

Submission
No 254

**INQUIRY INTO HEALTH AND WELLBEING OF
KANGAROOS AND OTHER MACROPODS IN NEW SOUTH
WALES**

Organisation: Australian Centre for Climate and Environmental Law (ACCEL)
and the Sydney Environment Institute

Date Received: 28 April 2021

*Submission to the NSW Parliamentary Committee of Inquiry into
the Health of the NSW Macropod Population*

Professor Rosemary Lyster, [Australian Centre for Climate and Environmental Law](#), The
University of Sydney

Professor Danielle Celermajor [Sydney Environment Institute](#), The University of Sydney

Professor Glenda M. Wardle, Professor School of Life and Environmental Sciences, The
University of Sydney

1. Authors

Professor Rosemary Lyster is the Professor of Climate and Environmental Law in the University of Sydney Law School and a Fellow of the Australian Academy of Law. She is co-director of the [Australian Centre for Climate and Environmental Law](#) (ACCEL), one of Australia's leading centres for environmental law and climate change expertise. She is also a member of the Sydney Environment Institute.

Professor Danielle Celermajer is Professor of Sociology and Social Policy, co-convenor of University of Sydney Human Animal Research Network and Deputy Director of the Sydney Environment Institute, a Multidisciplinary Institute of the University of Sydney bringing together expertise from across disciplines to address key environmental problems in favour of the public good. The [Sydney Environment Institute](#) is a national and world leader in multidisciplinary environmental research, known in particular for work in the environmental humanities and social sciences.

Professor Glenda M. Wardle is a Professor in the School of Life and Environmental Sciences, The University of Sydney with particular expertise in Environment, Wildlife and conservation, and Ecology and Evolution.¹

2. Introduction

The approach taken to this submission draws on the field of *Multispecies Justice*, which has been a focus of research in the Sydney Environment Institute in recent years. For the purposes of this Inquiry, a *Multispecies Justice* approach to law and policy suggests that two key linked principles must be applied:

(i) Laws and policies ought to be developed with a view to their impact on the functioning and flourishing of all humans, non-human animals and the environment (irrespective their economic benefits to humans), and of the relationships that sustain them. Correlatively, in evaluating the legitimacy of laws and policies, consideration ought to be given to the question: *whose lives and futures are prioritised and on what basis?*

(ii) In order to best ensure that laws and policies are formulated in light of the full range of interests and in a just way, the interests of all who are affected, including all humans, non-human animals and the environment ought to have the opportunity for representation.

The legitimacy of the laws and policies adopted by the NSW government with respect to kangaroos and other macropods requires that it justly weigh the full range of potentially impacted interests in coming to its decisions. When those laws and policies concern habitat protection or destruction, welfare protections, and the regulation of commercial and non-commercial killing, this process is inevitably made difficult by the fact that there exists a range of stakeholders with very different environmental, economic, and ethical interests and commitments. Nevertheless, the legitimacy of political decisions is undermined when they are not the outcome of efforts to reach a reasonable compromise, but rather reflect differential levels of political influence and industry capture.

¹ We also acknowledge the contribution of Dr Sophie Chao, a Postdoctoral Research Associate at the University of Sydney's School of Philosophical and Historical Inquiry and the Charles Perkins Centre.

Moreover, within the existing political process, there exists no formal mechanisms to ensure that the interests of the kangaroos and other macropods, nor of the broader environment are represented. As such, it is critical that accommodation be made within political processes to ensure inclusion of the views of Non-Government and Civil Society Organisations that have assumed the role of representing non-human interests, and of people with expertise, particularly environmental scientists, biologists, social scientists and ethicists in what is required for their wellbeing.²

Our submission to the current inquiry builds on these principles.

3. Comments on the Terms of Reference.

In this submission, we limit ourselves to commenting on:

- (c) threats to kangaroo, and other macropod, habitat, including the impact of:*
- (i) climate change, drought and diversion and depletion of surface water sources,*
- (ii) bushfires,*
- (iii) land clearing for agriculture, mining and urban development,*
- (iv) the growing prevalence of exclusion fencing which restricts and disrupts the movement of kangaroos.*

Rather than addressing each of the threats listed under (i)-(iv) separately, in this submission, we wish to point to the importance of responding to them synthetically. Such consideration should not occur only at the level of problem analysis, but more importantly at the level of law and policy.

In relation to threats to kangaroos and other macropods, the absence of this type of analytic and policy holism is starkly illustrated by the failure to take into account the effects of climate change and in turn climate change's effects on bushfires in the formulation of law and policy with respect to land clearing and biodiversity, and their combined impact on wildlife. Specifically, the devastating impact that the fires that ravaged large parts of NSW in the summer of 2019-2020 had on native animals including kangaroos and other macropods does not appear to have altered laws and policies regarding land clearing or biodiversity protection. Correlatively, the pre-existing weakness of biodiversity protections and the intensification of land clearing in NSW that resulted from a deregulatory ideology and framework exacerbated the impact that the fires had on animals, including kangaroos and other macropods.

