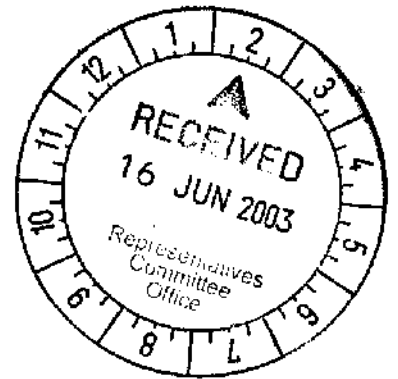


**SUBMISSION TO
COMMONWEALTH OF AUSTRALIA**



HOUSE OF REPRESENTATIVES

SELECT COMMITTEE ON THE RECENT AUSTRALIAN BUSHFIRES

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**INQUIRY INTO THE INCIDENCE AND IMPACT OF
BUSHFIRES**

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INQUIRY INTO THE INCIDENCE AND IMPACT OF BUSHFIRES

ARSON, MAINTENANCE OF CROWN ROADS AND ACCESS TO LAND IN NEW SOUTH WALES AS CONTRIBUTING TO THE INCIDENCE AND IMPACT OF BUSHFIRES

In the immediate aftermath of a bushfire, there is an urgency to deal with the neglect of day to day affairs occasioned by the emergency. Attention is then given to obvious issues that can easily be dealt with at the family, community or civic level. However, the emergency usually reveals fundamental weaknesses in legislation and administration, that prior to the bushfire, had become bureaucratically ignored, neglected or entrenched. The fire itself makes little or no impression upon their intractability.

Three of these weaknesses, the problems of arson, the non-maintenance of roads and landlocked parcels of land are evident less than seventy kilometres from the national capital.

(a) The extent and impact of the bushfires upon the environment, private and public assets and local communities

i. The extent and impact of arson

Of wildfires which threatened the Goulburn region in 1985, two were deliberately lit. One swept through Bungonia village and raced uncontrollably from the tablelands to the coast. Within hours the city of Nowra and Commonwealth property were at risk.

In January 1997 an arsonist set fire to a Bungonia property. The fire was contained by Bushfire Brigade members and the fire did not spread beyond the area where, according to forensic investigators "vast quantities of accelerant" were used to destroy storage facilities and farming equipment. Two weeks later, a neighbour left a fire burning overnight on the property boundary when conditions were right for a conflagration. The fire was discovered, the Bushfire Brigade called out and the neighbour given a caution.

Some arsonists have an obsession with fire; others are criminals who use arson for personal gain, taking advantage of fire danger periods and suitable weather conditions to mask their individual target. Arson usually leaves no evidence. Most arsonists maintain anonymity while their crime destroys homes, habitat and livelihoods.

Recent crime statistics rate as unexpectedly high on the state's list, the city of Goulburn and the surrounding shire of Mulwaree in which Bungonia is located and whose borders run close to the Australian Capital Territory.

(b) The causes of and risk factors contributing to the impact and severity of the bushfires including land management practices and policies in national parks, state forests, Crown land and private property

i. Land management practices and policies

Every road and track has the potential of being a powerful weapon in the firefighter's arsenal. This is not uniformly so in New South Wales. Roads leading into

fire trails have in many areas, become second only to the firefighter's first enemy, the fire itself.

Some Bushfire Brigade members in the Southern Highlands maintain, off the record, that some of the deaths of firefighters in New South Wales in recent years have been the result of the firefighters being trapped in the dead ends of fire trails. A death following the overturning of a fire tanker is believed to have been the result of the condition of the road.

(i) Dead end roads

Legislation once ensured that every road had an outlet. There were to be no dead end roads. This is no longer so.

In the 1952 fires on the Far South Coast of New South Wales, two girls on horseback perished when they were trapped in a dead end. Subsequently the local farmers worked on every road, fire trail and bush track until the only road without an outlet was the road up Mount Dromedary the highest peak in the region.

Barcham Lane at Bungonia leads into bushland near heavily timbered Mount Marulan and forks into two unmarked dead ends. Less than two kilometres away, Tiyces Lane, Towrang does the same.

(ii) Unmaintained Crown roads

Thousands of kilometres of roads in New South Wales receive no public maintenance since the relevant department ceased to be a road construction and maintenance authority. These are Crown roads which remain under the control of the Department of Land and Water Conservation. Since the change was made, a number of councils have declined to take responsibility for these roads until they have been upgraded to council's standard. The Department has neither the authority, nor funds to meet the council standard and can only give permission to concerned ratepayers to do minor maintenance, namely to fill the potholes with gravel.

Use of these roads is dangerous and potentially life-threatening under normal weather conditions, many being single lane. In a bushfire there is almost zero visibility and the danger of accident. In any emergency, traffic should move freely. This is not possible when a road such as Tiyces Lane is single lane width for more than five kilometres. At the end, there is nowhere to turn a long vehicle. Any accident or breakdown would block the way for rescue vehicles.

