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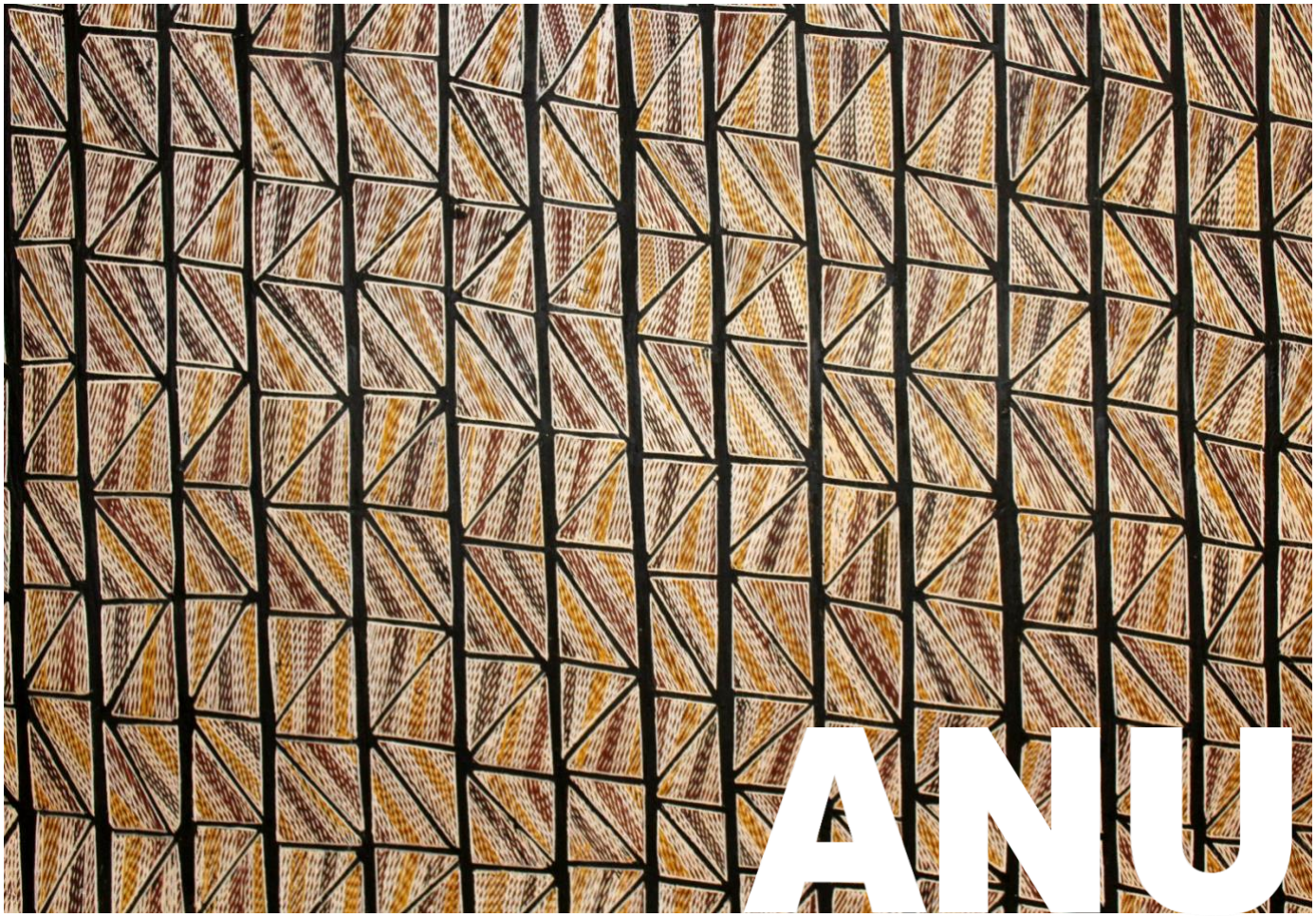

CULTURAL BURNING IN NEW SOUTH WALES: CHALLENGES AND OPPORTUNITIES FOR POLICY MAKERS AND ABORIGINAL PEOPLES

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Cultural burning in New South Wales: Challenges and opportunities for policy makers and Aboriginal peoples

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Abstract

The Independent Inquiry into the New South Wales (NSW) experience of the 2019–20 summer bushfires revealed that in NSW, Aboriginal people have not been adequately supported to pursue cultural land management opportunities, including cultural burning. The NSW Government accepted all recommendations from the Inquiry, generating a strategic opportunity for Aboriginal people in NSW to re-establish cultural land management activities and cultural burning. Drawing on the history of Caring for Country in northern and central Australia, and current developments to support Aboriginal people in southern temperate Australia, this paper maps the challenges and opportunities to support cultural land management programs in NSW. It considers 'what next' for cultural burning in NSW, by delving into the current governance arrangements in NSW Aboriginal communities and organisational cultures of NSW Government agencies. This reveals that much more must be done to confront historical issues of land justice and marginalisation. The paper also draws on the strengths of Aboriginal people to map ways forward to support the resurgence of cultural land management and in particular, cultural burning in NSW.

Keywords: Cultural burning, cultural land management, Indigenous rangers, southern Australia, NSW Aboriginal Affairs, bushfires

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Acronyms

ACT	Australian Capital Territory
ANU	Australian National University
CAEPR	Centre for Aboriginal Economic Policy Research
CDEP	Community, Development and Employment Projects
CFCU	Caring for Country Unit (Northern Land Council)
DFES	Department of Fire and Emergency Services (WA)
DPIE	Department of Planning, Industry and Environment (NSW)
IPA	Indigenous Protected Areas
LALC	Local Aboriginal Land Council
NCARA	New South Wales Coalition of Aboriginal Regional Alliances
NPWS	NSW National Parks and Wildlife Service
NSW	New South Wales
NT	Northern Territory
OCHRE	Opportunity, Choice, Healing, Responsibility, Empowerment
PBC	Prescribed Body Corporate
Qld	Queensland
RA	Regional Alliance
RFS	Rural Fire Service (NSW)
TOS Act	Traditional Owner Settlement Act
WA	Western Australia

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Introduction

Cultural burning by Aboriginal peoples has been the topic of immense interest as a strategy to mitigate climate change-driven catastrophic bushfires in Australia (Cumpston, 2020; Neale, 2020). But cultural burning is just one part of a larger cultural land management ethos captured in the Aboriginal English phrase 'Caring for Country' (Binskin et al., 2020; Owens & O'Kane, 2020, pp. 182–183; Weir et al., 2009, p. 1). This ethos has been led by traditional owners of Country and is now increasingly sourcing funding and conducting activities through Aboriginal and Torres Strait Islander ranger programs. These cultural land management programs have expanded exponentially since their beginnings in Queensland (Qld) and the Northern Territory (NT) in the 1980s and 1990s (Smyth, 2011). In 2018, there were more than 118 Aboriginal and Torres Strait Islander ranger groups operating across the country, supporting more than 831 full-time equivalent ranger positions (Country Needs People, 2021). These ranger programs, through the maintenance of ecosystem services, serve the national interests (Kerins, 2019). Many of the programs are increasingly key pillars in local economies, playing a significant role in reducing Australia's carbon emissions and conserving and managing vast parts of Australia's native landscapes and ecosystems and offer a range of health, social, political and economic benefits to local communities (Altman & Kerins, 2012; Garnett et al., 2009).

