



Environmental
Defenders Office

Defending the Unburnt:

A guide to private land conservation for landholders

Updated September 2021

About EDO

EDO is a community legal centre specialising in public interest environmental law. We help people who want to protect the environment through law. Our reputation is built on:

Successful environmental outcomes using the law.

With over 30 years' experience in environmental law, EDO has a proven track record in achieving positive environmental outcomes for the community.

Broad environmental expertise. EDO is the acknowledged expert when it comes to the law and how it applies to the environment. We help the community to solve environmental issues by providing legal and scientific advice, community legal education and proposals for better laws.

Independent and accessible services. As a non-government and not-for-profit legal centre, our services are provided without fear or favour. Anyone can contact us to get free initial legal advice about an environmental problem, with many of our services targeted at rural and regional communities.

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This report is produced as part of our Defending the Unburnt collaboration with WWF-Australia. Read more:

<https://www.edo.org.au/unburntsix-mainpage/>



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Introduction

In the wake of Australia's 2019-2020 bushfires, the protection of unburnt habitat has become an urgent priority.

Much of the land that survived the bushfires intact is now a vital refuge for biodiversity, particularly threatened species. Six priority landscapes have been identified in QLD, NSW and Victoria as requiring immediate protection because they will be the key to securing the future of many threatened species and ensuring important ecosystem services are sustained while impacted landscapes recover.

In collaboration with WWF-Australia, the Environmental Defenders Office is working to ensure that our laws are used to adequately protect these priority areas from further impacts, including impacts from inappropriate development, land clearing and forestry.

Some of these priority areas include habitats located on privately owned land which means that landholders are in a unique position to contribute meaningfully to bushfire recovery and the long-term protection of biodiversity through private land conservation.

Impacts of the 2019-2020 bushfire season

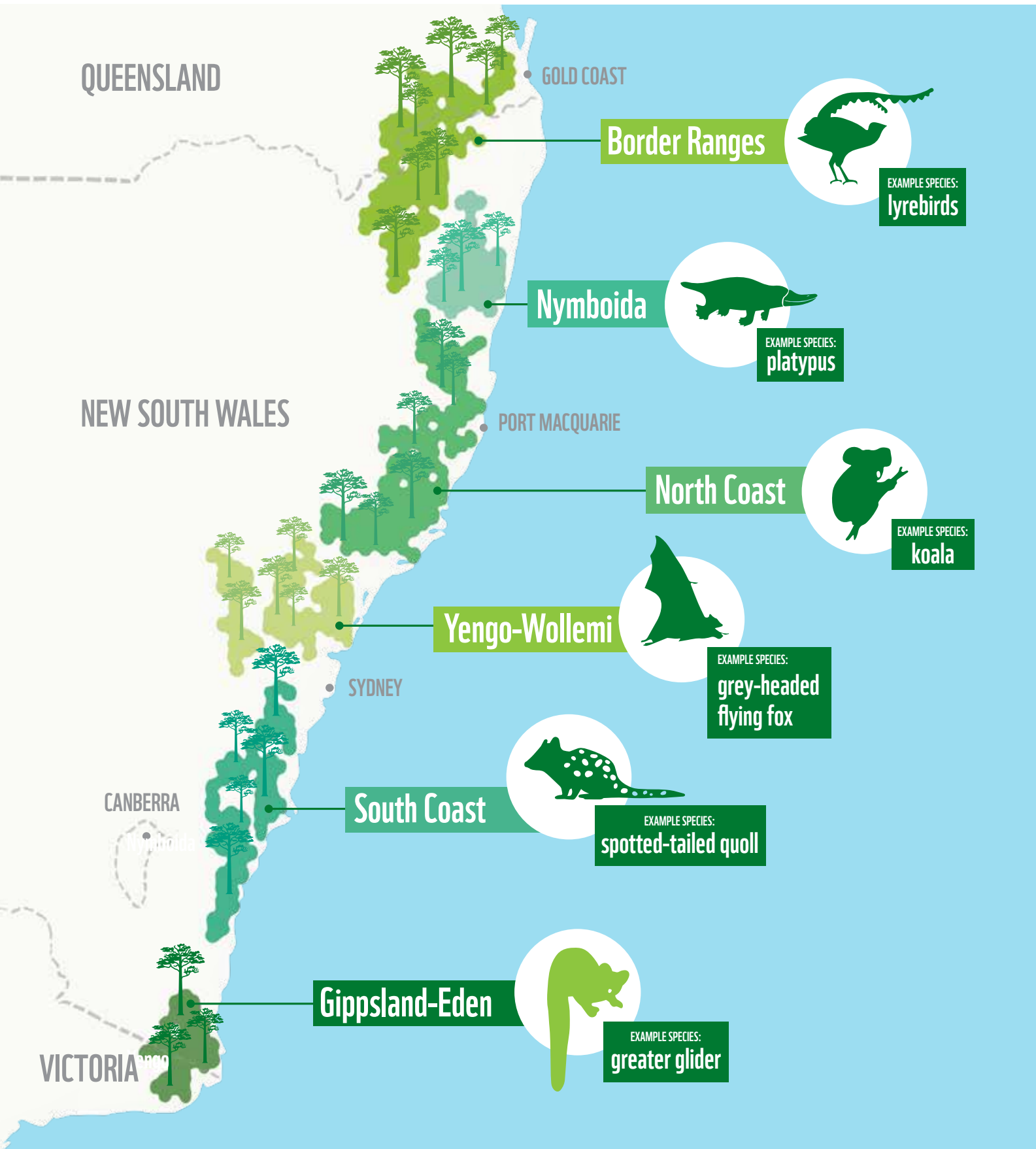
The bushfire season of 2019-20 is unprecedented in terms of scale, intensity and duration in Australian bushfire history. Around the country 33 lives were lost in the fires,¹ an estimated 417 people died due to smoke inhalation,² more than 3,000 homes burnt down,³ and property and infrastructure were destroyed.

The bushfires also had a devastating impact on our natural environment. Significant ecosystems and landscapes were decimated, including World Heritage-listed national parks,⁴ ancient rainforests⁵ and even waterways⁶ following post-fire flooding. An estimated net 830 million tonnes of greenhouse gases were emitted.⁷

While it is difficult to estimate the exact number of native animals impacted by the fires, some experts originally predicted it could be as many as 800 million in NSW and one billion nationally,⁸ with more recent analyses suggesting as many as three billion nationally.⁹

In NSW bushfires burnt over 5.52 million hectares of land.¹⁰ Initial analysis indicates the fire ground in NSW covered approximately 7% of the state, including 2.7 million hectares in national parks (37% of the NSW park system), and that the habitat of more than 293 threatened animals and 680 threatened plants has been impacted.¹¹ In Victoria bushfires impacted more than 1.5 million hectares.¹² Analysis indicates that 244 species have more than 50% of their modelled habitat within the burnt area, including 215 rare or threatened species and nine ecological vegetation classes (EVCs) with more than 50% of their extent burnt.¹³ More than 7 million hectares were burnt in bushfires in Queensland.¹⁴ Impacts in Queensland are still under assessment.¹⁵

Figure 1. (opposite) Six priority landscapes identified by WWF-Australia, with examples of an iconic species in each that requires stronger protection after the fires.



