

**INQUIRY INTO LOCAL LAND SERVICES AMENDMENT
(MISCELLANEOUS) BILL 2020**

Organisation: Kalang River Forest Alliance Inc.

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Inquiry into the Local Land Services Amendment (Miscellaneous) Bill 2020

Submission from the Kalang River Forest Alliance Inc.

I, Katherine Kelly (Ass. Dip. App. Sc, BSc(hons), PhD Candidate), am the Secretary of the Kalang River Forest Alliance Inc. (KRFA). I hold post-graduate qualifications in Environmental Science. I am a resident in the upper Kalang Valley, NSW 2454. Following our KRFA meeting on 3 February 2021, the Executive Committee and members authorised this submission.

KRFA's vision is *"The Kalang River Forest Alliance (KRFA) is a not-for-profit organisation comprising a community of people in the Kalang Valley that are dedicated to the protection and preservation of the Kalang catchment including its fauna and flora and waterways. We value its biodiversity and ecological and cultural importance"*.

The following issues relevant to the LLS Amendment (Miscellaneous) Bill 2020 are addressed in this submission from KRFA:

1. The objectives and impact of the Local Land Services Amendment (Miscellaneous) Bill 2020.
2. The operation and effectiveness of the 1994, 2019 and any potential new draft Koala SEPPs in protecting koalas and their habitat.
3. Current and potential incentives and challenges facing rural landholders who seek to protect koalas and their habitat on their land.
4. The mechanisms by which biodiversity values are assessed on private land when land use changes.
5. The impacts of current regulatory regimes on private landholders.
6. The impact on local government's ability to manage koala populations in their Local Government Area and koala plans of management.

The Kalang River Forest Alliance Inc. (KRFA) is requesting that this submission be published in full on the website including the name of our organisation.

Introduction

Native forests of the Upper Mid North Coast (Nambucca to Clarence Valley) are known to support a significant proportion of the NSW State's population of koalas. There are indications that 20% of the NSW koala population resides in these forests. The headwaters of the Bellinger, Kalang and Nambucca Rivers are within the Bellinger Shire Council and are completely connected by forest cover, enabling the movement and interbreeding (and hence survival) of koalas across the entire region. A high diversity and abundance of koala feed trees occurs in the existing complexes of wet and dry sclerophyll forest communities in these headwaters.

Patches of rainforest vegetation that exist within these forests are cool moist refuges that koalas seek and move into during heatwave conditions, enabling their survival during adverse climatic conditions. These remaining unburnt areas are now critical for the ongoing survival of koala populations following the loss of critical habitat resulting from the devastating bushfires of 2019 and 2020.

The KRFA and other local conservation based organisations have been campaigning over the last few years to cease all industrial and private logging in the Kalang, Bellinger and Nambucca headwaters. NSW Forestry Corporation (NSWFC) have been active in industrial logging the Gladstone State Forest, in the middle Kalang Valley, which was clear felled and burnt. This forest was untouched during the previous 30-40 years and was vital in providing habitat and feed trees for koalas and other threatened species. NSWFC is now turning their attention and efforts to the headwaters of the Kalang and Bellinger rivers. The headwaters comprise patches of old growth wet and dry sclerophyll forests, steep slopes and highly erodible shale based soils. The headwaters experience periods of high rainfall up to 2000mm annually, and, combined with the instability of the shale soils is completely unsuitable for any logging of any native vegetation on the Nambucca Shale Beds.

A "Soil Regolith Assessment Report" (The Report) was commissioned in 2018 by Mr Ashley Love of the Bellinger Environment Centre, on behalf of the North Coast Environment Council and KRFA, due to concerns about the proposed industrial logging activities proposed by NSWFC on steep land in river catchments on the Nambucca Shale Beds on the NSW mid north coast (Eddie, 2018). The report was developed in accordance with the "Soil Regolith Classification for State Forests in Eastern NSW (Murphy, Fogarty and Ryan, 1998). The Nambucca Shale Beds are composed of fine marine sediment that weathers readily, making it prone to landslides particularly on steep slopes where vegetation is removed. The Report estimated 46% of the Nambucca Beds is of slope gradients greater than 20°. The primary concerns were the impacts of logging in the steep headwaters and the resulting soil erosion, pollution and sedimentation in downstream waterways. The Report identified that several areas that would be subject to mass movement and landslips if they were to be disturbed (Eddie, 2018). These areas are within identified logging compartments and adjacent freehold land and Nature Reserve land. The report states that the soils in the Kalang headwaters meet all three critical criteria for mass movement and should NEVER be logged or disturbed.