The alternative to using an unmaintained road is that the ratepayer can upgrade or construct to Council specifications. This is often beyond the means of many ratepayers. One estimate for upgrading to Council standard, two kilometres of Tiyces Lane, just north of Goulburn, was estimated at \$150,000, to be paid by a single ratepayer.

(iii) Landlocked parcels of land

The right of access to land in New South Wales is no longer guaranteed. Rights of access provided by Crown Grants are difficult to exercise and information regarding this is almost impossible to obtain.

The land affected by the arsonist's fire noted in *a.i.* above, had been cut off from the nearest village, Bungonia in 1994, by a neighbour fencing across the access road and ploughing it up after he found a boundary out of alignment. The exact location of the fire could be seen from the village by Bungonia Brigade but could not be reached without a bulldozer to clear the former access road. Towrang Brigade could gain access from a back track but could not see the fire because of a mountain. The Brigade was delayed while a smaller vehicle was sent ahead to assess the potential danger of sending a tanker and crew into thick smoke on a single lane track with no turning

spaces and dangerous potholes where the tanker could overturn in very poor visibility. This delay resulted in the Brigade arriving to contain the spread of the mid-summer fire, but too late to save any personal or farm effects, all uninsured because of ongoing stock and other theft and vandalism.

The same back track used in 1997 was closed from July 2002 until February 2003 by another landholder claiming back a detour which had become a public way by usage over many decades. In July, 2002, he fenced across this detour and delayed until December, filling in a dam which had been constructed over one third of the width of the Crown road. These actions landlocked the property of over one hundred hectares noted above and nearby Crown land including a fire trail. The former detour was made untrafficable by ploughing it.

(iv) Provision of public access

(a) Local government

Some local councils will not act within their powers to prevent denial of public access to nearby parcels of land, nor will they act to provide public access to this land. The problem has been widely known for many years. John Fahey when Member for Southern Highlands commented on the situation of the Bungonia land in 1994, that the council was the appropriate body to provide public access to this land, but warned that it would not act on the matter.

(b) The Supreme Court

For those who attempt to achieve public access to their land their efforts can be wasted. Even Court orders are ignored by landowners, confident that their defiance will be unchallenged. A famous Bungonia access case in 1989 was successful for the landlocked parties from Equity to the High Court. Not only has the case not become the precedent for other landlocked Bungonia landholders as they believed it would, but the road they successfully fought to retain, has since been closed by the neighbour who locked them inside their property. This property sustained huge losses in the 1985 bushfire and could not survive the Court costs a few years later. The neighbour bought at bank auction, the property he landlocked after their bushfire losses and then Court costs sent the owners into bankruptcy.

(c) Inappropriate solutions when local government will not act

The inappropriateness of Supreme Court solutions can be seen from a decision which resulted in the creation, not of a public road into several thousand hectares, but a carriageway of track width, that is, single lane, which had some one hundred and forty bends in two kilometres. Another case in the Supreme Court failed as a result of an interpretation of the Conveyancing Act giving precedence to the date on a contract for sale over dates registering the sale and change of title by the Registrar General.

(d) Rights of carriageway

When no public access has been provided, many properties have rights of carriageway. These can be many kilometres in length, narrow and with no turning space even at the end. They are frequently poorly maintained with inadequate conditions of maintenance stipulated and becoming matters for dispute. They can be used to sell land and then to harass the purchaser to leave. They are death traps in time of bushfire. They are used as public ways and often contravene occupational health and safety standards. Frequently they are created over the site of Crown roads. Many carriageways are narrow and run for kilometres with no turning bays. Paper roads continue to be created by surveyors and registered without site survey. This practice continues to create untrafficable routes and hence a landlocked parcel of land.

The parcel will be landlocked indefinitely until the landholder sells it to the person who denied access. This could take years. A fire raging through such land is usually made inaccessible to firefighters in spite of legislation intended to give access in such an emergency.

(e) The widespread problem of landlocked portions

From time to time the media reports another victim of policies of inaction on land without access. A landlocked parcel at Camden was recently publicized on ABC TV. Several hectares in the city of Goulburn have recently been found by the owners no longer to have public access. One Bungonia property, for decades an agistment haven for horse thieves, had Crown roads leading into two leaseholds in perpetuity. Both roads had had dams constructed on them. An elderly Bungonia woman returned from a day's shopping to find a portable building placed over her carriageway. An elderly diabetic trapped on his property by a similar action, had the State Emergency Service on the alert with a bulldozer to remove obstructions should he require medical attention during a dispute over a misdescribed right of carriageway. In one case, not even the Supreme Court would make an order to allow any property including vehicles to be removed from behind a blockade. The stories abound and are not confined to one area.