Why it is important to defend intact and unburnt areas

It is important to protect intact and unburnt areas, particularly while burnt areas recover.

Unburnt areas are essential for:

- providing habitat and refuge for wildlife;
- providing future climate change refugia;
- delivering important ecosystem services including storing forest carbon; and
- building resilience within landscapes.

Protecting priority unburnt areas will help impacted ecosystems and landscapes to recover and ensure our remaining natural areas thrive.

Identifying unburnt landscapes

As part of its Bushfire Response Framework, WWF-Australia identified six priority landscapes for habitat protection and restoration in Queensland, New South Wales and Victoria.¹⁶ That work has been endorsed by WWF's Eminent Scientists Group, comprising some of Australia's leading and most distinguished conservation scientists. The priority areas, covering nearly 5.8 million hectares, warrant enhanced legal protection due to their significance for threatened species and ecosystems as a result of the bushfires.

In total, the six priority landscapes are home to at least 62 plant and 21 animal species, and 18 ecological communities, listed as threatened under national environmental laws. Koalas are found in all six areas, while most of the other threatened species, including the long-footed potoroo, the peppered tree frog, the Blue Mountains water skink and the Clarence River cod, are only found

in one or a few of the landscapes. Threatened plants, largely unique to these areas, include the Bordered Guinea Flower, New England Gentian, and the Swamp Mint-bush. Threatened ecological communities include the critically endangered Southern Highlands Shale Forest and Woodland, which had declined by up to 90% of its original pre-European extent even before the bushfires.

Detailed mapping of the six priority landscapes reveals that a significant proportion of the land is privately owned. Landholders in these areas will be key to ensuring these priority landscapes are protected and managed for their biodiversity values.

QLD, NSW and VIC, as well as the Commonwealth, all have private land conservation programs that give landholders a range of options for conserving their land voluntarily. This report will outline those options, and explain what is involved for landholders, including financial incentives and legal obligations.





**Conserving biodiversity
on private land augments
the public reserve
system, contributes to
CAR protection and will
help Australia meet its
commitment of 30 per
cent of land and sea
protected by 2030**

The role of private land conservation in defending the unburnt

From a public interest perspective, private land conservation is hugely beneficial. Australia is one of seventeen ‘mega-diverse’ nations in the world, making our biodiversity internationally significant and the forests of Eastern Australia are a recognised global biodiversity hotspot.¹⁷ However, Australia has the unfortunate distinction of being the world leader in mammalian extinction and Eastern Australia is also globally recognised as a deforestation front.¹⁸ There are thousands of plants, animals and ecological communities at risk of extinction across QLD, NSW and VIC. The 2019-2020 bushfires have exacerbated this problem. Many species and ecological communities now require urgent legal protection. Private conservation has an important role to play in reversing the decline of threatened species and ecological communities and securing their long-term survival in the wild. This will benefit all of us.

The majority of biodiversity in Australia has no formal protection and the public reserve system is not yet comprehensive, adequate or representative (CAR) in terms of the species and ecosystems that are protected. The Australian Government has committed to joining the High Ambition Coalition (HAC) for Nature and People which is a global pact to conserve 30 percent of the world’s land and sea by 2030. Australia has pledged to protect a combined 30 percent of domestic land and ocean by 2030.

Conserving biodiversity on private land augments the public reserve system, contributes to CAR protection and will help Australia meet its HAC commitment of 30 percent of land and sea protected by 2030.¹⁹

Private conservation is also important for connectivity across landscapes and builds resilience within ecosystems (which is especially important in light of climate change e.g. by providing corridors for wildlife to move between areas as the climate changes).

Landholders involved in private land conservation are acting in the public interest, but they bear the burden doing so. That’s why governments and non-profit organisations invest resources in programs aimed at delivering financial incentives to encourage private land conservation and support landholders with practical and educational assistance. This report will outline the assistance available to landholders under the various options, where relevant.

Private land conservation explained

What is private land conservation?

Put simply, private land conservation involves a landholder voluntarily agreeing to conserve some or all of their land for biodiversity. They can do this in one of two ways:

1. Entering into some form of private conservation agreement with a 'provider' (this is the most common option); or
2. Registering their property with a private conservation program (without an agreement).

Private land conservation agreements may be intended to last forever (in perpetuity) or for a set period of time. While the agreement is in place, the landholder is bound by the agreement (and future owners of the land may also be bound, depending on the agreement).

Most agreements will restrict what can be done with the land – such as clearing, livestock grazing or developing the land - so that biodiversity values are protected. Some agreements will also have a management plan attached that requires the landholder to undertake certain management actions, such as controlling pests and weeds. In this way, the biodiversity values of the land can be increased over time.

The landholder and the provider will negotiate the agreement and any management actions required as well as any financial or other support available to the landholder.

Who are private land conservation agreements made with?

It depends on the type of agreement. For some agreements, the provider is a Government Minister or a statutory body (such as Trust for Nature in Victoria). Other agreements are made with environmental non-government organisations (NGOs) such as Humane Society International.

The provider is usually responsible for ensuring the landholder complies with the agreement and will often support the landholder to manage their land for conservation through education, technical support and financial incentives such as grants or stewardship payments.

What sort of land is suitable for private land conservation?

Generally speaking, private land conservation is most effective where it conserves areas of high conservation value, or areas of strategic importance in the landscape, such as wildlife corridors or buffers around public reserves. Most, but not all, private land conservation mechanisms have land



eligibility criteria so that high conservation value properties are prioritised for protection, funding and other support.

As part of the Defending the Unburnt project, EDO and WWF-Australia will be working with key providers in QLD, NSW and VIC to discuss opportunities for aligning the strategic priorities and land eligibility criteria of those providers with the six priority unburnt areas identified in this report.

Who owns the land?

The landholder continues to own the land and is responsible for complying with the agreement. Some agreements are registered on title and will bind future landholders when the property is sold.

Many agreements only cover part of the land so landholders can continue to make use of some of their land as before, while managing the conserved area for biodiversity.

