

**WESTERN SYDNEY**  
UNIVERSITY



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Institute for Culture  
and Society

17 April 2020

Inspector-General for Emergency Management  
GPO Box 4356  
Melbourne VIC 3000

Dear Inspector-General,

From our research, and noting that an Aboriginal Reference Group has been established in Victoria, we recommend four steps in the response to the fire season:

1. Acknowledge that Aboriginal people have been erased, made absent and marginalised in previous post-bushfire enquiries. Undertake the reflective work required to identify and address how this happened and why it continues to happen, so as to help identify and embed the need for change.
2. Establish clear policy instructions that Aboriginal people—including their histories, knowledges, perspectives, experiences and unique status—be part of the terms of reference and membership of post-bushfire inquiries in the future, across the full suite of concerns that Aboriginal people raise, experience and are responsible for.
3. Establish, with guidelines and regulations, Aboriginal representation on relevant government committees involved in decision-making for the preparation, planning and implementation of natural hazard risk management, including how public sector research monies are allocated.
4. Examine how the acceleration of the return of land governance to Aboriginal peoples relates to the purpose and models of land management of the Federation of Australia, to ensure that regulation and funding is appropriate to the responsibilities and roles that Aboriginal peoples and their organisations hold.

We submit two documents in support of these recommendations:

- Williamson, B., Markham, F., & Weir, JK. (2020). *Aboriginal peoples and the response to the 2019–2020 bushfires* (Working Paper No. 134). Centre for Aboriginal Economic Policy Research, ANU.
- Weir, JK., Williamson B. and F. Markham 2020. Submission to the NSW independent expert inquiry into the 2019–2020 bushfire season. 17 April 2020.

Sincerely,

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# Submission to the independent expert inquiry into the 2019–2020 bushfire season

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## Table of Contents

<b>RECOMMENDATIONS</b> .....	<b>2</b>
<b>ABORIGINAL PEOPLES AND THE 2019–2020 NSW BUSHFIRES</b> .....	<b>3</b>
<b>PROCESSES AND STRUCTURES</b> .....	<b>3</b>
<b>DISTINCT RESIDENTS AND PEOPLES</b> .....	<b>3</b>
<b>OPPORTUNITIES TO LEARN FROM AND SUPPORT ABORIGINAL PEOPLES</b> .....	<b>5</b>
THE FRAMING OF THE PROBLEM .....	5
STRENGTHS AND VULNERABILITIES .....	6
PROTECTING AND MAINTAINING RIGHTS AND INTERESTS.....	7
CULTURAL BURNING .....	8
CONTEMPORARY LAND MANAGEMENT .....	8
<b>ABORIGINAL VOICES AND NATURAL HAZARD RESILIENCE</b> .....	<b>9</b>
<b>REFERENCE LIST</b> .....	<b>10</b>

## Recommendations

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2. Establish clear policy instructions that Aboriginal people—including their histories, knowledges, perspectives, experiences and unique status—be part of the terms of reference and membership of post-bushfire inquiries in the future, across the full suite of concerns that Aboriginal people raise, experience and are responsible for.
3. Establish, with guidelines and regulations, Aboriginal representation on relevant government committees involved in decision-making for the preparation, planning and implementation of natural hazard risk management, including how public sector research monies are allocated.
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## Aboriginal peoples and the 2019–2020 NSW Bushfires

The Terms of Reference of the NSW Bushfire Inquiry are to consider and report on the occurrence of bushfires and our preparation, planning and response to them. In this submission we foreground Aboriginal peoples' experiences and priorities.

Our submission is largely based on our research publication *Aboriginal peoples and responses to the 2019-2020 Bushfires* (Williamson, Markham & Weir, 2020), and related research expertise. We refer the Inquiry to this and other readings listed at the end.

This submission has been broadly structured to respond to a number of areas set out in the Terms of Reference of the Inquiry. In particular, we respond to Item 4 '*Any other matters that the inquiry deems appropriate in relation to bushfires*' to urge the Inquiry to deeply engage with the voices, opinions and stories of Aboriginal peoples, including their communities and nations.

### Processes and structures

We raise procedural and structural priorities which we ask the Commissioners to take into consideration. Specifically, for reasons set out in our paper (Williamson et al., 2020), the Inquiry has an imperative to listen to Aboriginal peoples and their organisations in the course of this Inquiry. This includes involving Aboriginal peoples' in the Inquiry itself, in providing expert evidence to the Inquiry, and in interpreting other evidence provided to the Inquiry.