Recommendations from the Report for the Nambucca Beds on slopes greater than 20°, in the absence of information, are:

- It is subject to mass movement;
- It has a high erosion rating;

- It has an extreme erosion rating; and
- Native forest logging is prohibited.

Previous logging activities on slopes greater than 25° in the Mistake State Forest resulted in over 88,000 tonnes of soil eroded into the headwaters of the Bellinger River. This caused extreme long term reduction in quality of water supplying domestic and agricultural needs, and then impacted downstream oyster farmers, marine reserves and fish habitat.

Forests are 'biotic pumps' driving regional rainfall due to their high rates of transpiration that return large volumes of moisture to the atmosphere and suck in moisture laden air from afar. Forests store water in their tissues, in the soil amongst their roots and in the protected microclimate beneath their canopies, releasing it over time to the atmosphere by evapotranspiration and to streams through the groundwater system. Forests are a vital component of our hydrological cycle and due to their roles in attracting and recycling rainfall, reducing temperatures and regulating runoff they provide immense economic benefits to human societies. Their importance will become increasingly significant as climate change results in more erratic rainfalls and intense dry periods.

There is abundant scientific evidence that deforestation and degradation of vegetation causes significant reductions in rainfall by:

- reducing the recycling of rainfall to the atmosphere by transpiration;
- reducing the drawing in of moist coastal air;
- reducing updrafts of moist air;
- reducing rooting depth and the recycling of deep soil moisture;
- increasing loss of water from the land by runoff; and
- reducing the organic aerosols necessary for the condensation of rain drops.

The overwhelming evidence from around the world is that land-clearing has directly caused a significant reduction in regional rainfalls and an increase in land temperatures. These impacts have been compounded through the release of stored CO², with land clearing contributing around a third of our CO² emissions in the past two centuries.

The 'Headwaters Conservation Reserve' proposal has been developed to preserve and protect the headwaters of the Kalang, Bellinger and Nambucca rivers. The headwaters contain well-known Koala breeding hotspots and there are reliable indications of the occupation of healthy breeding Koalas across all sectors of proposed reserve area from professional ecologist (David Milledge pers. com.) and community-led Koala surveys (Jonas Bellchambers, pers. com.). These surveys have been conducted in areas that are designated for industrial logging by NSWFC in Scotchman's State Forest, Roses Creek State Forest and Oakes State Forest (Fig 1). As Figure 1 indicates, these areas are directly adjacent to and sometimes completely surrounding freehold land. Koalas do not distinguish between forests that are privately owned or managed by the State government and Crown land. Substantial evidence of Koalas is documented for these compartments that included direct

observations with photographic evidence and location data; koala scats at the base of trees; acoustic evidence and the identification and recording of koala feed trees (Fig. 2).

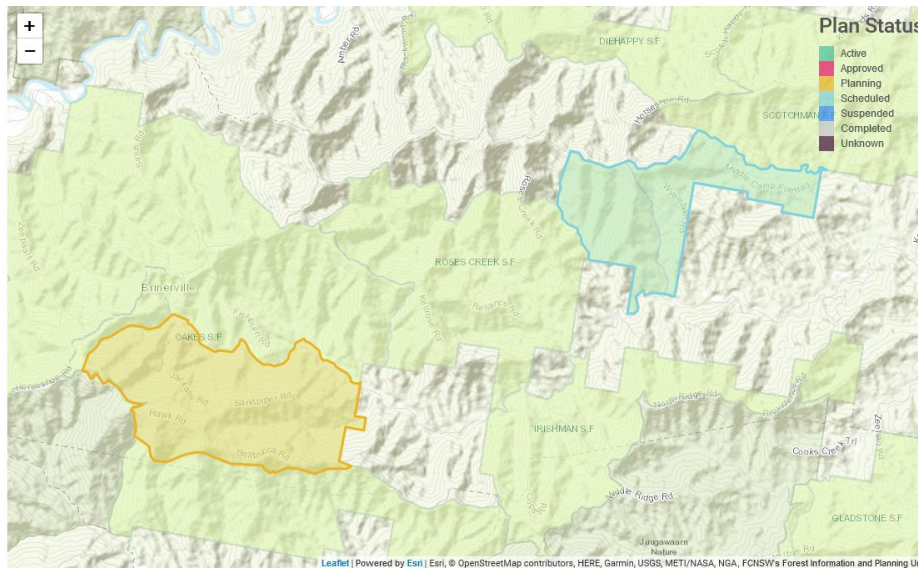


Figure 1: Map of areas marked as Scheduled (now Proposed) and Planning by NSW forestry Corporation