Initially, these groups were supported through funding from the Australian Government's Community Development Employment Projects (CDEP) program, the Indigenous Protected Areas (IPA) program along with a myriad of other small short-term grants (Northern Land Council, 2006). In 2007, the then Australian Department of Environment and Water Resources made a significant investment through the Working on Country Program (Mackie & Meacheam, 2016). With their roots firmly grounded in Australian Government funding, some state and territory governments have increasingly supported cultural land management groups through increased funding and administrative and bureaucratic support. Such has been the success of these cultural land management programs that other nation-states, such as Canada are seeking to replicate the models developed in Australia to support First Nations guardianship programs (Allam, 2019; Indigenous Leadership Initiative, 2021).

The significant majority of these Aboriginal and Torres Strait Islander ranger programs are located in northern and central parts of Australia (Binskin et al., 2020, p. 390; Neale et al., 2019, p. 342). Progress in developing groups in southern temperate Australia continues to be slow (Hunt, 2012; Smith et al., 2021). In NSW for example, the lack of support for Aboriginal people to develop and implement cultural land management programs and significantly, cultural burning, was highlighted in the Independent Inquiry into the NSW experience of the 2019–20 summer bushfires as a significant problem (Owens & O'Kane, 2020). The Inquiry found that:

> *Governments and land managers need to listen more to and learn from the people who managed the land for tens of thousands of years before British colonisation (p. 182).*

The Inquiry recommended:

> *That, in order to increase the respectful, collaborative and effective use of Aboriginal land management practices in planning and preparing for bush fire, Government commit to pursuing greater application of Aboriginal land management, including cultural burning, through a program to be coordinated by Aboriginal Affairs and Department of Planning, Industry and Environment working in partnership with Aboriginal communities. This should be accompanied by a program of evaluation alongside the scaled-up application of these techniques (p. 186).*

Concurrently, the Australian Government established a Royal Commission into National Natural Disaster Arrangements (Bushfire Royal Commission), and they recommended in their final report (Binskin et al. 2020: (p. 396) that:

> *Australian, state, territory and local governments should engage further with Traditional Owners to explore the relationship between Indigenous land and fire management and natural disaster resilience.*

In response to these recommendations, the NSW Government has created a Cultural Fire Management Unit to coordinate and support the resurgence of cultural land management programs in NSW. But mainstream Australia's recently-found enthusiasm for Aboriginal peoples' cultural land management practices also brings notable risks (Neale, 2020). It is in this context that this paper explores the challenges, opportunities and ways forward for Aboriginal groups to develop cultural land management programs including expanding the application of cultural burning in NSW.

This paper will first explore the history of cultural land management programs, commonly referred to as 'Caring for Country', identifying their common underpinnings and prerequisites for success. It will then explore some recent developments in southern temperate Australia revealing that cultural land management programs and cultural burning can, and is, being implemented in southern Australia in diverse and multifaceted ways. This paper will then use this background to explore the unique circumstances of NSW to identify the opportunities and challenges to supporting cultural land management programs throughout the state. This paper concludes with outlining key challenges that must be overcome, as well as the opportunities for moving forward for Aboriginal people and NSW.

Before proceeding however, a note on terminology is required. Use of the term 'cultural land management' refers to activities and projects carried out by a range of community-based and community-controlled organisations and groups. Aboriginal and Torres Strait Islander ranger programs are the most common and high-profile groups in this category however, the term cultural land management is used to include other groups including but not limited to non-incorporated community groups conducting Caring for Country works and Indigenous corporations that run cultural land management programs but that may not be considered 'ranger groups' These include, green groups or Aboriginal Landcare groups. As this paper explores opportunities for cultural burning in particular, the term cultural *land* management is used. I do acknowledge however, that fire management is a tool used to manage fresh and saltwater and that many cultural land management groups also conduct works looking after fresh and saltwater Country (see Weir & Freeman (2019) for an example of Ngadju managing a water resource using fire in southern Western Australia (WA)). References to government-run cultural land management groups such as Aboriginal ranger groups within government agencies will be explicitly named so as to make clear they are not community-controlled cultural land management groups.

A short history of cultural land management in northern and central Australia

The first cultural land management programs were established in Qld in the 1980s and then in the NT in the mid-1990s (Kerins, 2012; Smyth, 2011; Weir et al., 2009). These groups were established following the return of large parcels of land to Aboriginal groups through the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cwlth) (Kerins, 2012; Weir et al., 2009). However, much of this land when returned was severely damaged and degraded due to overgrazing, the introduction of weeds and feral animals, erosion and poor fire management (Kerins, 2012; Northern Land Council, 2006). It was in this context that the Northern Land Council created the first Caring for Country Unit (CFCU) in 1995 to support traditional owner groups manage their lands and waters (Kerins, 2012; Northern Land Council, 2006, 2021).

The aims of the CFCU were to support Aboriginal land-owning groups and their local organisations to manage their land, water and biodiversity, strengthen customary skills and governance and create meaningful employment opportunities (Kerins, 2012; Northern Land Council, 2006). To do this the CFCU worked with traditional owner groups to develop 'community-based plans' (Kerins, 2012). Development of these community-based plans took

time, years in some instances, but importantly, they allowed communities to set their own strategic directions in land and sea management, economic development and governance of ranger activities (Kerins, 2012). Unsurprisingly, the importance of conducting cultural burning to protect Country against late, hot season bushfires was also identified as being of immense importance by many Aboriginal groups (Kerins, 2012; Russell-Smith et al., 2009).

Following the initial success of the cultural land management programs in Qld and the NT, other Aboriginal and Torres Strait Islander groups pursued these opportunities. As native title rights was determined throughout much of central Australia, northern Western Australia and north Queensland, many Aboriginal and Torres Strait Islander groups were recognised as holding customary rights to ancestral lands and waters. Many of these native title groups moved quickly to identify environmental restoration and Indigenous land and sea management as being of utmost priority.

Now, with a long-established and administratively well-supported regime throughout northern and central Australia, Caring for Country is widely celebrated as an effective strategy to mitigate against late, hot season bushfires (Binskin et al., 2020, pp. 389–390), manage ecosystems, maintain biodiversity and promote collaboration between Aboriginal and Torres Strait Islander peoples and governments, scientific and non-government organisations, and provide economic development opportunities (Weir et al., 2009).

Caring for Country is also acknowledged for its ability to engage young Aboriginal and Torres Strait Islander people and provide working and professional development pathways while providing important opportunities for them to learn about their Country and culture and strengthen relationships with their communities and homelands (Fordham & Schwab, 2012; Morrison, 2007). Engaging young people and providing rewarding and enriching work, especially as it relates to culture and conservation, has been consistently identified as being of paramount importance to senior Aboriginal people (Weir et al., 2009, p. 9). But there have also been challenges and shortcomings in delivering Caring for Country programs (Kerins, 2012, p. 36).