Society, law and policy has shifted to recognise and value the distinct role and experiences of Aboriginal people. For example, the Victorian government has set up an Aboriginal advisory group to work alongside the new bushfire recovery agency, in contrast to the omission of Aboriginal peoples' and their concerns in the 2009 Victorian Bushfire Royal Commission (Williamson et al. 2020, p. 14). Addressing exclusion requires ameliorating discriminatory structures and processes, and supporting and resourcing Aboriginal peoples decision-making authority.

If it has not already done so, we strongly encourage the Inquiry to attend to this matter. Should the Inquiry be unable to do so in a meaningful way given the Terms of Reference, we suggest that the Inquiry make recommendations that addresses these important procedural and structural matters to relevant state government agencies.

### Distinct residents and peoples

In our research publication (Williamson, Markham & Weir, 2020), we sourced and analysed quantitative census data about Indigenous peoples as residents of the 2019–2020 bushfires within a specific 'bushfire affected area' in New South Wales and Victoria. We define the 'bushfire affected area' as the zone that falls within 15 km of the burnt area. Our research found:

- One quarter of all Indigenous peoples in NSW and Victoria were directly affected by the bushfires. Whilst Indigenous peoples make up only 2.3% of the population in NSW and Victoria, they represent 5.4% of people living in bushfire affected areas. Yet despite the significant population presence of Indigenous peoples in these areas, their minority status means they are at risk of being overlooked in bushfire responses and recovery.
- One in ten children living in bushfire affected areas are Indigenous. Indeed, over 36% of the total Indigenous population in fire-affected areas are less than 15 years old. This raises serious questions regarding the diverse effects of bushfires on infants and children. Of particular concern are issues of trauma, health, and access to education, housing and family support.
- The existence of 22 discrete Aboriginal communities in fire affected areas. Twenty of these are in NSW, with one in the Jervis Bay Territory and one in Victoria. In total, 10% of the total Indigenous population affected by the fires live in these discrete communities. In urban areas, Indigenous people are more likely to live in some locations than others. For example, Indigenous people comprise 10.6% of residents in fire-affected Nowra–Bomaderry, compared with 1.9% of residents in fire-affected Bowral–Mittagong. This spatial variation is indicative of historic and contemporary experiences and priorities and must be accounted for when providing support to Indigenous peoples.

We also mapped the legal rights and interests held by Aboriginal people, as well as communal land holdings, as formally recognised in government legislation. This mapping demonstrates:

- Aboriginal people have experienced land dispossession, with partial redress by governments; and,
- Aboriginal people have distinct, diverse and spatially extensive legal rights and interests in land as First Peoples, including across much of the fire affected area (Williamson et al., 2020, p. 10).

As part of the acceleration of land recovery in New South Wales, Local Aboriginal Land Councils are becoming the biggest landowners in some local government areas (Norman, 2018, p.25). Further, Norman reports OEH estimates that by 2038, Aboriginal people will have registered interests over all ‘public lands held in the conservation estate’ (cited in Norman 2018, p. 23).

These are rights and interests in land are complex issues, not least because they require navigating the relationship between the laws of the Federation of Australia, the common law, and Aboriginal peoples’ laws and customs (Weir and Duff 2017). This includes the 2019 High Court decision on the value of compensation for the extinguishment or impairment of native title after 1975 (see Dillon, 2019).

In summary, there is a significant presence of Aboriginal people, with unique population profiles, spatially uneven patterns of residence, distinct communities, and holding status as both Aboriginal peoples and as First Peoples who have ongoing legal rights and interests. This sets Aboriginal peoples in a unique position in Australian society and with specific regulatory arrangements with governments, including government policies to partner with Aboriginal communities as part of ‘Close the Gap’ (Department of the Prime Minister and Cabinet, 2019).

Given these findings, this Inquiry needs to consider the particular circumstances and standing of Aboriginal peoples. Notably, these experiences and interests are relevant across the Inquiry's interests in bushfire preparation, planning and response.