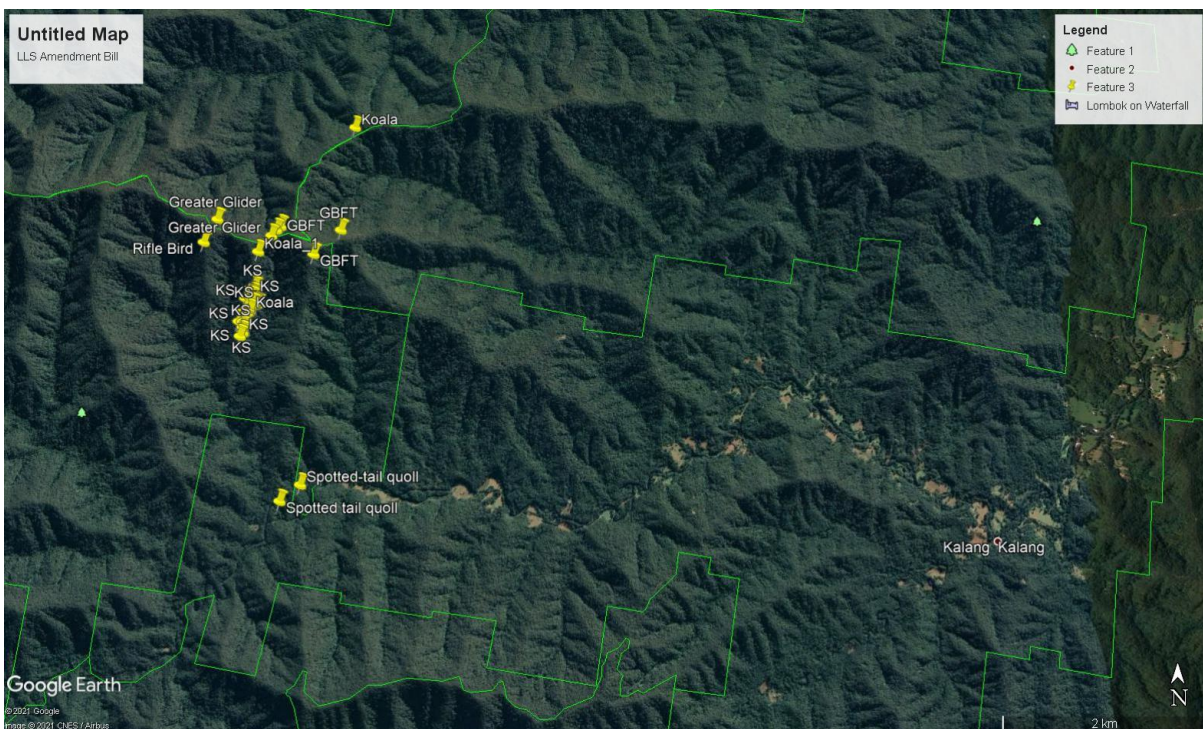


Figure 2: Sightings of koala scats (KS), koalas, Greater Gliders and Spotted-tail quoll in the Kalang headwaters

Koala feed tree species and those occupied by Koalas documented during the surveys of compartments include Tallowwood (*Eucalyptus microcorys*) New England Blackbutt (*E. campanulata*), Coastal Blackbutt (*E. pilularis*), White Mahogany (*E. acmenoides*), Forest Oak

(*Allocasuarina torulosa*), Brush Box (*Lophostemon confertus*) and Turpentine (*Syncarpia glomulifera*). These tree species are known to occur on freehold land adjacent to these State Forests.