Since their beginning, cultural land management programs have suffered from a lack of security in their funding arrangements (Kerins, 2012). This has impacted their ability to recruit, train and retain staff and impacts on delivering projects. Kerins identifies three distinct but interrelated funding challenges: the lack of funding available to Aboriginal people given their vast land ownership and management responsibilities of an ever-increasing estate, the short-term nature of the funding, and the separate and siloed funding packages which creates overwhelming administrative and reporting requirements (Kerins, 2012, p. 38). Decades-long advocacy for permanent and more streamlined funding arrangements has gone some way to securing resources, yet this issue continues to hinder development of cultural land management programs. The erratic nature of funding cycles is evidence of another significant problem for cultural land management programs, that is, the constant cycle of policy and bureaucratic changes in Indigenous affairs.

In Australia, Indigenous affairs suffers more generally from inconsistent policy approaches. The abolition of the Aboriginal and Torres Strait Islander Commission (ATSIC) was perhaps the most spectacular example of Aboriginal and Torres Strait Islander affairs being the victim of government vagaries. The large-scale defunding of the CDEP also had a significant impact as many of the first cultural land management programs were funded through this program (Kerins, 2012, p. 40; Patterson & Hunt, 2012, p. 210). Furthermore, just as the success of the Caring for Country programs in the NT was being observed and recorded, the then Australian Government introduced the discriminatory Northern Territory Emergency Response, known more commonly as ‘The Intervention’, which undermined community governance and the ability of Aboriginal people to remain living on homeland communities on ancestral lands (Kerins, 2012, p. 40). What is clear is that cultural land management in northern Australia, despite its enormous success, is not insulated against the policy vagaries of Australian

governments. But if funding and policy changes can be thought as external challenges, that is, challenges that exist outside of Aboriginal groups, there have also been internal challenges.

As cultural land management groups have expanded throughout northern and central Australia, it was widely acknowledged that Aboriginal and Torres Strait Islander women have been underrepresented (Green et al., 2012; Northern Land Council, 2018). The underrepresentation of women in these programs presented significant challenges to care for Country in a holistic sense (Weir et al., 2009, p. 9). This can be attributed to gender restricted sites and knowledges, and also the unique perspectives that women offer to Care for Country differently (Weir et al., 2009; Weir & Freeman, 2019, p. 12). In response, specific programs including discrete women ranger groups were created to target Aboriginal women (Northern Land Council, 2018). The creation of Aboriginal women ranger groups together with targeted recruitment and identified positions within larger ranger groups have come a long way in ensuring equal representation between men and women (Northern Land Council, 2020). However, more still needs to be done to support Aboriginal and Torres Strait Islander women in these programs.

Cultural land management in southern temperate Australia

In southern temperate Australia, progress to establish cultural land management programs has been much slower. This slow pace can be attributed in large part to the slow rate of recognising Aboriginal peoples' rights and interests in Country. Notwithstanding this slow rate of progress, there have been some recent advancements.

Australia's first IPA, Nantawartina, was declared in South Australia in 1998, soon followed by the Preminghana IPA in Tasmania (Commonwealth of Australia, 2007; Hunt, 2012, p. 94). In southern Western Australia, a settlement package with the state and Australian Governments for Noongar people have laid the foundation for the creation of a Noongar Ranger program (South West Aboriginal Land and Sea Council, 2021). This program includes the creation of a number of permanent, fixed-term ranger positions operating over vast tracts of lands recognised through native title settlement in southern WA (South West Aboriginal Land and Sea Council, 2021). Furthermore, the WA Government have created a cultural governance training course for staff in the Department of Fire and Emergency Services (DFES) (Weir & Freeman, 2019, p. 19). This allows DFES staff to develop specific cultural protocols when engaging with different Aboriginal communities (Weir & Freeman, 2019, p. 19). The WA Government has also created the 'Traditional Fire Program' within the Bushfire Centre of Excellence with the explicit aim of supporting 'communities in developing, implementing and promoting traditional fire activities' (DFES, 2021).

In Victoria, a number of Aboriginal groups have successfully had their native title rights and interests recognised, including Gunai-Kurnai and Gunditjmara peoples. From this basis, some groups have successfully leveraged their rights and interests to establish Aboriginal Ranger programs, such as the federally funded Budj Bim Rangers (National Indigenous Australians Agency, 2021b). Yet, while native title has offered opportunities for some groups, it prevents others, due to the Native Title Act's strict requirements for Aboriginal groups to demonstrate ongoing and uninterrupted connection. The colonisation of Victoria, and on-going settler-colonial regimes, means that many Aboriginal groups are unable to fulfil these legal requirements. In recognition of this problem, the Victorian Government designed alternate pathways for Aboriginal groups to be formally recognised as holding rights to ancestral lands – for example, the *Aboriginal Heritage Act 2006* (Vic) which appoints Registered Aboriginal Parties (RAPs), and the *Victorian Traditional Owner Settlement Act 2010* (Vic) (TOS Act) which offers a pathway for the return or co-management of national parks, as well as settlement packages. The settlement packages range from group to group, but generally consist of monetary packages in recognition of the enormous impact colonisation has had on traditional owner groups, funding for permanent staff and support to establish sustainable governing institutions. The TOS Act, in particular, offers an important case study in how state governments can introduce targeted legislation to respond to the distinct needs and historical circumstances of Aboriginal peoples in particular states and territories. This includes resolving issues of land justice and ongoing marginalisation of Aboriginal

peoples in the management of their Country. Furthermore, an innovative partnership between Victorian Government agencies, Aboriginal peak bodies and traditional owner groups have seen them develop the Victorian Cultural Fire Strategy (Department of Environment, Land, Water and Planning, 2020). This strategy has informed new and targeted programs through the Department of Environment, Land, Water and Planning to support traditional owner groups to map, plan, prepare for and carry out multi-tenure cultural burning over the next two to three years in Victoria. It is important to note that these initiatives in Victoria have all been implemented against the backdrop of the Victorian Aboriginal Affairs Framework, a whole-of-government approach to working with traditional owner groups throughout Victoria (Aboriginal Victoria, 2018).

In the Australian Capital Territory (ACT), a cultural burning program has been developed iteratively and over a number of years through the ACT Parks and Conservation Services. This cultural burning program, unlike other programs, has been developed without formal recognition of traditional owners (there exists no land rights, native title or other formal recognition of Aboriginal peoples in relation to land management in the ACT). As such, the ACT offers a case study of how Aboriginal people may be supported to develop cultural burning programs within the government bureaucracy and without formal recognition of rights and interests to land.