## Opportunities to learn from and support Aboriginal peoples

In the following section, we outline how Aboriginal peoples can not only contribute to, but lead across preparation, planning and response. This includes bureaucratic structures and processes, as well as in relation to specific topics, such as land management practices, community recovery, cultural and natural heritage, land use planning, the role of volunteers, research priorities and so on.

### The framing of the problem

Aboriginal peoples are uniquely placed to make a substantive contribution to understanding the key questions including; what is at risk, and what might be done about it? These framing matters have broad consequences for regulation and resourcing.

For example, Aboriginal people repeatedly identify that the land needs to be foregrounded in bushfire risk mitigation, and that property and life are to be protected within this. This is a practical and meaningful land ethic known as Country, which sets out priorities for decision making (Williamson et al, 2020, p.16; Cavanagh, 2020; Weir et al., 2020). From this perspective 'the environment' should not be the third risk priority after life and property, but first. This does not downgrade the protection of people and property but understands that they are not categorically separate and cannot be protected without looking after the environment first. This viewpoint understands that humans live within the environment, as distinct from viewpoints that understand the environment as biodiversity or a place to visit (Weir and Freeman 2019, p.25; Weir, 2016).

With this framing, government and societal attention on environmental issues finds a sharp and meaningful focus, and bushfire risk mitigation can then be better argued for, resourced and understood in relation to other public priorities. This is similar to, but not the same as, the framing being developed by integrated and sustainable approaches to natural hazard risk and resilience.

Aboriginal people also foreground the importance of culture and its inseparable relation nature. For example, Aboriginal people express healing from trauma as a cultural and spiritual process that is inherently tied to land (Fenney, 2009; The Lowitja Institute, 2020). Yet, in community recovery and disaster resilience, the term 'community' is often used to assume a single socio-cultural group where people's individual needs are broadly homogenous and that is conceptually separate to 'nature'. Without considering the political and cultural contexts that define the lives of Aboriginal peoples, responses to the bushfire crisis are likely to be inadequate and inappropriate (Williamson et al., 2020).

However, when Aboriginal people foreground culture, their issues can be characterised as discrete issues to a cultural group, rather than understanding the role of culture in decision making for all people. All people have culture. Culturally literacy is central to understanding social values, social change, and to humanise our futures.<sup>1</sup>

With this framing, cultural issues are not a grab-all tacked onto a list of management concerns, or dismissed as intangible, but can be identified and analysed to understand how they form and inform management. For example, the natural hazard sector has traditionally focused bushfire risk mitigation on the prescribed burning of public lands, however this is changing with policy approaches centred on resilience and community engagement. The foregrounding and analysis of values, assumptions and more enables a wider range of options to consider in risk mitigation. It also addresses serious gaps in the evidence and expertise needed by risk mitigation practitioners (Weir et al., 2019; Lane, 2013).

### Strengths and vulnerabilities

Aboriginal people are often cast as vulnerable passive recipients of assistance. This typecasting glosses over the discrimination that underscores Aboriginal peoples' vulnerability and instead focuses on Aboriginal peoples as a problem to be fixed (Fogarty et al., 2018). For example, given current child removal rates from Aboriginal people, particularly in NSW and Victoria (Brennan, 2018), it is quite reasonable that some Aboriginal families may be fearful and hesitant to engage with family services, putting them at risk of accessing sub-standard support or indeed, not accessing support at all, leading to further risks and vulnerabilities.

The frequently cited vulnerabilities conceal the strengths Aboriginal peoples possess. These include their laws and customs with respect to kin and Country, their cultural knowledge, their knowledge practices, their social networks, as well as their own organisations and land base. Of particular importance in the context of community recovery is understanding and valuing the resilience of Aboriginal peoples. As communities of peoples that have lived through catastrophic change and continue to exist in a settler-colonial society that perpetuates structural inequality, much can be learnt from the resilience of Aboriginal peoples, individuals and communities who are in possession of durable social, cultural and ancestral ties (Tiwari et al., 2019; Williamson, In Press).

It is important to have nuanced understandings of Aboriginal peoples' experiences of trauma, vulnerability, and strength because catastrophic bushfires do not just reveal, but can also magnify and deepen vulnerabilities in society, which can then lead to vulnerable people becoming more vulnerable (Lukasiewicz & Baldwin, 2020). If agencies and non-government organisations responsible for leading the recovery from these fires are not well-prepared, they

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<sup>1</sup> See further the Australian Academy of the Humanities <https://www.humanities.org.au/advice/8pointplan/>

risk inflicting new trauma on Aboriginal communities. This is not ‘special treatment’, rather policy and practice that is fit-for-purpose.