A distinct feature of the forests is the near-complete absence of environmental weeds. The general lack of weeds is a consequence of the 30-50 years since these forests were selectively logged, with no disturbances that have facilitated or enabled weed invasion. Weeds that are present include Lantana, Crofton Weed and Mistflower along roads and trails with very little apparent in core forest areas of these compartments. Koalas can't travel through lantana and weeds. Bell Miners can also populate disturbed areas and breed causing die-back.

1. Koalas are predicted to go extinct by 2050 if the NSW Government doesn't act immediately to stop escalating deforestation rates
2. Expansion of National Parks estate needs to be considered
3. No logging of native forest on private land for financial gain is to occur

1. The objectives and impact of the Local Land Services Amendment (Miscellaneous) Bill 2020.

Part (a) of the objects of this Amendment Bill excludes the Bellingen Shire Council lands as core Koala habitat. Although Kempsey to the south and Coffs Harbour Council to the east are included, the Bellingen Shire Council is excluded. The impacts of this exclusion of core koala habitat and refuge within Bellingen Shire Council lands results in fragmentation of critical koala habitat, potential disturbance to the natural movement of koalas between forest types and limited access to key koala habitat and feed trees. Bellingen Shire Council hosts the iconic Gondwana World Heritage Area designated for its high biodiversity values, unique landscape and the provision of connectivity of remnant old growth Gondwana forest types. This area is of critical importance to the fabric and connectivity of ancient forests types that are critical for koala populations.

In order to manage the forests within the Bellingen Shire Council, and private land holders use of the forests, the Bellingen Shire Council must be recognised as having core koala habitat and be included as a key koala area in the Local Land Services Act.

Part (b) removes the requirement for development consent under the *Environmental Planning and Assessment Act 1979* in relation to carrying out private native forestry authorised under Plan B of the Act. The headwaters along the Kalang River are largely privately owned, except for areas of State forest and a couple of Nature reserves on the back ridges. This places the flora and fauna of the Kalang headwater forests and the river banks in a perilous situation, where unregulated private native forestry activities can and does occur without penalties, fines or incentives to stop. This causes irreparable damage to riparian vegetation along the river bank, damage to the fragile, highly erodible soils at higher elevations resulting in high levels of erosion and increased sedimentation into the Kalang River and associated streams. This also results in the loss of rainforest wet gullies that sustain critically endangered species, provide a moister localised atmosphere and a cooler local climate. These gullies are currently identified as Endangered Ecological Communities and are irreparable if disturbed.

Private native forest logging contractors target particular species of trees that are in demand by Boral Inc. and local timber mills. Tree species such as Tallowwood and Blackbutt are targeted for poles and sold to Boral. Other species, including rainforest species are highly sought after by local

timber mills as they fetch a high price. The mere concept of allowing the equivalent of unregulated logging is abhorrent. It is imperative that we protect the remaining forests in the face of the recent bushfires, impending climate change, Australia's current extinction crisis and a heating planet.

If development consent for private native forestry activities is removed, the very trees that hold the landscape together will be lost resulting in impoverished water quality, multiple massive landslips and continual sedimentation of the river.

Part c) relates to the extension of the maximum duration of private native forestry logging plans from 15 years to 30 years. It is well known in this valley that land owners do not conduct wildlife surveys prior to private logging operations, nor does the Environment Protection Agency follow up on landowners to ascertain adherence to the requirements for PNF Permits. The extension from 15 years to 30 years is considered by KRFA to be an unrealistic and dangerous timeframe for any form of effective environmental monitoring and management by the relevant authorities, that is currently completely inadequate and negligent. Private logging permits that are granted will be shelved into the archives and long forgotten about, enabling complete devastation of our native forest. KRFA considers even the current time frame of 15 years to be unrealistic and not conducive to any baseline and ongoing assessment and monitoring. Logging of our native forests cannot be left to the individual land owner that most likely has no knowledge of the fragility of the forest, the high biodiversity values and the downstream impacts that private native logging creates.

Part d) excludes community consultation (third party rights to appeal) in the making of a private forestry code of practice. Community consultation is critical for obtaining social licence and community acceptance of private logging activities. Forestry activities on slopes greater than 25° have been shown to result in massive landslips in this area. KRFA does not accept or support any private native forestry activities in the Kalang headwaters or anywhere in NSW.