Queensland currently offers a best-practice case study in supporting cultural land management programs. The Queensland Government supports Aboriginal and Torres Strait Islander communities to deliver cultural land management programs through a centralised government unit – the Indigenous Land and Sea ranger program (Queensland Government, 2021). The sole purpose of the Indigenous Land and Sea Ranger Unit is to work with Aboriginal and Torres Strait Islander communities to build their governance capabilities, identify training needs, develop conservation and cultural heritage work plans, barter relationships with government agencies, recruit positions and promote the work of ranger groups. The unit also delivers the Looking after Country Grant program that supports incorporated Indigenous organisations to undertake small scale projects or develop Country plans for their lands and waters. The program supports the development of Junior Rangers and supports an annual Aboriginal and Torres Strait Islander ranger conference (Queensland Government, 2021). Additionally, the unit coordinates an investment portal where external parties can choose to invest in specific projects to be delivered by Aboriginal and Torres Strait Islander ranger teams (Queensland Government, 2021). Whilst some Aboriginal and Torres Strait Islander groups had opportunities to establish cultural land management programs in the first wave of Caring for Country funding across northern Australia, the support of the Queensland Government including a significant increase in funding at the 2020 Queensland election, and the work of the Indigenous Land and Sea Ranger Unit, continues to provide increased opportunities for Aboriginal groups throughout the state.

There are also a small but growing number of private land holders in southern temperate Australia engaging Aboriginal people to advise and inform their land management practices including conducting cultural land management activities. These include the management of cultural heritage sites and some cultural burning (Archibald-Binge & Wyman, 2020; Vyas, 2019).

Cultural land management programs create opportunities for local partnerships, respond to local histories and priorities as outlined by local Aboriginal communities. Australia is a vast continent with various ecosystems and geographies, and varied histories of colonisation, such that cultural land management programs must identify and build on local experiences, concerns and landscapes. This often requires developing and/or strengthening the local governance capabilities within Aboriginal communities and providing spaces for Aboriginal people to discuss what cultural land management and cultural burning is, and means to them, in contemporary contexts (Neale et al., 2019; Weir & Freeman, 2019). This ensures that cultural land management is firmly rooted within a larger ethos of self-determination and that collaborative opportunities between Aboriginal and non-Indigenous people are being built on common foundations. These local conversations extend also to non-Indigenous people. The denigration and dismissal of Aboriginal peoples' knowledges and ongoing connections to Country in southern temperate Australia remains a significant barrier to Aboriginal peoples' inclusion and participation in land

management activities (Freeman et al., *in press*; Neale, 2020; Neale et al., 2019). So, whilst Aboriginal peoples must organise and make decisions about how they choose to reinvigorate these ancient practices, non-Indigenous people must also learn to overcome their own prejudices and be willing to confront racist attitudes, which has enabled the exclusion of Aboriginal peoples from their ancestral lands.

What is shared between all cultural land management programs is that at their heart, they represent a distinctly Indigenous worldview and development pathway that places community and culture at the centre. This worldview honours the relationships between people and land, and recognises the interdependence of both, placing management within these logics, in comparison to western environmental or natural resource management initiatives that separate humans from nature. Kerins (2012, p. 41–42) identifies that Caring for Country:

> *is a uniquely Indigenous development strategy assisting Indigenous people to take ownership of their own future, to shape it and give it meaning… This is much more than environmental work.*

Furthermore, cultural land management programs have been shown to build community pride, create positive role models for young people and provide an increased sense of confidence and self-esteem for community members (Altman & Kerins, 2012; Patterson & Hunt, 2012, p. 204). Cultural land management programs offer an important alternate pathway for community development that centres traditional knowledge, kinship systems and Indigenous ways of being, knowing and doing.

There are a number of important lessons to be garnered from understanding the history of supporting Aboriginal and Torres Strait Islander groups to develop cultural land and sea management programs, including some early lessons from southern temperate Australia. These include:

- Formal recognition of rights in lands and waters (such as through native title) is the most consistent foundation that Aboriginal groups have used to establish cultural land management programs. Nonetheless, such an approach should not be punitive for traditional owners who have not chosen to secure formal recognition, are in the process of doing so, or have not met narrow legal standards.
- In all jurisdictions, cultural land management programs have been established with the support of government agencies, statutory bodies such as land councils or through community-controlled organisation such as Prescribed Bodies Corporate (PBCs).
- Government agencies or statutory bodies such as land councils assist to help groups organise and deliver training and professional development to ensure Aboriginal people are suitably qualified to carry out cultural land management.
- Cultural land management programs are only established when the community says it is a priority, thus facilitating self-determination as both an input and an outcome.
- Cultural land management programs respond to the circumstances and unique needs of local Aboriginal groups.
- Supporting cultural land management programs requires engaging with historical land justice issues.
- Cultural land management programs have been shown to be effective in attracting, training and offering employment opportunities for young people.
- Establishing cultural land management programs requires supporting the governance capabilities of Aboriginal peoples and communities.
- Short-term and insecure funding arrangements constrain efforts to develop high functioning cultural land management programs.
- Cultural land management programs must include specific objectives to include Aboriginal women including through identified positions and targeted projects.
- Cultural land management has consistently demonstrated flow-on impacts on social, cultural, spiritual and economic wellbeing for Aboriginal peoples.
- Cultural land management programs offer important collaborative opportunities with external parties such as government, scientific and non-government organisations.

- It is possible in some circumstances to integrate cultural burning programs within government agencies and deliver this program over public lands.
- There is an important role, and extensive opportunities for, private land holders to engage Aboriginal people to conduct cultural land management programs including cultural burning.

Barriers to Aboriginal cultural land management in NSW

Currently, the NSW Government does not adequately support Aboriginal groups to deliver cultural land management programs (Hunt, 2012, p. 101). This does not preclude isolated ranger programs that operate over lands recognised through native title, although the bulk of these groups are funded through the Australian Government Indigenous Ranger program, previously known as the Working on Country program (National Indigenous Australians Agency, 2016). Canvassing the range of programs and funding to support cultural land management programs throughout other parts of Australia, it is clear that Aboriginal groups in NSW find themselves left behind. This is particularly damaging for Aboriginal people in NSW who, despite the early and particularly devastating impacts of impacts of colonisation, including the large-scale removal of people from Country, continue to hold a deep sense of responsibility to care for Country (Hunt, 2012, p. 95). This lack of opportunity is compounded by the fact that NSW has the highest population of Aboriginal people in Australia (Australian Bureau of Statistics, 2016), constraining efforts to 'close the gap' nationally. In order to support Aboriginal groups to develop their own cultural land management programs, a number of barriers need to be addressed.

The first barrier to consider is the nature of 'cultural' land management in NSW; specifically, does the management of land in NSW by Aboriginal people automatically constitute 'cultural land management'? Insofar as these programs require Aboriginal people to physically undertake the land management works, they may be considered as such. However, questions remain as to the role of traditional owners and importantly, the incorporation of Indigenous ecological knowledge, which is generally possessed by traditional owners, in managing landscapes (Hunt, 2012, p. 112). While Indigenous ecological knowledge has been important for developing cultural land management programs, and solving environmental challenges in northern Australia (Kerins, 2012, p. 32; Weir et al., 2009, p. 4), drawing on these knowledge systems is not always possible in southern temperate Australia where colonial intrusions have existed for much longer, physically separating generations of Aboriginal people from their lands and waters and severing the transfer of knowledge.