Choosing an agreement

There are various options available in each State (and nationally). Choosing the right agreement will depend on the personal preferences and circumstances of each landholder.



EDO can provide free initial legal advice to landholders who are considering entering a legally binding private conservation agreement. For more information and contact details, visit our [website](#).²⁰

The two most important considerations for landholders in choosing a private land conservation option are:

Level of protection provided - Some options provide strong and permanent legal protection for land, while others may be time-bound or are easily terminated. Even the strongest options may not protect against all threats to biodiversity, such as mining and major infrastructure developments.

Level of support provided - Most providers will have support available for participants in their scheme. The level of support varies considerably. Most schemes will provide educational resources to landholders as well as some level of technical support to help landholders to effectively manage their land for biodiversity outcomes. Some schemes are also designed to provide financial support to landholders, either through annual payments or one-off grants to help landholders meet the costs of the management actions, and to provide an incentive to manage the land for biodiversity outcomes.

Other factors that landholders should consider when choosing an option include:

Duration of the agreement - Some agreements will be in-perpetuity and bind future owners of the land. Others may be time-bound or easily terminated by a current or future landholder.

Start-up costs - Most agreements will have some form of start-up cost. This may be the cost of seeking professional advice about the legal, tax and financial implications of the agreement. Some agreements will also require a survey of the land to be undertaken and/or a scientific assessment of the natural features of the land.

Land management requirements - Most private conservation agreements require the landholder to actively manage the land to protect and enhance its biodiversity values. Funding may be available to help landholders meet the costs of these management actions. Management actions are negotiated as part of the agreement so they are tailored to each property but typically include things such as managing pests and weeds and fencing to exclude stock from the conserved area. Some agreements will require the landholder to monitor the conserved area and report on any management actions that have been carried out.

Potential impacts on property value - Entering into a private conservation agreement may impact the value of the property but this is dependent on many factors specific to the land and the potential purchaser. Some purchasers may be willing to pay a premium for properties that have high biodiversity values. The underlying development potential of the land will often determine whether private conservation agreements will impact the value.

Enforcement - If the agreement is legally binding, any breach of the agreement by the landholder may expose the landholder to enforcement action. This can range from a warning right through to criminal prosecutions or civil enforcement. However, the level of protection afforded by the legally binding options very much depends on the provider's willingness to monitor compliance and enforce any breaches.

The non-binding options are not legally enforceable against the landholder.

We will address most of these considerations (where relevant) for each option covered in this report. However, landholders who are seriously considering private conservation should seek legal, tax and financial advice based on their individual circumstances.





Part 1
Private
Conservation
in NSW

The NSW private land conservation scheme is well developed and offers landholders several options to choose from:

1. Conservation Agreements
2. Biodiversity Stewardship Agreements
3. Wildlife Refuge Agreements
4. Land for Wildlife
5. Wildlife Lands Trust (national)
6. Commonwealth Conservation Agreements (national)
7. Indigenous Protected Area (national)

The first three options are through the same provider – the Biodiversity Conservation Trust (BCT).

The Biodiversity Conservation Trust

The BCT is a statutory body set up by the NSW Government to encourage and support conservation on private land.²¹

The NSW Government has committed more than \$350 million over five years from 2019-20 to fund the BCT to deliver private conservation programs and up to \$70 million per year after that.

The NSW Government is required to develop a Biodiversity Conservation Investment Strategy²² (Strategy) to guide the BCT's investment in private land conservation.²³ The Strategy ranks NSW landscapes into priority investment areas. The Strategy also sets out investment principles to guide the BCT's decision-making and ensure it factors in environmental, social and economic considerations. The majority of the BCT's investment is in the areas ranked as highest priority investment areas.

The BCT has two programs for delivering Government investment in private land:

- The Conservation Management Program²⁴ which offers in-perpetuity and term Conservation Agreements supported by annual conservation management payments: and
- The Conservation Partners Program²⁵ which offers in-perpetuity Conservation Agreements supported by grants to assist with conservation management actions.

Conservation Agreement

What is a Conservation Agreement?

A Conservation Agreement is an agreement between a landholder and the BCT to conserve the biodiversity of the land. Agreements are entered into voluntarily, but once signed they are binding on the landholder and future landholders.

The Conservation Agreement will identify the conservation area – which may be the whole or part of a property. The Agreement will be accompanied by a management plan that sets out the obligations of the landholder in managing the land for biodiversity outcomes.

Each Conservation Agreement is different, but generally they will:

- Restrict development or certain activities on the land covered by the agreement;
- Require the landholder to carry out specified actions (such as pest and weed control); and
- Set out the financial (if any) and technical support that the BCT will provide.