Though imperfect, the National Disability Insurance Agency offers an example of how to engage with Aboriginal people that sets out to respect Country, culture and community, and working with each community’s values and customs to establish respectful, trusting relationships. This demonstrates that a large national agency responsible for administering a complex and long-term policy can set out to embed different ways of working within its structures and recognise the uniqueness of Indigenous peoples.

Fundamentally, though, Aboriginal peoples’ own organisations and leadership need to be supported. For example, two Aboriginal-led responses have emerged to provide direct support to south coast Aboriginal families in New South Wales. These are the joint Illawarra Aboriginal Medical Service and Dr Marlene Longbottom appeal (Wellington, 2020), and the Indigenous Crisis Response and Recovery appeal (GoFundMe, 2020). Central to both of these fundraising initiatives is the importance of culturally appropriate support (Williamson et al., In Review).

Protecting and maintaining rights and interests.

Aboriginal polities have rights and interests arising out of their laws and customs, as recognised through native title and other laws and policies. This includes places and things of value known as ‘cultural heritage’ – such as scar trees, stone arrangements, rock art, and so on – which are often inseparable to Country and are also have State and Federal statutory regulation. Where there is no formal recognition of land ownership, it remains that all fire-affected lands have Aboriginal ownership held and passed down through songlines, languages and kinship networks.

The distinctive nature of these rights and interests means that the 2019-20 bushfires have different consequences for Aboriginal rights-holders than for non-Indigenous landowners. For example, native title lands are inalienable, and cannot be bought, sold, or held individually. The decision of whether to stay and rebuild or sell and move on, is a transaction not applicable to relationships between Aboriginal polities and their Country. In another example, Ngadjju people in southern western Australia have recently attracted greater fire agency support because of the importance of keeping the Nullarbor Highway open (Schultz et al. 2020). But, for Ngadjju, their fire management is about looking after a suite of landscape values that are not present, and thus not resourced, in a regulatory set up focused on towns rather than Country (Weir and Freeman, 2019).

Clearly, in the immediate term, supporting these interests requires distinct measures. For example, funds and additional support for recovery for farmers and businesses need to also be allocated for Aboriginal peoples’ interests in land that do not fit within these categories. What is at risk also requires serious consideration, and a considered engagement with the full meaning of Country.

Without specific measures, it is likely Aboriginal peoples will continue to be marginalised in processes that follow major fire events, and thus the learnings and recommendations that arise out of them. Aboriginal people are placed in an undesirable position as they continue to be largely excluded from key emergency management forums and decision-making roles, even though they have distinct legal responsibilities as different to all others.

### Cultural burning

The extraordinary public interest in Aboriginal peoples' burning practices, and its inclusion in this Inquiry's Terms of Reference, present a unique opportunity to embed and extend Aboriginal-led cultural burning in NSW. Any additional support to implement cultural burning *must* be led by Aboriginal peoples. This will require significant investments in the training and capabilities of Aboriginal peoples in fire management, as well as equipment and transport needs. This leadership role, and the allocation of resources, will be unsettling for people who had thought these matters were settled and in the past.

There now exists a significant evidence base from northern Australia demonstrating how Aboriginal-led landscape scale burning has significantly decreased hot, late season bushfires (Russell-Smith et al. 2018). These burns have largely been on Indigenous land holdings, and supported by the carbon economy, as well as public sector funding for conservation employment. Aboriginal groups in NSW hold significantly less lands and where they do, it is generally small parcels held through Local Aboriginal Land Councils whose funding is not tailored around land management (Norman 2018). Cultural burns are also undertaken in collaboration with other land authorities, including parks and conservation lands. Promoting cultural burning will require creating regulation that is fit for this context, including addressing the inequity in land management funding between Aboriginal organisations and the public sector.

Furthermore, there must be significant investment in the education and training of non-Indigenous land managers and land holders. The reality is that Aboriginal peoples remain excluded from decision making roles throughout much of mainstream Australia, this is certainly the case in Australia's land management and emergency response sectors. As such, the state must commit to a meaningful program of educating and reforming land management and emergency services personnel, including in the education of Aboriginal people's histories, societies, cultures and worldviews. This is a significant structural issue that without addressing, severely limits the long-term possibilities that landscape-scale cultural burning offers.