Legacies of the violent severing of Aboriginal knowledges from Country and between generations has been a feature of collaborations between non-Indigenous land management agencies and Aboriginal groups in Victoria, where Aboriginal people identify non-Indigenous people's fixations on 'traditional' knowledge were identified as being a challenge to overcome in their participation. As stated in Neale et al. (2019, p. 353):

> *It should not be assumed that Indigenous people have traditional knowledge ready at hand or that they are willing or able to share it (particularly with the settler state).*

These challenges exist in many parts of NSW given the history of violent and systemic displacement of Aboriginal people from their territories, and their continued marginalisation in the management of their ancestral lands. Yet the question remains: if Aboriginal people are managing lands in such a way that reflects non-Indigenous techniques, systems and values, is it cultural land management?

The second barrier to consider is that of insecure governance. Unfortunately, the governing arrangements of Aboriginal communities in NSW remains contested and thus, unresolved (Hunt, 2012, p. 111). Aboriginal land councils, including the NSW State Land Council and Local Aboriginal Land Councils (LALCs), are now a deeply entrenched part of both community and land governance. Land councils were first established in NSW in the 1980s through the *Aboriginal Land Rights Act 1983* (NSW). Throughout NSW, vacant crown land can be claimed

by land councils and then vested in a LALCs estate and administered for economic, social and cultural wellbeing of all Aboriginal people living in a locale (Hunt, 2012, p. 96). It is important to note that even though the NSW Aboriginal Land Council is one of the most significant land holders in the state, there remain a significant number of unresolved land claims (Thompson, 2020). The deplorably slow rate of progress to resolve these claims is widely criticised (Thompson, 2020); however, it is worth considering that when, eventually, these land claims are resolved, they will further and significantly increase the estate owned and managed by LALCs. Yet unlike native title, Aboriginal land councils in NSW are not restricted to traditional owner groups. Instead, they are governed by the Aboriginal community more generally who either live in, or are from, the different land council locations. Notwithstanding that some LALCs do account for and incorporate traditional owners in their governing arrangements, it is not required. Traditional owners, generally understood through the lens of native title, offer a different governing authority (Hunt, 2012, p. 111).

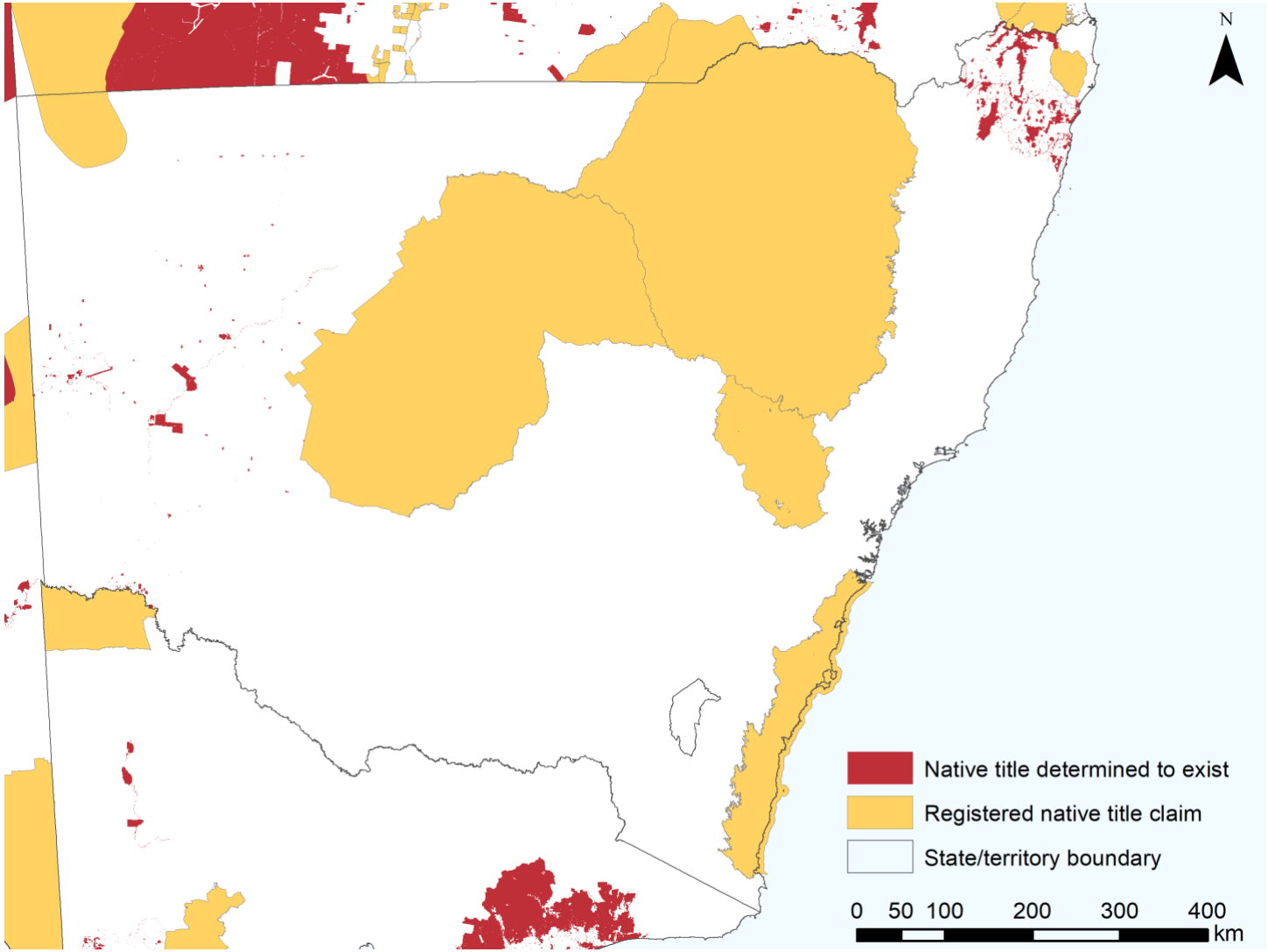
Corporations representing traditional owners, such as PBCs, carry the legal and administrative rights and responsibilities of traditional owners who assert ancestral rights and interests over their Country. Unlike LALCs, PBCs represent native title holders' and claimants' voices regardless of whether they are permanently located on Country.[1] In NSW, a number of native title claims have already been recognised, with many more currently registered covering significant tracts of land and waters throughout the state (Fig. 1). But LALCs and PBCs are not the only governing institutions in place in NSW.

Recently, the NSW Government has invested significant energy and resources into negotiating Accords (or agreements) with Aboriginal Regional Alliances (RAs) under the OCHRE[2] policy framework (NSW Aboriginal Affairs, 2021a). These Accords are wide ranging and include the delivery of services and agreed decision making structures between representative community groups and the state government including at a state level with the NSW Coalition of Aboriginal Regional Alliances (NCARA) (NSW Aboriginal Affairs, 2021b). The development of RAs and negotiation of accords with the NSW Government offer (at a high level) a strategic tool for communities to organise regionally and negotiate the delivery of services. What remains unclear however, is the membership of RAs. Whereas some RAs are made up of a coalitions of LALCs such as Three Rivers Regional Assembly in central and mid-western NSW (Three Rivers Regional Assembly, 2021), others have representation from Community Working Parties such as Murdi Paaki Regional Assembly (Murdi Paaki Regional Assembly, 2021). Other RAs such as the Illawarra Wingecarribee Alliance Aboriginal Corporation, are made up of various community organisations and/or representatives (Illawarra Wingecarribee Alliance Aboriginal Corporation, 2021). The lack of an agreed membership structure for RAs results in inconsistencies in Accords as the substance often reflects the needs of the members. Unlike LALCs or PBCs, RAs are not established through legislation, making them particularly vulnerable to changing governments or government priorities.

