

# Mainstreaming fire and emergency management across legal and policy sectors: joint research and policy learning

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## The initial research proposition

“Vulnerability to fires, and the ability to protect life, property and other assets, is largely defined by activities and policy settings in other policy sectors, defining fire and emergency management as a whole of government and cross-sectoral challenge.”

# Are other sectors or the law a problem?

- Land use planning;
- Native vegetation, tree protection;
- Work Health & Safety constraints;
- Transport and infrastructure; ... etc.
- *A persistent discourse in EM, and emerging themes in inquiries.*

# Three Bushfire CRC projects

1. Law and policy (Eburn & Dovers, ANU)
  2. Shared responsibility (Handmer & McLennan, RMIT)
  3. Planning (Norman, UC)
- *Linked, but we speak to (1) today.*

## Our focus: three questions

1. Perceived inconsistencies or is there mainstreaming?
2. The litigation experience – is it increasing, is it a problem?
3. What are the measures of success for fire and emergency management policy?

# 1. Perceived inconsistencies or ‘is there mainstreaming?’

- Eburn and Jackman, ‘Mainstreaming fire and emergency management into law’ (2011) *28(2) Environmental and Planning Law Journal* 59-76.
- Many perceived inconsistencies are simply misunderstandings. We don’t like having to apply for permission or justify an application.
- There is widespread mainstreaming, but the ‘strength’ of mainstreaming is debatable.

# Extent versus strength

- A standard question in (horizontal) policy integration – see for example environmental policy integration (Lafferty and Hovden 2003; Ross and Dovers 2008).
- Extent is an objective measure, whereas strength involves a normative judgement.
- Strength = how important is emergency preparedness, response, etc relative to other individual, community and social goals.

## The appropriate ‘strength’ is contestable

‘... there is a wide *extent* of fire and emergency mainstreaming ... but the evidence suggests that such mainstreaming is not *strong*.

If, however, fire management was too strongly integrated across the environmental policy sector, considerations such as amenity of the environment and issues of cultural, ecological or environmental significance, as well as respecting personal autonomy and choice could be ignored.’



## The challenge

“Until there is a clear and specific goal or objective of emergency management policy, **it is impossible to identify how that policy can be mainstreamed** or the success (or otherwise) of the policy measured.”

## 2. Litigation: a big problem for EM?

- Proposition – we can't undertake hazard mitigation or do anything because 'we'll get sued'.
- Eburn and Dovers, 'Australian wildfire litigation', *International Journal of Wildland Fire* (Online)  
<http://www.publish.csiro.au/paper/WF11094.htm>.

## What we've done

- Reviewed available reported, and post 1995 unreported judgments dealing with liability for bushfire.
- Reviewed the compensation claims made against the NSW RFS over 20 years; 263 claims; 28 went to court.

# Litigation

- Available judgments from 1867. Only 87 relate to liability for causing or failing to extinguish a fire. An average of fires leading to litigation every 3 years.
- Is that a lot in 150 years?