### Contemporary land management

Significantly, the accelerating return and co-governance of land across Australia is changing how land management is understood, with the public sector adapting to land rights and native

title rights and interests, as well as societal change with respect to the presence and value of Indigenous people as land managers. Fundamentally, Weir and Duff (2017) argue that there needs to be a re-think of the land management responsibilities of land holders in relation to:

- Who the landholders are;
- Their legal status (from companies, individuals and government agencies; to now include (largely non-profit and frequently unfunded, or funded for different purposes) communal landholding groups, sometimes represented by special statutory corporate bodies);
- Their land use activities;
- Their priorities, values and world views, including their motivations for being involved in land management;
- Their available resources – including funding, skills, knowledge, and organizational capacity (noting that these changes are not all necessarily diminutions); and,
- The legal rights and obligations they have in respect of the land.

Concomitantly, the public sector and political leadership needs to think closely about what is meant by ‘the public good’ in their policies and programs – that is, who is the public and what do they consider is good? Whilst remote Australia is an emblematic focus of activity by and for Indigenous Australia, the majority of Australia’s Indigenous people live in urban and regional south-eastern Australia (Markham & Biddle, 2018), and with the recognition of native title, Ngadju are now the largest land holders in southern Australia.

## Aboriginal voices and Natural Hazard Resilience

The events of the past summer offer, we argue, a once in a generation opportunity to recalibrate the relationship between the state and Aboriginal peoples with respect to natural hazards and natural hazard resilience. There has been unprecedented public interest in cultural burning, but the opportunities must not stop there. These burning practices are a window into Aboriginal peoples’ concerns and interests that are across preparation, planning, and response. As important as cultural burns are, they should not distract from these matters. Indeed, these matters will inform how cultural burns are interpreted and engaged with.

For example, if cultural burning is considered simply a technical burn practice, without consideration of its context nor meaning in relation to kin and Country, then its larger import is missed. At the same time, this narrow scope presents Aboriginal people with the choice of having their practices co-opted by the public sector on these terms, or choosing not to engage. This is a real possibility. Because of inequities in resources and decision-making authority, Aboriginal people risk sharing their cultural burning techniques with the public sector and then being excluded from it being practiced in their name. This choice faced by Aboriginal people can be addressed by meeting on different terms. Recalibrating relationships and setting new terms has already begun with the emergence of cultural burning collaborations in southeast Australia, but there is much at stake.

There is substantial academic literature about how the government, research, inquiry processes, and others might respond, engage and co-design disaster response strategies and policies. As Hunt (2013, p. 33) demonstrates, successful Indigenous engagement:

*...works best in a framework that respects Indigenous control and decision making and supports development towards Indigenous aspirations. Early engagement to enable deliberation about shared goals is necessary, and support for Indigenous governance development and capacity to engage is important. The development of respectful and trusting relationships is key to success. This takes time, people with the right skills and approaches, good communication and leadership by all parties. Clarity about processes, roles and responsibilities, mutually agreed outcomes and the steps to achieve them and a willingness to share responsibility for progress are essential.*

We recommend four steps be taken:

5. Acknowledge that Aboriginal people have been erased, made absent and marginalised in previous post-bushfire enquiries. Undertake the reflective work required to identify and address how this happened and why it continues to happen, so as to help identify embed the need for change.
6. Establish clear policy instructions that Aboriginal people—including their histories, knowledges, perspectives, experiences and unique status—be part of the terms of reference and membership of post-bushfire inquiries in the future, across the full suite of concerns that Aboriginal people raise, experience and are responsible for.
7. Establish, with guidelines and regulations, Aboriginal representation on relevant government committees involved in decision-making for the preparation, planning and implementation of natural hazard risk management, including how public sector research monies are allocated.
8. Examine how the acceleration of the return of land governance to Aboriginal peoples relates to the purpose and models of land management of the Federation of Australia, to ensure that regulation and funding is appropriate to the responsibilities and roles that Aboriginal peoples and their organisations hold.

These structural and procedural changes are needed to ensure that Aboriginal peoples own voices are centred in understanding what matters, and what might be done in response, in both policy and practice for Australia's natural hazard resilience.

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