevant employee’s key performance indicators. Finally, there must be sufficient resourcing to support implementation efforts, including to support an increase in the capacity of management programs to operate throughout the year.

⁴ Deloitte Access Economics, *Building resilience to natural disasters in our states and territories* (Report, November 2017).

The Law Society thanks you for the opportunity to provide a submission to this inquiry. If you have any questions, please contact Claudia Elvy, Policy Lawyer, on (02) 9926 0275 or claudia.elvy@lawsociety.com.au.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'R Harvey', with a stylized flourish at the end.

Richard Harvey
President