Part e) allows for farmers to clear fell any free hold land held by them for agricultural purposes, regardless of whether core koala habitat is found there or not. This is irresponsible land practice management and will result in the further loss of topsoil retained by trees; critical koala feed trees; further heating of the land where there is no shade; and increased impoverishment of soils.

2. The operation and effectiveness of the 1994, 2019 and any potential new draft Koala SEPPs in protecting koalas and their habitat.

This Bill proposes dramatic weakening of laws for how and when developers and landholders can destroy koala habitat. It seeks large expansion of exemptions for both developers and landholders from the koala SEPP regulations. These exemptions enable clear destruction of koala habitat more easily, following a disastrous history of weakening of protection laws in NSW (detailed below).

Councils such as the Bellingen Shire Council (BSC) will be unable to protect core koala habitat and require consent for logging in environmental zones. This new Bill will be disastrous for koalas within the BSC and other areas not identified as core koala habitat.

History of the lack of effective regulation of Private Native Forestry 1974 - 1991

Some controls over logging of protected lands, steep lands and selected riparian areas has existed since 1972, with areas outside these basically unregulated. It is apparent that the NSW National Parks and Wildlife Act 1974 (NPW Act) established the need for people to undertake activities likely to cause harm to species to obtain a licence to log. Private Native Forestry (PNF) is the clearance of native vegetation in a native forest in the course of it being selectively logged on a sustainable basis or managed for forestry purposes (timber production). However, it was not clear that the NPW Act was established to apply to PNF until the introduction of the NSW Endangered Fauna (Interim Protection) Act 1991. This Act put it beyond doubt in 1991 that threatened fauna were required to be protected in PNF operations.

1991 - 1995

PNF then continued unabated during a long period of inaction on behalf of the NSW government agencies. Prest (2003) found that from 1991 – 1995 only nine PNF operations were licensed by the National Parks and Wildlife Service (NPWS).

1995 - 2001

In 1995, two Planning Policies were introduced as interim measures to regulate clearing of private lands:

- the State Environmental Planning Policy No. 44, 'Koala Habitat Protection' SEPP No. 44; and
- State Environmental Planning Policy: 'Protection and Management of Native Vegetation' SEPP No. 46.

They were established to require landholders to seek development consent for PNF and 'authorised' plantation establishment.

However, when SEPP 46 was introduced in 1995 it included an exemption for PNF (outside 'protected lands'). When SEPP 46 was replaced by the Native Vegetation Conservation Act 1997 (NVCA), it carried over the PNF exemption, where all PNF operations (outside 'protected lands') could be undertaken without any constraints to protected threatened fauna. This is because, at the time, the NSW Department of Lands, Water and Conservation (DLWC) chose to ignore requirements for sustainability and threatened species, including koalas. The poor wording of the PNF exemption effectively allowed for any logging operation "for forestry purposes" to claim an exemption, and left it open for 'those who wish to use an exemption to make a self-assessment' as to its scope, and to lawfully commence clearing or logging under exemption without informing the DLWC (Prest, 2003).

Under the NVCA between 1997 – 2000 only three s.91 licences were issued by NPWS, with not one refused. All the applications for PNF on protected lands in the North Coast and Hunter regions from 1997 – 1999 were granted.

While DLWC publicly tried to pretend that the exemption only applied to "sustainable logging", Prest (2003) identified that the DLWC (2000) internal 'Review of Exemptions' report stated that the wording suggested that non-sustainable forestry is also permissible under this exemption. Due to the location of 'or' in the exemption there is no other interpretation possible. This exemption in effect allows any clearing of native forests without consent so long as timber is being produced. Prest (2003) considers it probable that the intent of the exemption was originally to encourage

sustainable logging but that the alternative ‘managed for forestry purposes’ was added at the last minute following lobbying from rural and timber interests. One DLWC officer was later to complain “This exemption is so lacking in any definition that logging of non-protected lands is effectively unregulated by the NVCA”. “It would be absolutely impossible to convict anyone for alleged breaches that involve forestry activities”(Prest, 2003).