At a local level, these various regimes of community and land governance — LALCS, PBCs and RAs — overlap and often conflict. For instance, whereas traditional owner groups assert ancestral and cultural rights over defined geographic areas, LALCs hold land and administer programs for the benefit of *all* Aboriginal people who are either from, or currently live, in the LALCs footprint, meaning Aboriginal people who are not traditional owners are able to assert decision-making authority over Country. It is unclear how these various layers of governance between and within NSW Aboriginal communities intersect. What is clear is that they interfere with one another and prevent a coordinated Aboriginal approach to cultural land management programs.

[1] Some PBCs do include specific provisions outlined in their Rulebooks for traditional owners located on-Country
[2] OCHRE is the NSW Government policy in relation to Aboriginal peoples. OCHRE stands for: Opportunity, Choice, Healing, Responsibility, Empowerment.

Fig. 1 Native title determinations and registered claims in New South Wales, March 2021



Source: National Native Title Tribunal. Note: Areas where it was determined that native title does not exist or that native title has been extinguished are not shown. Details of each claim are available on the National Native Title Tribunal website: http://www.nntt.gov.au/assistance/Geospatial/Pages/NTV.aspx

The third barrier is a regulatory environment that restricts, rather than supports, cultural land management, and inadequate funding. Currently, there are 19 registered IPAs throughout NSW (National Indigenous Australians Agency, 2021a). Yet the majority of these do not include funding for ranger positions (National Indigenous Australians Agency, 2021a). One of the longest running and most successful cultural land management programs is the Wattleridge IPA and Rangers in the NSW northern tablelands (National Indigenous Australians Agency, 2021c; Patterson & Hunt, 2012). The Wattleridge Rangers emerged after decades-long local leadership from Banbai people wanting to reconnect with Country and provide opportunities for young people to learn about culture and provide employment and development opportunities for their community (Patterson & Hunt, 2012). A key pillar in Banbai peoples' cultural land management aspirations included re-learning cultural burning practices and techniques to protect against bushfires and promote ecosystem services (Patterson & Hunt, 2012). Other recent and notable cultural land management projects include the Yellomundee Regional Park in western Sydney (Ngurra et al., 2019) and cultural burning forums such as the Ngulla Firesticks Cultural Burning Forum held in Ulladulla in 2019 (Robertson, 2019). Examining these few cultural land management programs reveals the shared desire of Aboriginal people in NSW to care for Country and importantly, conduct cultural burning. Notwithstanding that some of these programs have attracted small or one-off grants from NSW Government agencies, such as the Local Land Service, to support land management activities, scanning the range of cultural land management activities in NSW reveals the almost complete lack of coordinated and sustained funding available for Aboriginal groups by the NSW Government (Hunt, 2012, p. 101). The vast majority of funding for cultural land management in NSW is delivered by the Australian Government's IPA program (Hunt, 2012; National Indigenous Australians Agency, 2021a; Patterson & Hunt, 2012).

Investment in cultural land management by the NSW Government specifically, has occurred through the *NSW Aboriginal Lands Act 1983* (NSW). This pathway provides opportunities for Aboriginal groups in NSW to negotiate the return or co-management of public lands for the purposes of conservation. In 2007, the Worimi Conservation Reserve north of Newcastle was created through this provision (Hunt, 2012, p. 96). The fact that it took 24 years from the passing of this legislation for it to have a tangible benefit for an Aboriginal group, and the rarity of such an agreement in NSW, suggests that the Act is both difficult to navigate and that NSW Government agencies are reluctant to activate these opportunities.

What is clear in NSW, as it is in other Australian states and territories, is that supporting Aboriginal groups to return to and manage Country requires engaging with deep and ongoing issues of land and social justice (Weir & Freeman, 2019, p. 13). This includes challenging non-Indigenous peoples to think deeply about what they hope to achieve by supporting Aboriginal people to return to and manage their Country. As Neale (2020) asks:

> *Are we, the beneficiaries of colonial dispossession, simply trying to make our lifestyles, houses and property safer from the increasingly combustible landscapes we have helped create?*

In terms of cultural burning specifically, the NSW National Parks and Wildlife Service (NPWS) Cultural Fire Policy represents the first efforts to invest in and support cultural land management activities by the NSW Government (NSW Office of Environment and Heritage, 2016). Recently, the development of the 'Our Place on Country' strategy by the Department of Planning, Industry and Environment (DPIE, 2020) represents another small but important step in increasing the presence of Aboriginal people within government agencies. The NSW Rural Fire Service (RFS) has also established their own Aboriginal Communities Engagement Strategy (NSW RFS, 2018a) and adopted the Aboriginal Participation Strategy (NSW RFS, 2018b).

Taken together, these policies represent the total efforts to engage Aboriginal people in cultural land management and cultural burning from NSW Government agencies. Yet the lack of detail, meaningful targets, accountability, and meagre resourcing provided to implement these policies suggests a façade of Aboriginal engagement. It is clear that NSW Government agencies across the board need to do more to create opportunities for cultural land

management programs, including addressing their own structures and processes that continue to discriminate against Aboriginal people and Aboriginal ways of managing lands. Examining the suite of policies including the RFS Aboriginal Communities Engagement Strategy, Our Place on Country, and the NPWS Cultural Fire Strategy among others, reveals few references to the internal changes needed within agencies to create an environment that supports and values Aboriginal people and Aboriginal ways of managing Country.

That Aboriginal people in NSW continue to find themselves dispossessed of their lands speaks to the importance of creating cultural land management opportunities within government agencies including through the negotiation of co-management arrangements or the return of conservation estates and state forests. Opportunities to bring cultural land management, or at least elements of it, into government practice also provides opportunities to heal fraught relationships between community and government (Neale et al., 2019; Weir & Freeman, 2019, p. 12). This healing can also be transformative in terms of public sector practice as it often requires mainstream land management agencies to examine their own epistemic foundations, questioning how, and for what purpose, they manage the land (Freeman et al., forthcoming; Neale et al., 2019).

Ways forward

NSW has much work to do. This came to a head in the Final Report of the Independent Inquiry into the 2019–20 summer bushfires which states:

> *There appears to be great opportunity for restoration and revitalisation of cultural practices in south-eastern Australia and improvements in landscape health, along with benefits in managing bush fire risk. But wider implementation of traditional land management practices will require review of policies and procedures, and potentially regulatory change, clear acknowledgement of the cultural basis for the practices and Aboriginal ownership of knowledge, and a commitment from Government to invest in building knowledge and capacity for Aboriginal communities to have a greater role in land management, including planning and preparation for bush fire* (Owens & O'Kane, 2020, p. 186).