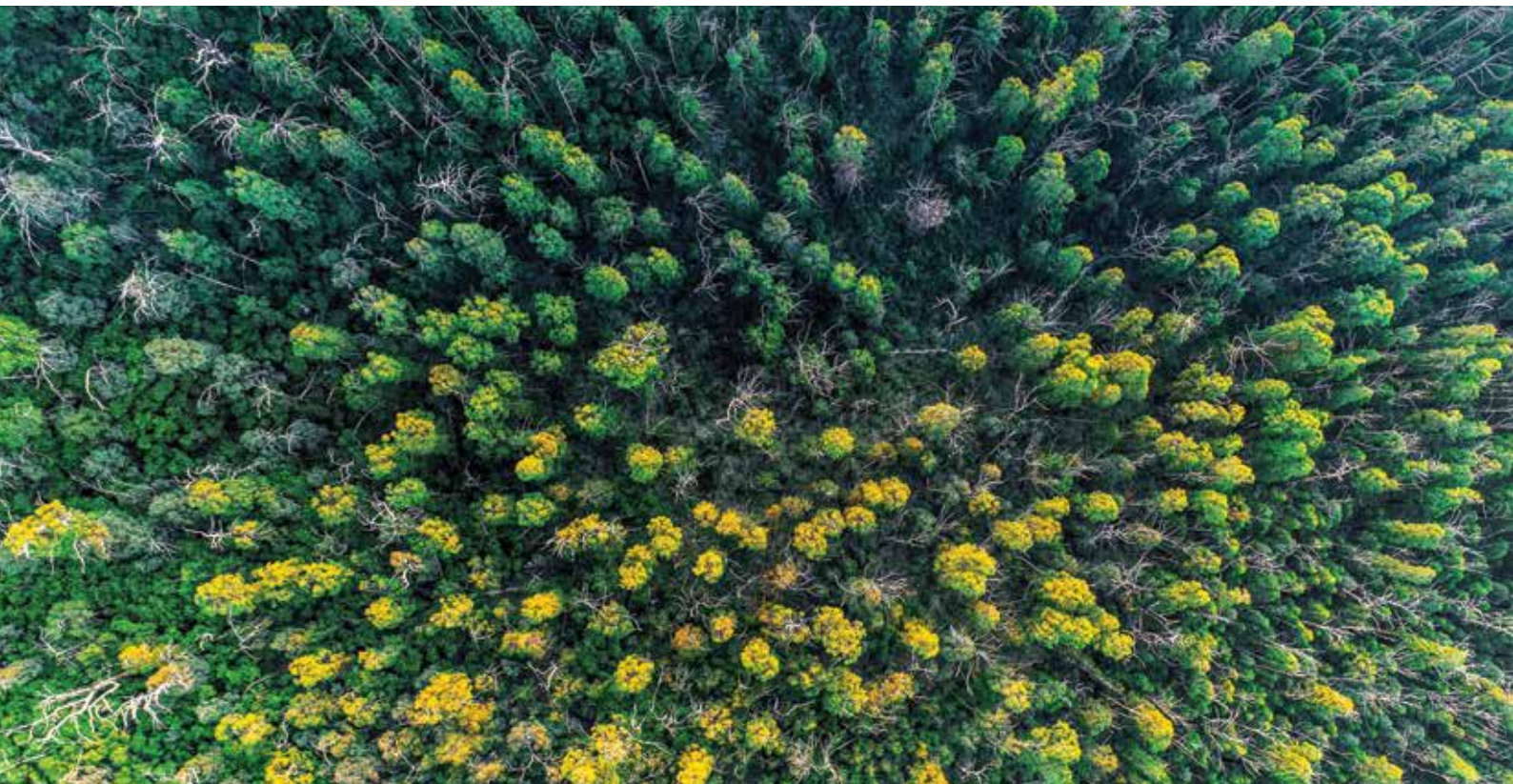
Conservation Agreements offer a high level of protection for the land, although some mining and infrastructure projects can be approved over the conserved area despite the Conservation Agreement.

Duration

Some Conservation Agreements are intended to last forever (in-perpetuity) and these agreements will be registered on the property title and bind future landholders. Where the Conservation Agreement is supported by annual conservation management payments, future landholders receive the annual payments.

Conservation Agreements can also be for a fixed-term in which case the Agreement will state when it ends.

Both in-perpetuity and fixed-term Conservation Agreements can be terminated with the agreement of both parties, but the BCT is unlikely to agree to termination in any but the most exceptional circumstances.



Land eligibility criteria

The land eligibility criteria depends on whether the landholder is seeking a Conservation Agreement under the Conservation Partners Program or the Conservation Management Program.

Conservation Partners Program

The [Conservation Partners Program](#) offers in-perpetuity Conservation Agreements supported by grants to assist with conservation management actions.

Generally, the area to be conserved should be a minimum of 20ha but smaller areas will be eligible if they contain high conservation values or meet other strategic priorities of the BCT.²⁶

Conservation Management Program

The [Conservation Management Program](#) offers Conservation Agreements supported by annual conservation management payments.²⁷

The Conservation Management Program is guided by targets, priority investment areas and investment principles as set out in the Strategy.²⁸ While many of the highest priority investment areas are in the central west of the State and were not impacted by the bushfires, there may be some alignment with the areas identified as part of the Defending the Unburnt project.

The BCT offers different delivery mechanisms under the Conservation Management Program (such as fixed price offers and conservation tenders), which focus on different areas of NSW and have different land eligibility criteria. The land eligibility requirements will be set out in the fixed price offer or invitation to tender. More information is available on the BCT [website](#) and below.²⁹

Financial and other support

Land that is covered by a Conservation Agreement is exempt from local council rates. Other tax concessions may also apply depending on the landholder's personal circumstances.

Landholders with Conservation Agreements can access technical support from BCT staff and ecologists, such as advice on management issues, technical guidance on management options and assistance with identifying species and monitoring ecological outcomes. The BCT also runs workshops and field days and links landholders to other organisations involved in conservation.



Conservation Agreements under the Conservation Partners Program

Conservation Agreements entered into under the Conservation Partners Program do not receive annual conservation management payments. However, landholders with these Conservation Agreements can apply for a [Conservation Partners Grant](#) (up to \$15,000 per year for three years) at any time.³⁰

Conservation Partners Grants can be used to fund a variety of management actions, such as:

- assisted regeneration and weed control;
- fencing to secure the conservation area, control grazing, and enable restoration of native vegetation;
- introduced pest animal control;
- revegetation (including supplementary planting); and
- habitat restoration—such as installation of nest boxes and artificial hollows, or additional ground cover layer and habitat structure.

Conservation Agreements under the Conservation Management Program

Conservation Agreements entered into under the [Conservation Management Program](#)³¹ provide for annual payments to be made to the landholder to help them meet the management obligations of the Agreement. This has the added benefit of providing an additional revenue stream to landholders for conserving and managing the biodiversity on their land.

There are two main ways of securing a Conservation Agreement with annual conservation management payments – fixed price offers and conservation tenders.

Fixed price offers – Landholders in targeted areas can express an interest at any time to enter an in-perpetuity Conservation Agreement with annual payments set at a fixed price per hectare.

The BCT targets fixed price offers to priority areas identified in the [Strategy](#).³² To be eligible, landholders must be in the targeted area and meet any other eligibility criteria associated with the offer. For example, at the time of writing this report, the fixed price offer for Central or Eastern NSW regions requires the conservation area to comprise:

- a minimum 50 hectares of native vegetation in moderate to good condition;
- a minimum of 20ha of threatened ecological community; or
- an important wetland (no minimum size however must meet additional criteria).

Interested landholders do not need to know if their land contains threatened ecological communities or important wetlands. The BCT will conduct a site visit to determine what the ecological values of the land are.

The BCT assesses applications on a value for money basis. Successful applicants will be offered annual conservation management payments at the fixed price in perpetuity for entering an in-perpetuity Conservation Agreement.

Landholders can access the most up to date information about fixed price offers by visiting the [BCT website](#)³³ and [online map](#) of the fixed price offer area.³⁴

Conservation tenders - Each year the BCT invites landholders in targeted areas to express their interest in a conservation tender. In response to expressions of interest, BCT staff assist landholders with eligible properties to identify the land that could be managed for biodiversity conservation and develop a conservation management plan.

Landholders are then invited to submit a tender or 'bid' which indicates the annual payments they wish to receive to implement the conservation management plan. As part of their bid, landholders can choose the term of the Conservation

Agreement, which will be either in-perpetuity or for a fixed term (a minimum of 15 years).