# Post bushfire litigation 1867-2009

owners

Railway companies

1867

1884

Electricity suppliers

Fire and land management agencies

1977

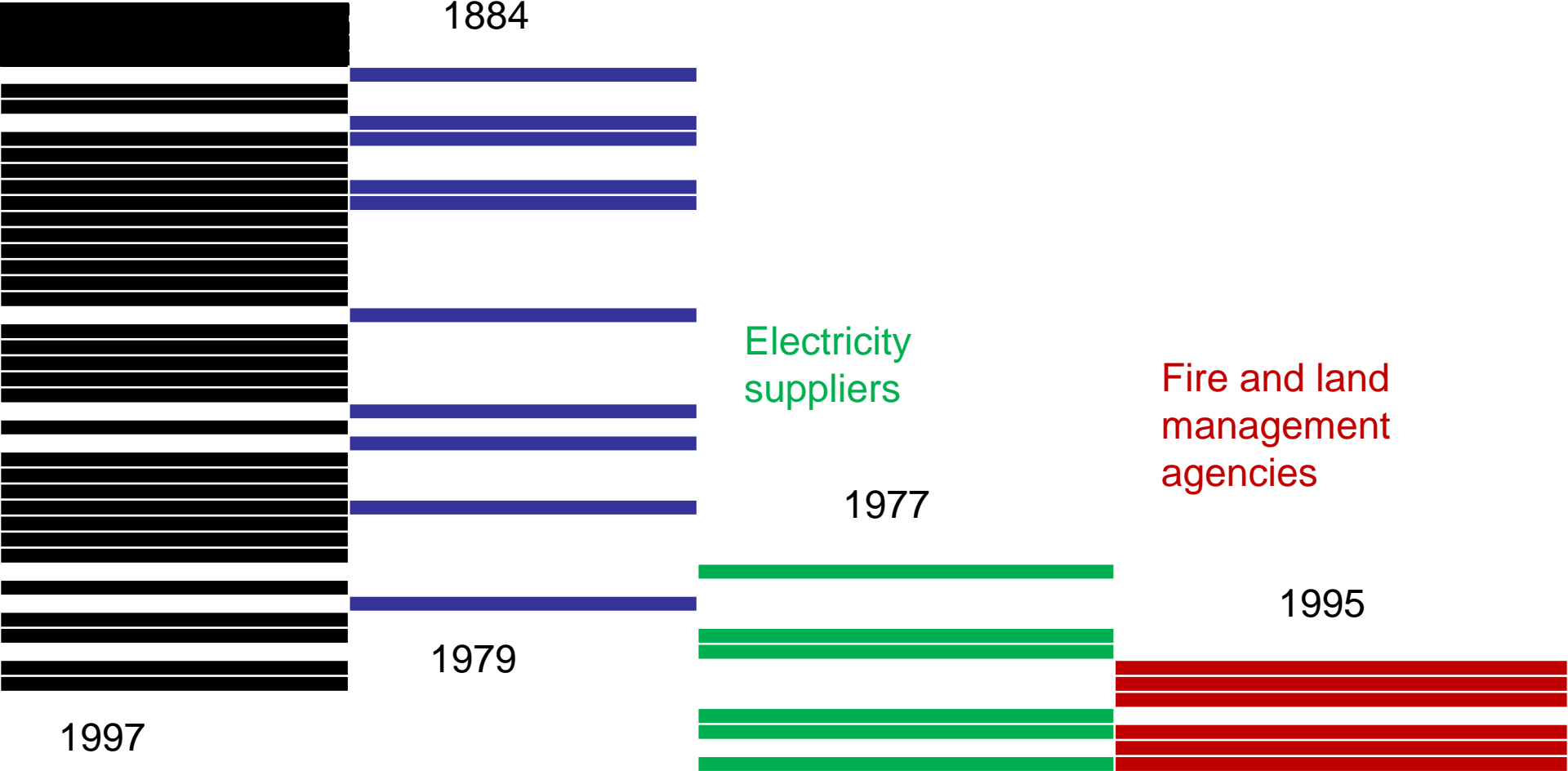
1979

1995

1997

2009

2009



# Claims history of the RFS

- 263 claims 1989-2010.
- Doesn't include fire fighters' 'Workers Comp' or car accidents on public streets.
- Range from the very small to the large.
- 28 had court proceedings filed;
- 235 settled 'out of court'.
  - 65% were about fires;
  - 27% were about motor vehicle accidents
  - 8% were 'other'.

# Litigated cases

- Firefighter death/personal injury 8
- MVA 5
- Property damage – context not identified 1
- Property damage – backburn 3
- Property damage – hazard reduction burn 6
- Property damage – firefighting 5
- **Total 28**

# Claims settled

- Payments were made in 203 (77% of) cases.
- No payment in 60 (23% of) cases.



# Why?

- It costs more to defend claims (particularly small claims) than to settle the matter.
- State agencies are bound by ‘model litigant’ rules which require them to ‘avoid litigation’.
- Courts have a number of ‘dispute resolution’ processes.
- The overriding objective of litigation is to settle disputes, not enforce legal rights and duties.

# Results

- The fear of litigation is overstated. Emergency services aren't regularly sued for routine events but litigation after catastrophic events may become routine.
- There are, as yet, no definitive judgements on relevant legal issues so the law's impact is not yet known.

# Other proceedings - what kind of inquiry, for what purpose?

## Questions:

1. Are quasi-judicial inquiries the best forum for lesson drawing?
2. Can they identify policy and management lessons?
3. Are omnibus, lengthy inquiries an efficient and effective mechanism?

# Royal Commissions and other post event inquiries

- Are increasingly:
  - Adversarial
  - Personal; and
  - Lengthy.

# Increase in the number of post event inquiries

- At least 26 bush fire inquiries between 1939 and 2011; one every 2.8 years. 12 since 2002.

## And their longer

- The 1939 Stretton Royal Commission established 27 January 1939. 36-page final report was signed off on 16 May.
- Rodger Royal Commission into 1960-61 WA fires delivered a 61-page report in August 1961.