Much can be learnt from cultural land management programs in other parts of Australia, but it is clear that NSW must find their own way forward. The following section sets out what I believe are suitable next steps, building on my experience as an academic, advisor, practitioner and traditional owner in NSW.

The most suitable starting point is to acknowledge the programs and initiatives in NSW that have provided opportunities and benefit for Aboriginal people. In NSW, two programs stand out as examples in improving Aboriginal engagement and providing opportunities for Aboriginal people. The first is the Protecting our Places grant program. The Protecting our Places grants are offered annually and are open to both incorporated and non-incorporated Aboriginal groups. This program's success owes to the program's flexibility and structured support for Aboriginal groups (DPIE, 2021). To date, the program has facilitated Aboriginal groups, both incorporated and non-incorporated, to self-determine local projects, develop comprehensive implementation plans and carry out their work. These projects include building partnerships in local areas and providing training and upskilling as part of the project delivery. Previous Protecting our Places grant recipients demonstrate that many of these local programs include cultural burning (DPIE, 2021).

The second program is the Indigenous Fire and Rescue Employment Strategy coordinated through Fire and Rescue NSW (Fire and Rescue NSW, 2021). This program is run annually and provides a structured and supportive education and training program for Aboriginal people wanting to pursue a career in Fire and Rescue NSW (Fire and Rescue NSW, 2021). This program has been so successful that other jurisdictions including the ACT, recruit through this pathway. These are small but positive signs within the NSW Government bureaucracy.

It must also be said that, for many years, there have been committed and dedicated Aboriginal people working within the NSW Government bureaucracy to change the institutions from within, with varying degrees of success. Despite these people numbering in the few and spread across and within a large and complex policy ecosystem, many of the small gains outlined in this paper are owed to their leadership and determination to create opportunities for Aboriginal people in spite of government policies and regulation. Their individual leadership must now be matched with institutional leadership.

Arguably, as the largest Aboriginal land holder in NSW (and one of the largest in the country), the NSW Aboriginal Land Council has immense opportunity to be a leader in Aboriginal cultural land management programs. The significant role of the NSW Aboriginal Land Council in fire management more broadly is recognised through its permanent seat on the recently reformed NSW Bushfire Planning Committee (Fuller, 2020). As a land holder with legal jurisdiction to conduct land management activities, including cultural burning, the NSW Aboriginal Land Council, including LALCs, are well-placed to develop cultural land management programs. But land councils are not the only pathway to developing Aboriginal cultural land management programs.

The policy architecture of RAs negotiating Accords with the NSW Government on the delivery of services offers some strategic opportunities to advance cultural land management. The scope of services that can be negotiated in regional Accords is considerable, and it is within the scope of RAs to negotiate for funding and support to establish their own cultural land management programs. Should LALCs be members of RAs, the amalgamation of Aboriginal lands offers potentially vast estates to manage. Accords can also include opportunities for collaboration with mainstream land management agencies with responsibility to manage public lands such as NPWS and the NSW RFS. The negotiation of agreements through the TOS Act in Victoria offers important lessons in brokering these agreements and demonstrates their enormous potential. Yet whilst this may be a desirable path forward for some, the proliferation of positive native title determinations in NSW provides another pathway.

The recognition of native title and subsequent incorporation of native title holders through PBCs can provide opportunities to establish cultural land management programs, with traditional owners organised and incorporated – although resources for native title groups to look after their lands and waters have rarely accompanied native title determinations. Where funding has been available, including through Australian Government environmental programs, Aboriginal and Torres Strait Islander groups throughout much of Australia have established their own cultural land management programs – indeed, this has been the well-travelled path for many native title groups to date. As many native title claims are large in scale, the land base exists to offer year-round employment opportunities and the capacity to take more holistic and impactful approaches to support local ecologies. Administering cultural land management programs through native title groups also provides opportunities for the revitalisation of Indigenous ecological knowledge and ensures that native title holders, as traditional owners, are engaged with the work of Caring for Country.[3]

But Aboriginal cultural land management programs are a significant undertaking and require support through governance, planning, training, equipment and more, and so cannot be limited to community-controlled groups. NSW Government agencies such as NPWS and NSW RFS must also be accountable, including by increasing the recruitment of Aboriginal staff and volunteers and promoting Aboriginal cultural land management opportunities including cultural burning. While the first steps have been taken, such as through the 'Our Place on Country' strategy with DPIE (2020), these are only first steps in a state that has much catching up to do.

It may be desirable for agencies to examine the population distribution of Aboriginal people in NSW to identify where the greatest opportunities might exist, for instance those areas with both high populations of Aboriginal peoples who are in close proximity to significant areas of public lands – although this approach should not

[3] This is not to say that other pathways would not also do this as traditional owners are often engaged in the business of LALCs. See Patterson & Hunt, 2012, for an example of how Banbai people have been active agents within the Guyra LALC.

disadvantage other places with other strengths to bring to the work. Should Aboriginal people be adequately represented and trained in these organisations, the ACT Parks and Conservation Services cultural burning program offers one example of how to formally establish these programs of work within bureaucratic structures and regulations.

Lastly, there also needs to be a strong and robust program to support private land holders to collaborate with Aboriginal communities and their cultural land management groups. Currently, collaborations on private land in NSW are built on local relationships and generally aren't well supported by government land management agencies. Incentivising private land holders to engage with Aboriginal groups to conduct cultural land management and cultural burning can provide significant opportunities and mutual benefit. Queensland provides a case study in how government can be a leader in brokering partnerships and supporting both private land holders and cultural land management groups to come together and conduct land management activities. But any such program must be sufficiently resourced and staffed with people capable of navigating intercultural exchanges and partnerships. Further, I note the role of philanthropic interests and encourage regulatory and practical arrangements to support such engagements.

The importance and complexity of this work requires expert leadership and careful navigation by both Aboriginal and non-Indigenous land managers, policy makers and governing groups. In the first instance, it may be desirable to establish a working group consisting of Aboriginal people with expertise in cultural land management, government policy and community governance. A group such as this would be a strategic asset for government agencies and can direct and advise agencies entrusted to lead this policy response. However, establishing a body such as a cultural land management working group should not be the only avenue pursued.

It may be desirable to develop a whole-of-NSW cultural fire strategy. The Victorian Cultural Fire Strategy offers an example of such a policy, and one that prioritises ethical process and thus has greater potential to be sustained through the relationships it seeks to support. But any such policy must be led by Aboriginal people and confront issues of land justice and ongoing marginalisation in conservation and land management. Perhaps the most challenging issue in developing such a strategy is how to provide greater power for Aboriginal people in NSW to negotiate and set the agenda (McKemey et al., 2019; Neale et al., 2019). Increasing cultural land management programs requires firstly increasing the power of Aboriginal people to participate in the processes that lead to that involvement (Weir et al., 2009, p. 10). Doing so allows Aboriginal people to centre their own goals and embed their own philosophies of land and water management in these programs. In this way, collaborations between Aboriginal and non-Indigenous people become more than working together, they are about walking together (Neale et al., 2019), experimenting and testing the bounds of what is possible, challenging one another and providing a safe-to-fail environment. It is this innovative thinking that a NSW Cultural Fire Strategy could capture and policise[4]. An intercultural experiment such as this may also offer opportunities to re-examine the structural frame within NSW Government agencies. Should such a strategy be developed and committed to, it needs to make sure partnership statements build real results by embedding three pillars: resourcing, regulation, education.