The BCT assesses bids on a value for money basis. Landholders with successful bids will be offered a Conservation Agreement with annual conservation management payments (that reflect the payments they set out in their bid) for the term of the Agreement.

The land eligibility criteria for each tender are outlined on the [BCT website](#) when the tenders are opened.³⁵

Co-investment partnerships - The BCT is also interested in entering partnerships with landholders and co-investors to protect core areas and corridors through Conservation Agreements where doing so will advance the following objectives:

- deliver long term private land conservation outcomes;
- complement other government or non-government conservation initiatives;
- deliver socio-economic outcomes;
- achieve conservation at scale; and
- demonstrate value for money.

Core areas include rainforest, wet and dry sclerophyll forests and grassy woodlands. The BCT has [guidance documents](#) on its website that indicate the type (and size) of conservation assets it is interested in protecting through co-investment partnerships.³⁶

The proposal can identify a role for the BCT. For example, providing ongoing or one-off payments to meet identified conservation outcomes. The BCT will assess proposals on a case-by-case basis on their merits against the BCT's objectives and evaluation criteria.

The BCT has detailed information on co-investment partnerships on its website.³⁷

Application process and start-up costs

Conservation Partners Program

Applications to enter into a Conservation Partners Program Conservation Agreement can be made to the BCT by completing the [Landholder Interest Form](#) and emailing it to info@bct.nsw.gov.au or posting it to:

NSW Biodiversity Conservation Trust

Locked Bag 5022

Parramatta, NSW 2124

The Landholder Interest Form asks for details of the property and its ownership as well as information such as the size of the proposed conservation area, the type/s of vegetation and its condition, whether there are any threatened species, the current land use and the aspirations and goals of the landholder for the conservation area.

There is no application fee.

Conservation Management Program

Fixed price offer – An expression of interest for a Conservation Agreement delivered through a fixed price offer can be made at any time.³⁸

Tenders – Tenders are announced periodically and are targeted to particular areas and conservation assets. Expressions of interest are open for a limited time via the [BCT website](#).³⁹

The BCT will contact the landholder to discuss the suitability of the property for a Conservation Agreement. If it is not suitable, another conservation option may be recommended.

Co-investment partnerships

Co-investment partnerships are initiated through an [expression of interest](#) form.⁴⁰ If the BCT is interested, the partners will be invited to submit a business case that will be taken to the BCT Board. If the Board approves the proposal, the BCT will initiate the process for establishing a Conservation Agreement over the site.

Legal advice – Landholders interested in entering a Conservation Agreement should seek independent legal advice before signing the Agreement.

Financial and taxation advice – Interested landholders should also consider obtaining independent advice about the financial and tax implications of entering a Conservation Agreement, particularly a funded Agreement.

The fees associated with obtaining advice will be the most significant start-up costs.

Enforcement

Conservation Agreements are legally binding on the landholder and the BCT is responsible for ensuring landholders comply with their obligations. Landholders may be subject to auditing and other compliance activities carried out by the BCT.

Serious breaches (or threatened breaches) may result in enforcement action in the Land and Environment Court. The Court has the power to make such orders as it thinks fit to remedy or restrain a breach of the Agreement. This may include orders to remediate any damage to the conserved area and injunctions to prevent any further damage in the future.

Landholders who breach a Conservation Agreement may be required to repay any money paid to them under the Agreement.

Other important information

Before a Conservation Agreement can be entered into, all those with an interest in the property must consent. This includes all owners and mortgagees.

The BCT has a fit and proper person test for those entering Conservation Agreements and co-investment partnerships.



Are Conservation Agreements suitable for defending the unburnt?

Yes. These Agreements will provide strong legal protection for the land and can connect landholders with funding to undertake management actions to improve the land's ecological values. Most Agreements are intended to last forever, but even Agreements that are time-bound will help maintain biodiversity and ecological processes while fire-affected landscapes recover.

A weakness with these Agreements is they cannot prevent mining or public infrastructure projects from taking place in the conserved area.

Another limitation with this option is that, at the time of writing this report, there is a back-log of applications for Conservation Agreements under the Conservation Partners Program awaiting assessment by the BCT, which means that there may be a delay in establishing Conservation Agreements for areas that need urgent protection following the bushfires. Also, under the current Biodiversity Conservation Investment Strategy, priority areas are predominantly in the central west of NSW. This means there will be limited opportunities for landholders in fire affected areas to enter Conservation Agreements under the Conservation Management Program via fixed price offers. However, there may be opportunities to enter Conservation Agreements through conservation tenders which are announced annually.

Conservation Agreements under the Conservation Partners Program should be more readily available and landholders can apply for grants to help undertake works to improve the biodiversity values of their conservation areas.

An option for landholders in fire-affected areas may be to form a co-investment partnership with a conservation group and this may make the application a higher priority for the BCT.

Biodiversity Stewardship Agreement

What is a Biodiversity Stewardship Agreement?

A Biodiversity Stewardship Agreement (**BSA**) is made between the landholder and the Environment Minister and administered by the BCT. They provide for the permanent protection and management of the biodiversity on the stewardship site. Agreements are entered into voluntarily, but once in place they are binding on the landholder.

BSAs are a key component of the Biodiversity Offsets Scheme which is a market-based scheme that brings together landowners who create biodiversity credits by establishing stewardship sites and purchasers who buy those credits to offset the negative impacts on biodiversity of development or clearing.

A BSA will restrict the types of activities and development that can take place on the stewardship site. The Agreement will be accompanied by a management plan that sets out the actions that the landholder will undertake to conserve and enhance biodiversity (such as fencing and control of feral species).

Once the biodiversity credits created by the BSA are sold, a pre-determined proportion of the cost of

the credits (called the Total Fund Deposit) must be transferred to the BCT. The BCT then makes annual payments to landholders with stewardship sites to meet the costs of management actions.

A BSA will specify the number of biodiversity credits created, the agreed management actions and the amount of the Total Fund Deposit (the amount that must be transferred to the BCT in order to receive annual payments).

BSAs offer a high level of protection for the land although some mining projects and public infrastructure projects can be approved over the conserved area despite the BSA.

Duration

A BSA is intended to last forever. It is registered on the title to the property and will bind future owners.

BSAs can be terminated in limited circumstances, such as if the landholder requests termination within 3 months of entering the Agreement. The Agreement can be varied with the agreement of the Environment Minister so long as the variation does not negatively impact the biodiversity values protected by the Agreement.



Land eligibility criteria

BSAs are appropriate for properties that contain vegetation types and threatened species that are under development pressure. This way there will be a market for the credits generated by the Agreement.