As a result, irrespective of their nature, 100% of PNF operations outside ‘protected lands’ in the North Coast and Hunter regions claimed the PNF exemption (Prest, 2003). And, despite the SEPP 44 nothing was required to be done to protect koalas. In 1998, the DLWC developed best management principles for logging which included a wide variety of habitat retention requirements and exclusion areas for biodiversity and threatened species, as well as limiting canopy removal as a key component of ecologically sustainable logging. Despite this, Prest (2003) found that PNF was the most important cause of native vegetation clearing within the categories of all types of approved vegetation clearing between 1991 – 2001 inclusive. If PNF logging under exemption were to be included, it is abundantly clear that PNF would have been, by a considerable margin, the most important cause of native vegetation clearing in those regions.

Prest (2003) reported that the DLWCs communication with landholders in the North Coast and Hunter regions wanting to apply the exemption to undertake PNF to “turn a blind eye to the impact of logging under the exemption”. In the Sydney –South Coast Region, DLWC negotiated with landholders to obtain concessions relating to their logging operations in order to obtain the exemption. Similarly of all the applications for PNF outside of ‘protected lands’ in the North Coast and Hunter regions from 1997 – 1999 not one was refused. The NVCA also allowed for the preparation of a Code of Practice (COP) as an exemption. Due to the broadness of the PNF exemption, it was recognised by some DLWC staff that a COP for PNF was required to at least provide some semblance of regulation.

3. Current and potential incentives and challenges facing rural landholders who seek to protect koalas and their habitat on their land.

The following suggestions are an approach to develop and provide incentives for landholders to protect koala habitat on their properties.

- A streamlined process for landholders to quickly and easily undertake conservation covenants;
- Provide greater funding for these conservation programs;
- Greater funding and payments to landholders for protecting certain habitat will incentivise further conservation on private land;
- Greater funding for surveys and baseline assessment of important potential habitat on private land to support farmers and landholders in understanding the species that their land supports and what they can do to protect them; and
- Reintroduce 2020 koala Habitat Protection SEPP with amendments that strengthen, rather than weaken protection for koalas.

4. The mechanisms by which biodiversity values are assessed on private land when land use changes.

Current biodiversity assessment mechanisms prior to land use changes are inept and have contributed to massive loss of native forests in NSW. Application for PNF does not enforce any baseline assessment of biodiversity values prior to the enactment of PNF activities. Nor is there any ongoing monitoring or follow up of forestry activities on private land. It is evident that PNF has never been undertaken on an Ecologically Sustainable basis because of political interventions; lack of political will; opposition from some landholders; failure to adopt best practices; refusal to adopt science-based prescriptions and consider relevant environmental research; refusal to require pre-logging surveys and apply mitigation measures for threatened species; inadequate retention and recruitment of old trees; failure to undertake assessments to identify ecosystem features requiring protection; inadequate protection of streams and riparian buffers; failure to take into account forest degradation and require rehabilitation; failure to monitor the effectiveness of prescriptions and apply adaptive management; failure to undertake effective regulation; secrecy surrounding PNF operations and contempt for genuine community concerns.

5. The impacts of current regulatory regimes on private landholders.

The current regulatory demands on landholders are lacking and limited, resulting in detrimental environmental outcomes for koala habitat and native forests. Few restrictions are currently placed on farmers or rural landholders regarding plans to develop or clear land on their property. This Bill weakens restrictions even further resulting in higher rates of land clearing and habitat loss for koalas.

In June 2019 the Auditor General Report 'Managing Native Vegetation' determined that clearing of native vegetation on rural land is not effectively regulated and managed. Management of clearing activities currently has weak processes, poor assessments, inadequate protection, limited monitoring and poor enforcement. This Report documented that in 2018, clearing of woody vegetation doubled to 60,800ha, of which, 72% of the 75,000ha of Rural Regulated Land was unexplained.

6. The impact on local government's ability to manage koala populations in their Local Government Area and koala plans of management.

Local Government can play a critical role in the protection of koalas within their Shire. This Bill does not include Bellingen Shire Council (BSC) as core koala habitat, thereby rendering the BSC with no protection measures for koalas during land use changes and PNF permit applications. In listing the BSC as core koala habitat and providing adequate resources and incentives, the BSC can continue with the development and implementation of a comprehensive koala plan of management. In the past 5 years or so, the BSC has collaborated with local conservation groups and First Nations people to develop the Great Koala National Park (GKNP). This is a comprehensive plan that results in far greater protection for koalas in the NSW mid-North Coast and should be recognised and adopted. It is critical that stronger protections are implemented for the remaining koala populations following the 2019/2020 devastating bushfires.

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