# Today

- 2005 Eyre Peninsula inquest ran from October 2005 to May 2007 produced a 617-page report.
- Doogan inquest into the 2003 Canberra riot completed until 2006. Produced a 2-volume report of in excess of 850 pages.
- 2009 VBRC 55 sitting days, produced two interim reports and a final report that was in excess of 1000 printed pages plus an additional volume that was only available in electronic format

# And there's more personal blame

- Consider
  - Wangarry (SA),
  - Boorabin (WA);
  - Black Saturday (Vic).



## A recurring theme in inquiries

Comrie 2011 – there is a ‘a void that exists in the emergency management arrangements. This void is the absence of any overarching strategy or enabling policy framework to drive reform ...’ or “Until there is a clear and specific goal or objective of emergency management policy, **it is impossible to identify how** that policy can be mainstreamed or **the success (or otherwise) of the policy [can be] measured.**”

### 3. What are the measures of success for fire and emergency management policy?

- Keelty 2011 – what are the measures of success, is it simply that no-one dies?
- Comrie 2011 – what was the problem his recommendations were meant to solve?

# Three major themes and changes

1. Resilient communities (COAG National Strategy for Disaster Resilience): what does this mean, and how much resilience?
2. Shared responsibility (Vic Royal Commission): what measure of shared, by whom, when?
3. (Nascent issue): stick by the written procedures, as that will be your defence: emergency management by automatons?

# Barriers to resilience

1. The emergency services are very good at what they do. They are victims of their own success.
2. Increased urbanisation – ‘sea change’ and ‘tree change’.
3. Risk aversion.

# Victims of their own success

- ‘... because the government has done a fantastic job - and these agencies, done a fantastic job in marketing themselves and telling them that they're around. So, instead of people saying, listen I'll sort that out, their immediate response is to ring the SES ...’
- ‘... our challenge is around building the community's capacity to take action themselves ... But, as I said, the challenge is to make sure we don't get those sort of perverse behavioural responses from the community, where people become less prepared.’

## Risk aversion

‘We don't expect people to do risky things any more. We say to people, if you think that's going - if you're going to get hurt doing that, don't do it ... once they might have had a go at it, not even thinking about whether they might have got hurt ... these days they will ring somebody who is trained and has expertise and that, and so they are out of harm's way.’

# What level of resilience should we aim for?

‘If you step back and you say, well, how could we have prevented that fire? Here’s the strategy ... Clear every tree for 100 metres each side of the road winding up ... all that littoral forest and beautiful tall timber ... Get rid of all the timber cottages in the village. They’re 100 years old ... made of timber and highly volatile. Put brick and concrete structures in place. Put perimeter hazard reduction around the village every two years ... I can tell you now if we had put that strategy in place the public would have said f\_\_\_\_ off ...’

# What is ‘shared responsibility’?

- ‘Shared responsibility is a bit ambiguous. It's sort of saying a fifty-fifty bet each way; I'll take a bit, you take a bit.’
- ‘... the problem with shared responsibility is what's shared and what's not – who's responsible for what?’
- ‘We have a responsibility to provide advice. They have a responsibility to take up on that advice or to adhere to that advice.’



## A recurring theme

“Until there is a clear and specific goal or objective of emergency management policy, it is impossible to identify how that policy can be mainstreamed or the success (or otherwise) of the policy measured.”

## What's the policy objective?

- Saving lives or sharing responsibility?
- Why do I have to exercise *my* responsibility to meet *your* policy goal?
- Can there be shared accountability, or will the emergency managers still be the target at the end of the day?

# Preparing for catastrophic events

- Requires political judgment to balance objectives for
  - *Personal autonomy;*
  - *Environmental protection;*
  - *Managing other risks.*
- What do we want the world to look like?
- How safe do we want to be?
- Who's responsible for those decisions?

# What's success?

- ‘... zero death rate should always be aspirational ... you always push towards it but accept the inevitability of the event as well and then try and narrow the gap ...’
- ‘if everyone has gone above and beyond their limits and really done everything they could practically and conceivably do in the circumstance, I don't think that's failure. I think there's space to learn or improve or change, but is it failure? No. I don't think so. I just don't think it is.’

# Translating policy into action

- Legal regimes impose duties and obligations on agencies, but not on individuals.
- What's the price for not preparing, for not 'sharing responsibility'?
- Which government's prepared to deliver the hard message after the event?

# Questions? Comments?

- Thank you for your attention.

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