The detrimental, if not deadly impacts that climate change is already having and will continue to have on a range of species is well documented, as is the combined effect of climate change and other drivers of environmental destruction. Already in 2014, Working Group II of the Intergovernmental Panel on Climate Change (IPCC) reported that:

“A large fraction of both terrestrial and freshwater species faces increased extinction risk under projected climate change during and beyond the 21st century, especially as climate change interacts with other stressors, such as habitat modification, over exploitation, pollution, and invasive species.”³

² We note that draft bills and regulations are published by government for comment prior to being made and NGOs including animal rights and environmental organisation are able to make submissions. Legislative history casts doubt on whether these are adequately considered in the bargaining process.

³ IPCC Working Group II, *Climate Change 2014: Impacts, Adaptation and Vulnerability; Summary for Policy Makers*, 14-15. https://www.ipcc.ch/site/assets/uploads/2018/02/ar5_wgII_spm_en.pdf

In its 2019 *Special Report on Climate and Land*⁴ report, the IPCC found that:

- Climate change had adversely impacted terrestrial ecosystems and contributed to desertification and land degradation (A.2).
- Shifts in climate zones resulting from climate change have resulted in many animals experiencing changes in their ranges, abundances, and shifts in their seasonal activities (A.2.6).

In 2019, the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES) also reported that:

“An average of around 25 per cent of species in assessed animal and plant groups are threatened, suggesting that around 1 million species already face extinction, many within decades, unless action is taken to reduce the intensity of drivers of biodiversity loss. Without such action, there will be a further acceleration in the global rate of species extinction, which is already at least tens to hundreds of times higher than it has averaged over the past 10 million years.

...The rate of global change in nature during the past 50 years is unprecedented in human history. The direct drivers of change in nature with the largest global impact have been (starting with those with most impact): changes in land and sea use; direct exploitation of organisms; climate change; pollution; and invasion of alien species.”⁵

Such global trends are particularly stark in Australia. The Final Report of the Review of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (released in October 2020)⁶ found that:

“Australia’s natural environment and iconic places are in an overall state of decline and are under increasing threat. They are not sufficiently resilient to withstand current, emerging or future threats, including climate change.” (iii)

“Given the current state of Australia’s environment, broad restoration is required to address past loss, build resilience and reverse the current trajectory of environmental decline. Restoration is necessary to enable Australia to accommodate future development in a sustainable way.

...To shy away from the fundamental reforms recommended by this Review is to accept the continued decline of our iconic places and the extinction of our most threatened plants, animals and ecosystems. This is unacceptable. A firm commitment to change from all stakeholders is needed to enable future generations to enjoy and benefit from Australia’s unique environment and heritage.” (iv).

⁴ See *Summary for Policymakers* available at <https://www.ipcc.ch/srcl/chapter/summary-for-policymakers/> (accessed 26 June 2020) at 9, para. A.2.

⁵ IPBES *Global Assessment on Biodiversity and Ecosystem Services*, https://ipbes.net/sites/default/files/2020-02/ipbes_global_assessment_report_summary_for_policymakers_en.pdf, pp. 11-12.

⁶ Professor Graeme Samuel AC, *Independent Review of the EPBC Act – Final Report*, October 2020, available at <https://epbactreview.environment.gov.au/resources/final-report>

Despite the common belief that kangaroos and other macropods are so abundant that they will be immune to such threats, over 60% of kangaroo species are now classified as extinct, critically endangered, threatened or vulnerable.⁷

The relationship between climate change and the fires of 2019-2020 is widely recognised. The hottest and driest weather conditions experienced in Australia, combined with exacerbated fire conditions and the intensity and spread of the fires were made far worse by extremely hot and windy conditions.⁸ These fires were in turn responsible for the death of over 3.3 billion vertebrate animals.⁹ The lives of animals who survived the immediate fires was subsequently made more vulnerable as a result of the loss of habitat, food and shelter and increased risk of predation.¹⁰

Such direct threats from climate induced fires occurred against a background where native animals including kangaroos and other macropods were already facing a number of threats and stressors. Most specifically, systematic deregulation of land clearing regimes in NSW has resulted both in a massive increase in land clearing and correlatively of threats to biodiversity. A 2019 NSW Natural Resources Commission report found that since the introduction of new laws in 2016, land clearing in NSW had had increased 13-fold and biodiversity is now at risk in 11 out of 13 regions.¹¹ In May 2020, the Guardian¹² reported that in August 2019, just before the fires, the NSW government announced that farmers who had cleared land illegally under the old *Native Vegetation Act 2003* (NSW) would be granted amnesty. It had also been reported that hundreds of prosecutions already initiated.¹³

Since the fires, there has been no sign that the destruction of native animal habitats is letting up. So as to fulfil timber contracts, the New South Wales Government permitted salvage logging in burnt areas¹⁴ and further logging by the NSW Forestry Corporation of remnant unburnt forest that might have provided habitat, food and protection for surviving animals.¹⁵

⁷ Australian Wildlife Protection Council, *National Code of Practice for the Shooting of Kangaroos and Wallabies for Commercial Purposes: Submission by the Australian Wildlife Protection Council*, 9 December 2019.