Resourcing

For Aboriginal people to carry out cultural land management, projects require adequate resourcing including training, equipment and administrative support. This includes the creation of full-time, community-controlled cultural land management programs.

[4] 'Policise' is an Aboriginal-English term which I first heard from my friend and colleague Vanessa Cavanaugh and means to make something that currently has no policy, into policy.

Regulation

To enable Aboriginal people to carry out cultural land management activities, a regulatory environment that is fit-for-purpose is required. For instance, supporting cultural land management and in particular, cultural burning, over public lands in NSW, will require rethinking key elements of how public lands are managed and the meaningful involvement of Aboriginal people, including their priorities, cultural norms, knowledge practices and worldviews. This includes addressing practicalities such as insurance. In order to support Aboriginal people to self-determine cultural land management and be fully supported to conduct these activities, the NSW Government may need to create specific provisions to insure and protect Aboriginal people. Having adequate and fit-for-purpose insurance has been identified as a barrier to cultural land management activities. Whether real or imagined, many Aboriginal groups feel they cannot, or are unable, to afford the premiums to cover their activities (Hunt, 2012, p. 111; Weir & Freeman, 2019, p. 13). Insurance concerns are set to become even more pronounced given the impacts of the 2019–20 summer bushfires and the significant increase in insurance premiums to cover land management activities and in particular, burning activities (Collins, 2021).

Education

Educating non-Indigenous people and in particular, non-Indigenous land and fire managers in NSW, of the ecological and environmental benefits that flow from Caring for Country activities along with the need to support and create opportunities for Aboriginal people to manage Country, addresses a key hurdle to developing cultural land management programs in NSW: non-Indigenous land and fire managers acting as 'gate-keepers' and locking Aboriginal peoples out of the management of Country. Instead, non-Indigenous people in these critical positions must ensure they are doing the work to create meaningful and trusting relationships with Aboriginal people (Neale et al., 2019). This reduces the burden on Aboriginal peoples to create their own opportunities to overcome systemic formal and informal exclusion. It is also critical to facilitate equitable partnerships in local areas and Aboriginal peoples' involvement in the management of the lands and waters in that region.

Further considerations

In addition to these next steps, other matters need to be addressed. I highlight three key matters that need to be developed synchronously to support Aboriginal groups to establish their own cultural land management programs.

Research

There is a strong and urgent need to create new research opportunities and partnerships between Aboriginal groups, research organisations and government agencies in NSW. The strength and sustainability of cultural land management programs in northern and central Australia has developed in tandem with high quality, well-funded, long term and organised research projects conducted in partnership with Aboriginal ranger groups and Aboriginal communities more generally. These research partnerships have assisted Aboriginal groups as they have helped create an evidence base of environmental, cultural, social and economic benefits of their work. This has been vital to advocate for more secure funding, made them competitive in environmental grants and also allowed them to explore alternate funding sources such as carbon abatement and offset opportunities and threatened species conservation. Yet these research endeavours have reflected a now long-term bias in academia in relation to conducting research with Aboriginal and Torres Strait Islander people in remote locations. Currently, there is a dearth of research of this nature in NSW (Neale et al., 2020).

Monitoring and Evaluation

With any new programs to support cultural land management, a strong and robust system of monitoring and evaluation will be necessary, and this also needs to involve Aboriginal leaders to define 'success', and work with the research community to identify appropriate indictors of that success. Monitoring and evaluation was highlighted as being of an urgent need in the recommendation arising out of the NSW Bushfire Inquiry (Owens & O'Kane, 2020). Eliciting the highest quality information from these processes including what works, what doesn't, and why, requires the embedding of monitoring and evaluation from the outset. The lack of evaluation of cultural land management partnerships has previously been identified as a barrier, as it is not known if current partnerships negotiated in NSW are achieving the desired benefits (Hunt, 2012, p. 100). Designing cultural land management programs synchronously with monitoring and evaluation will greatly benefit the design and implementation of both.

Cultural intellectual property

There remain unresolved questions of protecting Aboriginal peoples' cultural and intellectual property. Cultural intellectual property is a strategic resource for Aboriginal peoples and there exist long-standing protections and protocols to safeguard such knowledge within Aboriginal peoples' systems of cultural governance and law. This is particularly important when dealing with knowledge of ecologies, cultural sites and landscapes including through the application of fire. The 'Aboriginal Affairs NSW Aboriginal Cultural and Intellectual Property Protocol' provides a starting point but more needs to be done to safeguard Aboriginal peoples cultural and intellectual property (Janke, 2019). These issues have been highlighted in the Victorian Traditional Owner Cultural Fire Strategy (Department of Environment, Land, Water and Planning, 2020, p. 18), and the same opportunity could exist in a NSW Cultural Fire Strategy.

Supporting cultural land management including the use of cultural burning throughout NSW must be accompanied with a strong and transparent policy of protecting Aboriginal peoples' cultural intellectual property including observing the principles that Aboriginal people themselves determine what is and is not public and/or private knowledges. This insulates against extractive relationships that separate people from their knowledge, undermine Aboriginal peoples' governance, and undermine relationships with the public sector.

Conclusion

The increasing impacts of climate change including catastrophic fires, loss of life, property, and biodiversity, along with increased greenhouse gas emissions, has governments and policy makers looking for new and fresh approaches and adaptive practice – and Aboriginal peoples' fire management is now on the table for discussion. The independent inquiry into the experience of NSW in the 2019–20 summer bushfires has opened what has previously been a bolted door for Aboriginal people in NSW by strongly suggesting that Aboriginal people, their knowledge and practices are vital participants in future fire management. It is a time of immense opportunity for Aboriginal people and non-Indigenous land managers who want to walk together, learn and create new land management regimes that respond to the increased threats posed by climate change and mismanagement of lands and waters. But these intercultural experiments pose risks that must be understood and mitigated.

This paper has sought to introduce briefly the development of cultural land management programs in different parts of Australia, so as to examine the unique circumstances of NSW, bringing the specifics of this context into dialogue with the opportunities that have been pursued elsewhere. From this analysis it is clear that NSW is lagging behind. It is clear is that one single approach to supporting cultural land management in NSW will not work. Rather, a well-coordinated and multi-faceted approach is required that is flexible to suit the different circumstances, priorities and organisation forms of diverse Aboriginal peoples and their Country. Much of the groundwork has already been laid through the creation of land councils, the establishment of RAs together with

the negotiating powers they have, and the ongoing recognition of native title. Whilst these are complex and at times conflicting governing arrangements, strong community leadership together with a supportive government can leverage these tools to create substantial and sustainable cultural land management programs. With a firm commitment to promote cultural land management programs including the expansion of cultural burning, the sleeping giant that is NSW may awake to lead Australia, and the world.

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