The NSW Department of Planning, Industry and Environment maintains [public registers](#) for the Biodiversity Offset Scheme that provide information on credit supply and demand that can help inform whether a property is suitable for a BSA.⁴¹

The BCT also maintains a [list of wanted credits](#).⁴²

Financial and other support

Biodiversity Stewardship Agreements are intended to generate income for the landholder to meet the costs of the management actions that form part of the Agreement.

In order to receive funding, the landholder must sell the biodiversity credits generated by the Agreement. Credits can be sold to anyone, and will be easier to sell if there is demand for the particular credit type/s (credits are categorised as species or ecosystem credits). Many variables influence how much a credit is worth, including the

demand for the credit type/s and the availability of those credits (in other words, general supply and demand market forces).

Once the credits are sold, the agreed upon Total Fund Deposit must be transferred to the BCT. This ensures the landholder receives annual payments from the BCT to meet the management obligations of the Agreement. Anything above the Total Fund Deposit can be kept by the landholder as profit. The profit may be significant if the credits are valuable.

Land tax is not payable on the portion of a lot that is covered by a stewardship site. Council rates are payable but can be included in the cost of managing the site and recouped through the annual payments, as can the cost of insurance.

As with Conservation Agreements, landholders with Biodiversity Stewardship Agreements can access technical support from BCT staff and ecologists, such as advice on management issues, monitoring ecological outcomes, technical guidance on management options and assistance with identifying species. The BCT also runs workshops and field days and links landholders to other organisations involved in conservation.

Application process and start-up costs

The start-up costs for a BSA are significant so there is the option to stage the process for applying for these Agreements.

Expression of interest

It is recommended that landholders begin the process by lodging an expression of interest.⁴³ This information will be added to a public register which prospective credit purchasers use to approach landholders who are likely to have the credits they need. This allows landholders to ‘test the waters’ before committing further.

Conducting a feasibility assessment or business case (optional)

A feasibility assessment is an optional, relatively low-cost step that assesses the biodiversity values of the site and provides information about whether a BSA is feasible on the land. The feasibility study is carried out by a suitably qualified person, such as an ecological consultant, who usually undertakes a desktop assessment to estimate the number and type of credits and the likely demand for those credits.⁴⁴

If conducted via a desktop study, the landholder can expect to pay between \$2,000-3,000 for a feasibility assessment. If a site visit is required it will cost around \$8,000.

A business case is more detailed than a feasibility assessment and the purpose is to provide a reliable estimate of the potential financial viability of establishing a BSA. A business case will outline the costs of undertaking the management actions required to achieve the biodiversity outcomes of the BSA.⁴⁵

BSA assessment report and management actions

The next step is to have the land assessed by an accredited assessor. The assessor will apply a scientific tool known as the Biodiversity Assessment Method to produce a report (known as a Biodiversity Stewardship Site Assessment Report)

which identifies the number and type of biodiversity credits a potential stewardship site will generate. These reports can cost around \$50,000 (and up to \$80,000). Prospective credit purchasers may be willing to fund the assessment of properties they are interested in.

The assessor can also help the landholder to prepare a management plan for the site.

Application

Applications for Biodiversity Stewardship Agreements are made to the BCT.⁴⁶ The application must be accompanied by the Biodiversity Stewardship Site Assessment Report and a proposed management plan (with the management actions fully costed) as well as any other required **supporting documents**.⁴⁷

There is an application fee of \$2,500.

Agreement

The BCT will negotiate the BSA with the landholder. Once agreed, the BSA is registered by the BCT.

Legal advice – Landholders interested in entering a BSA should seek independent legal advice before signing the Agreement.

Financial and taxation advice – Interested landholders should also consider obtaining independent advice about the financial and tax implications of entering a BSA.

The fees associated with obtaining advice will add to the start-up costs of entering a BSA.

Enforcement

The BCT is responsible for ensuring landholders comply with their obligations under a BSA. Landholders may be subject to auditing and other compliance activities by the BCT.

Biodiversity Stewardship Agreements are legally binding and can be enforced in the Land and Environment Court. Any person can bring legal proceedings to remedy or restrain a breach of a

BSA (although in practice this would almost always be done by the Environment Minister). If the Court is satisfied that a breach has been (or will be) committed, it can make any orders it thinks fit to remedy or restrain the breach. Landholders who intentionally, recklessly or negligently breach the Agreement can be ordered to pay damages or to retire credits without having sold them.

Only the most serious breaches are likely to end up before the Court. Most breaches will be dealt with by enforcement orders issued by the Environment Minister which will require the landholder to do, or refrain from doing, certain things. It is an offence not to comply with such orders.

Other important information

As with Conservation Agreements, before a BSA can be entered into, all those with an interest in the property must consent. This includes all owners and mortgagees.

The landholder also needs to be able to establish they are a fit and proper person to enter into, and fulfil the obligations of, a BSA. The Environment Minister can decline to enter a BSA with someone they consider is not a fit and proper person.

Relevant factors are:

- the landholder's legal record and whether they have contravened the law;
- whether the landholder will be competent in fulfilling the management actions set out in the management plan;
- whether the landholder is of good repute, honesty and integrity;
- whether the landholder has been bankrupt in the previous 3 years; and
- The landholder's demonstrated financial capacity to comply with their obligations under the Agreement.



Are Biodiversity Stewardship Agreements suitable for defending the unburnt?

A BSA will provide strong and permanent legal protection for the land and, once credits are sold, they can generate funding to undertake management actions that improve the biodiversity values of the land. They may even result in a significant windfall for the landholder if the credits are valuable. However, it is important to note that the credits sold will almost certainly be used to offset the impacts of clearing/development elsewhere. In this respect, BSAs differ from other private land conservation agreements because they are not purely for conservation; rather, they offset biodiversity impacts at development sites.

A weakness with these Agreements is they cannot prevent mining or public infrastructure projects from taking place in the stewardship site.

The biggest barrier to the uptake of BSAs by landholders is likely to be the significant start-up costs and the inherent uncertainty surrounding the financial incentives (i.e the sale of credits) as they are market-based and likely to fluctuate with supply and demand.

Wildlife Refuge Agreement

What is a Wildlife Refuge Agreement?

A Wildlife Refuge Agreement is a voluntary agreement made between a landholder and the BCT to conserve and manage the biodiversity values of the land. They can be viewed as entry level agreements because, although they are legally binding while in place, they can be terminated at any time. They are therefore suitable for landholders who do not wish to enter a permanent agreement, or whose land does not meet the eligibility criteria for a Conservation Agreement.