Landlocked portions like the unmaintained roads, delay and obstruct in any time of emergency.

(c) the adequacy and economic and environmental impact of hazard reduction and other strategies for bushfire prevention and control

i. Reduction of hazards on Crown roads

A road of full width with controlled regrowth is a deterrent even to a wildfire. The major hazards on unmaintained Crown roads are the roads themselves. Many Crown roads are single lane, with blind corners, crests and dips.

Since the Department of Land and Water Conservation ceased to have responsibility under legislation for the maintenance and construction of a large proportion of the state's roads, the beginning of hazard control, the roads and adjacent regrowth do not receive attention.

Along some roads, any hazard reduction is illegally undertaken by nearby ratepayers or contractors engaged by them.

ii. Reduction of hazards on landlocked parcels of land

No hazard evaluation or reduction can take place. Even to reach the land, an act of trespass is committed.

Lacking a public way, public officials have no means of access for inspection and evaluation or to police the law on such land.

The lawmakers will not exercise the law to enable owners of landlocked portions to reach the land to fulfil legal and civic requirements.

(d) appropriate land management policies and practices to mitigate the damage caused by bushfires to the environment, property, community facilities and infrastructure and the potential environmental impact of such policies and practices

- i.* The following policy changes will mitigate damage and danger of bushfire in the situations outlined above.
 - (i) Amend legislation to ensure the maintenance of all Crown roads by bulldozer or similar to provide adequate width, a reasonable surface and simple drainage.
 - (ii) Re-introduce or activate existing legislation that all land has reasonable and practical access.
 - (iii) Empower the implementing bodies to carry out the legislation in (i) and (ii) above.
 - (iv) Raise community awareness to the danger of arson.
 - (v) Raise community awareness to the benefits of neighbourliness.

(e) any alternative or developmental bushfire mitigation and prevention approaches, and the appropriate direction of research into bushfire mitigation

- i.* The following could be examined:
 - (i) promotion of fire conscious gardens, both home and civic, which feature fire resistant and retardant plants, ground covers, vines, shrubs and trees;
 - (ii) examination of a grid pattern of streets as compared with curved;
 - (iii) communicating with experienced firefighters.

(f) the appropriateness of planning and building codes, particularly with respect to urban design and land use planning in protecting life and property from bushfire

- i.* Councils have currently no duty of disclosure as to who owns and maintains the roads
- ii.* Keyhole developments in rural shires economize on roads but put pressure on the road system in bushfire. Keyhole developments limit the choice of escape in a bushfire. The State Emergency Service organised the evacuation of some seventy properties at Bungonia Heights in 1985. These properties had only one road leading out of the keyhole development - into the front of an oncoming fire.

(g) the adequacy of current response arrangements for firefighting

- i.* In the Bungonia fires noted herein, the response arrangements were excellent. Any delays in response were created outside the control of firefighters.

(h) the adequacy of deployment of firefighting resources, including an examination of the efficiency and effectiveness of resource sharing between agencies and jurisdictions

- i.* The piecemeal effect of different jurisdictions which created the situations noted herein can be illustrated in one road at Towrang. Of its ten kilometre length, the first four kilometres of Tiyces Lane after it leaves the south western freeway, are

maintained by the local council. The remaining six, used by twenty property owners running small rural enterprises, receive no public funds and no maintenance. This section deteriorates to a single lane, at one point less than three metres in width. The last two kilometres have one section with a pothole beside the track large enough for two cars end to end and half a metre in depth. Leading off this section is a fire trail over Mount Marulan which is maintained and funded through the local bushfire brigade.

After two seizures of roads which by usage had become public ways, thousands of timbered hectares surrounding Mount Marulan have been twice landlocked in the past nine years, the last period being over the period of the recent bushfires.

(i) liability, insurance coverage and related matters, and speedier response to need

- i.* Losses occasioned by arson are borne either privately or by the insurer.
- ii.* Where crime is entrenched and highly organized over decades, insurance has become prohibitive before an arsonist strikes.

(j) the roles and contributions of volunteers, including current management practices and future trends, taking into account changing social and economic factors.

- i.* Strategies and practices of bushfire brigades with a history of speedy response, containment of local conflagrations and safety of volunteers should be studied and promoted throughout the national services.

Many individuals, especially mothers, live by the precautionary principle. Bureaucracies tend not to do so. Bushfire, as with flood, drought and other national emergencies becomes in a short space of time, an event which precipitated emergency action after which, the bureaucracy having procedures, staff and funding for the traumatic event, but non for the post-traumatic, goes on as before. The people who faced the emergency return to their normal pursuits and the bureaucracy is left without experienced hands-on competence to devise and implement new policies and strategies. As a result, the problems which came to the fore in the catastrophic event remain and the problem-solvers have gone away taking with them their expertise from which new strategies would be devised.