⁸ See Celermajer, Danielle, et al. "The Australian bushfire disaster: How to avoid repeating this catastrophe for biodiversity." *Wiley Interdisciplinary Reviews: Climate Change* (2021): e704.

⁹ See Dickman (2020) <https://www.abc.net.au/news/2020-01-31/fact-check-have-bushfires-killed-more-than-a-billion-animals/11912538>. Accessed 17 February 2020.

¹⁰ Chris Dickman, Don Driscoll, Stephen Garnett, David Keith, Sarah Legge, David Lindenmayer, Martine Maron, April Reside, Euan Ritchie, James Watson, Brendan Wintle, John Woinarski (2020) After the catastrophe: a blueprint for a conservation response to large-scale ecological disaster, Threatened Species Recovery Hub, January 2020, and McGregor HW, Legge SM, Jones ME, Johnson CN (2016) Extraterritorial hunting expeditions to intense fire scars by feral cats. *Scientific Reports* 6, 22559.

¹¹ The NSW Natural Resources Commission compiled a report *Land Management and Biodiversity Conservation Reforms. Final Advice on a response to the Policy Review*, July 2019

https://drive.google.com/file/d/1aYqKtF7A9JrHyrOWCjPF_4nZoQPHZkE8/view. For a discussion Rachel Walmsley, Analysis: Native vegetation clearing in NSW – Regulatory failure confirmed, <https://www.edo.org.au/2020/04/02/native-veg-clearing-nsw-regulatory-failure/>

¹² See <https://www.theguardian.com/australia-news/2019/aug/01/nsw-farmers-granted-amnesty-for-illegal-land-clearing>.

¹³ <https://www.theland.com.au/story/6258528/native-veg-case-crisis-talks-with-old-laws/>

¹⁴ See: <https://www.epa.nsw.gov.au/your-environment/native-forestry/bushfire-affected-forestry-operations>

¹⁵ Lisa Cox, 'State MPs dismayed at NSW Forestry logging unburnt habitat after bushfires' (15 March 2020) *The Guardian* <https://www.theguardian.com/environment/2020/mar/15/state-mps-dismayed-at-nsw-forestry-logging-unburnt-habitat-after-bushfires>.

It should be noted that several recommendations of the NSW Government's own Bushfire Inquiry (July 2020) speak directly to these actions.¹⁶ In particular:

Recommendation 36

That Government invest in long-term ecosystem and land management monitoring, modelling, forecasting, research and evaluation, and harness citizen science in this effort. This will include, among other things:

- tracking and trying to forecast what is happening to ecosystems over decades under projected changes to climate extremes, including fire regime change;
- better understanding interaction of fire with other disturbances, e.g. drought, hydrological changes in the landscape;
- commissioning experiments and feasibility studies for ecosystem adaptation experiments – for example, facilitating shift of high conservation-value rainforest vegetation communities further south as climatic conditions change;
- better understanding the influence of different land management practices on landscape flammability (in different landscapes) over the short, medium and long-term, and enabling an adaptive management approach.

Recommendation 53

That Government develop and implement a policy on injured wildlife response, rescue and rehabilitation including:

- a) a framework for the co-ordination and interaction with emergency management structures;
- b) guidelines for Incident Management Plans to include wildlife rescue and rehabilitation as a consideration
- c) a requirement for all vets and wildlife rescue volunteers to obtain the Bush Fire Awareness accreditation
- d) guidance for firefighters on handling injured wildlife.

To draw this together, the key argument we are seeking to make in this submission is the following. Multiple threats and stressors on wildlife, including kangaroos and other macropods combine and multiply to intensify their vulnerability. However, legal and policy responses fail to recognize their synthetic effect. There is evidence that laws and policies that would, on their own, have deleterious impacts on wildlife including kangaroos and macropods are not reconsidered in the face of the multiplication of threats. Indeed, it would appear that in some cases, government doubles down on such laws and policies.

This final observation needs to be linked back with the principles set out at the beginning of this submission. That is, particularly in the face of climate change, environmental degradation and their impacts of biodiversity, it would appear that the interests of animals and the environment are not taken into consideration in the development of law and policy, and that the NSW government has been responsive to particular human interests to the exclusion of others.

¹⁶ <https://www.dpc.nsw.gov.au/assets/dpc-nsw-gov-au/publications/NSW-Bushfire-Inquiry-1630/Final-Report-of-the-NSW-Bushfire-Inquiry.pdf>