A Wildlife Refuge Agreement is negotiated between the landholder and the BCT, but may include provisions that:

- restrict development or certain activities in the protected area;
- require the landholder to undertake specified activities; and
- require the BCT to provide financial assistance and/or technical advice.

The Agreement can apply to all or part of a property.

These agreements provide moderate legal protection for the protected area but mining and public infrastructure projects can still take place in the protected area.

Duration

Wildlife Refuge Agreements are registered on the title to the property and will bind current and future landholders while they are in place. However, they can be revoked by the landholder or the BCT in accordance with the Agreement.

Land eligibility criteria

Wildlife Refuge Agreements are made under the [Conservations Partners Program](#)⁴⁸ administered by the BCT.

To be eligible, the land should contain high conservation values and meet minimum size and conditions requirements. For Wildlife Refuge Agreements, the land to be protected should be a minimum of 10 hectares. In addition, the BCT is looking for properties that:

- have at least one good example of the least protected ecosystems, including threatened species (and habitats), threatened ecological communities, over-cleared vegetation types, important wetlands, old growth forest, rainforest or high conservation value grasslands;
- are in moderate (or better) ecological condition;
- are managed primarily for conservation; or
- can contribute to landscape connectivity (such as wildlife corridors) or can form part of a larger area of remnant native vegetation.



Smaller properties may be considered by the BCT if they contain very high conservation values (e.g. threatened species or their habitat, or threatened ecological communities), or are of high strategic importance, or are within priority investment areas under the NSW Biodiversity Conservation Investment Strategy.⁴⁹

Landholders do not need to know that their property meets these requirements in order to apply for a Wildlife Refuge Agreement. The BCT will undertake an assessment.

Financial and other support

Wildlife Refuge Agreements do not attract exemptions from land tax or local council rates. However, landholders with Wildlife Refuge Agreements can access technical support from BCT staff and ecologists, such as advice on management issues, technical guidance on management options and assistance with identifying species and monitoring ecological outcomes. The BCT also runs workshops and field days and links landholders to other organisations involved in conservation.

The BCT's [Conservation Partners Program](#) also applies to Wildlife Refuge Agreements so landholders can apply for grants (up to \$2,000 a year for three years) to fund activities that will protect or improve the ecological value of their property. This may include fencing, pest and weed control, revegetation or habitat restoration.

Application process and start-up costs

Interested landholders can obtain an Application Form by calling 1300 992 688, emailing info@bct.nsw.gov.au or completing the [Landholder Interest Form](#) on the BCT website.⁵⁰

The Landholder Interest Form asks for details of the property and its ownership as well as information such as the size of the proposed conservation area, the type/s of vegetation and its condition, whether there are any threatened species, the current land use and the aspirations and goals of the landholder for the conservation area.

There is no application fee.

The BCT will then contact the landholder to discuss the suitability of the property for a Wildlife Refuge Agreement. A site assessment may be carried out. If the property is eligible for a Conservation Agreement, this option may also be discussed with the landholder.

Legal advice – Landholders interested in entering a Wildlife Refuge Agreement should seek independent legal advice before signing the Agreement.

Financial and taxation advice – As Wildlife Refuge Agreements do not attract any tax exemptions it should not be necessary to obtain any advice on tax implications unless the Agreement includes



funding. As they can be terminated by future landholders, it should not be necessary to obtain any financial advice.

The fees associated with obtaining legal advice will be the most significant start-up cost.

Enforcement

The BCT is responsible for ensuring landholders comply with their obligations under the Wildlife Refuge Agreement and landholders may be subject to auditing and other compliance activities carried out by the BCT.

Wildlife Refuge Agreements are legally binding while they are in place. The Agreement can be enforced in the Land and Environment Court. The Environment Minister, or any other person authorised by the Environment Minister, can bring proceedings to remedy or restrain a breach of the Agreement.

If the Court is satisfied that a breach has been (or will be) committed it can make whatever orders it thinks fit to remedy or restrain the breach. Landholders who intentionally, recklessly or negligently breach the Agreement can be ordered to pay damages and may be required to repay any payments made to them under the Conservation Partners Program (such as grant money).

Are Wildlife Refuge Agreements suitable for defending the unburnt?

Yes. Wildlife Refuge Agreements provide moderate legal protection for the land and landholders may be able to access grants through the [Conservation Partners Program](#) to fund activities that improve the biodiversity values of the land.

Although they are not necessarily permanent and can be removed at any time, they are a great entry-level option for landholders who are hesitant to commit to an in-perpetuity agreement or whose land does not meet the eligibility requirements for a Conservation Agreement. Even if the Wildlife Refuge Agreement is subsequently terminated, it may be sufficient to provide important legal protection for land that is a refuge for threatened species and ecological communities while bushfire-affected landscapes recover.

Wildlife Refuge Agreements provide moderate legal protection for the land and landholders may be able to access grants through the Conservation Partners Program to fund activities that improve the biodiversity values of the land.



Land for Wildlife

What is Land for Wildlife?

Land for Wildlife is a private conservation scheme coordinated by the Community Environment Network in partnership with the NSW Government.

Landholders who wish to manage part or all of their property for wildlife conservation can register their property with Land for Wildlife. This scheme is not legally binding but it encourages and assists landholders to conserve and manage the ecological values of their land.

Because Land for Wildlife is a community-based scheme it is not available in all regions of NSW. Interested landholders should contact [Community Environment Network](#) to see if the scheme operates in their region.⁵¹

Duration

Participation in Land for Wildlife is voluntary and carries no legal obligations so the landholder can opt out of the scheme at any time. Future landholders can choose whether or not to participate in the scheme.

Land eligibility criteria

There are no specific land eligibility criteria for participation in this scheme. However, the scheme is focussed on managing wildlife habitat so properties should contain habitat for native species.

Financial and other support

Land for Wildlife supports participating landholders with expertise on wildlife management and provides opportunities for peer-to-peer information sharing.

Landholders participating in this scheme can access:

- information about wildlife management;
- information about the role of wildlife and native vegetation in sustainable agriculture to control pest species, provide shade and shelter, manage salinity and control wind and water erosion;
- membership links and contacts with like-minded people;
- notes and news on particular management issues;
- signs for registered properties; and
- education programs and activities.

In addition to this, the Biodiversity Conservation Trust recognises the conservation value of this scheme and, as such, participating landholders are eligible to apply for grants through the BCT's [Conservation Partners Program](#) to assist them to maintain the ecological values of their properties.⁵² This program provides grants of up to \$2,000 per year for three years to eligible landholders.

Application process and start-up costs

Registering with Land for Wildlife is very straightforward for landholders who are in a region where the scheme operates and simply involves contacting the local [regional provider](#).⁵³ This will be followed up by a site visit.

Landholders in regions where the scheme does not operate can fill in the online [expression of interest](#) form.⁵⁴

There are no costs associated with participation in this scheme, and as there are no tax, property value or legal implications it is not necessary to obtain independent advice before signing up.

Enforcement

Registration with Land for Wildlife carries no legal obligations and cannot be enforced against the landholder.

Is Land for Wildlife suitable for defending the unburnt?

This scheme does not provide legal protection for the land but it does connect landholders with educational and technical support to encourage the conservation of wildlife habitat. Participating landholders are also eligible to apply for grants through the Conservation Environment Network (with financial support of the Biodiversity Conservation Trust) to fund projects that improve the ecological values of the land.⁵⁵ This program provides grants of up to \$2,000 per year for three years to eligible landholders.

While legal protection more effectively defends unburnt landscapes, landholders who want to help defend the unburnt without entering legally binding agreements will find this option compelling.

Furthermore, this option is well suited to landholders who have smaller properties that don't meet the land eligibility criteria of the legally binding options outlined above.

Unfortunately, this scheme is not available across NSW so interested landholders will need to check whether it operates in their area.



The Wildlife Land Trust

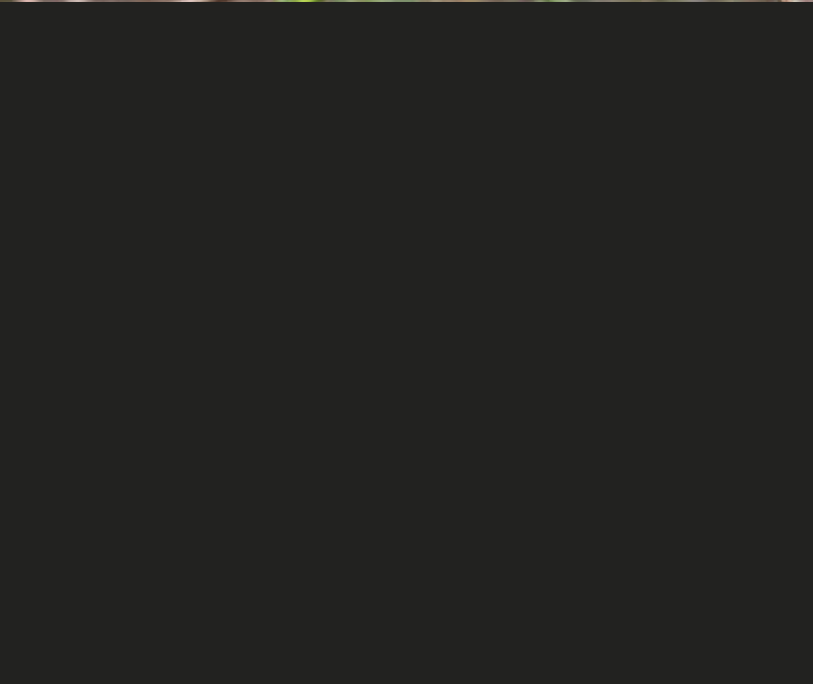
The Wildlife Land Trust is a national scheme and is covered in Part 4.

Commonwealth Conservation Agreement

Commonwealth Conservation Agreements are a national option and are covered in Part 4.

Indigenous Protected Area

Indigenous Protected Areas are a national option and are covered in Part 4.





Part 2
Private
Conservation
in Queensland

Like NSW, Queensland has several private conservation options to choose from. Unlike NSW, there is no single government agency like the Biodiversity Conservation Trust tasked with coordinating private conservation and distributing government funding to participating landholders.

The options available in Queensland are:

1. Nature Refuge
2. Special Wildlife Reserve
3. Statutory Covenant
4. Voluntary Declaration
5. Land for Wildlife
6. The Wildlife Land Trust (national)
7. Commonwealth Conservation Agreement (national)
8. Indigenous Protected Area (national)



Nature Refuge

What is a Nature Refuge?

A landholder can voluntarily enter a Conservation Agreement with the QLD Government that creates a Nature Refuge on their land. The Conservation Agreement can apply to the whole, or part of, the land. The Department of Environment and Science (DES) approaches landholders whose properties it is interested in adding to the private protected area network.

The Conservation Agreement will provide for the conservation of the land's cultural and natural resources while allowing compatible and sustainable land uses to continue. The Agreement will set out what can and cannot be done on the property and may specify the manner in which certain activities are to be carried out.

Once finalised, the Minister executes the Conservation Agreement and the Governor in Council declares the Nature Refuge by way of regulation. The Nature Refuge will then become part of the private protected areas network in Queensland.

Nature Refuges do not protect land from grazing, forestry or mining activities. Grazing may be identified as an excluded activity in some Conservation Agreements provided this does not conflict with the underlying land tenure (e.g. a pastoral lease). The existence of a Nature Refuge

may provide an avenue for placing conditions on any exploration or mining activities and, if such activities impact on the Nature Refuge, those impacts must be offset.

Duration

Nature Refuges are often intended to last forever (in-perpetuity). The Conservation Agreement that establishes the Nature Refuge is registered on the property title and is binding on future landholders.

Some Conservation Agreements can include an expiry date and will automatically expire once that date is reached.

Land eligibility criteria

Nature Refuges must contain significant biodiversity values at a property, landscape and strategic level.

Potential nature refuges are those that:

- At a property level, contain significant conservation values that are of a sufficient size, condition and placement in the landscape to remain viable in the long term.
- At a landscape level, increase representation of the State's biodiversity and establish or maintain landscape linkages and corridors.
- At a strategic level, possess exceptional values or circumstances that contribute to improved conservation in Queensland.



Financial and other support

The DES funds conservation activities through NatureAssist.⁵⁶ The funding can be negotiated as part of the Conservation Agreement but is delivered through a separate grant deed. Funding will be considered where a proposed project has a clear conservation outcome and enhances the resilience and sustainable management of a proposed Nature Refuge.

In addition to this, NatureAssist provides small grants of up to \$10,000 to Nature Refuge landholders from time to time, to undertake activities that protect and enhance the conservation values of their Nature Refuge. These may require an in-kind contribution from the landholder, and projects are to be completed in a short timeframe.

Projects must demonstrate a clear conservation outcome and enhance the resilience and sustainable management of the Nature Refuge. Activities that will be considered for funding include pest and weed control, installation of fencing to exclude stock, fire management programs, revegetation and other activities deemed relevant to the conservation of the Nature Refuge.

There may also be funding available through NatureAssist to deliver ecosystem recovery payments to landholders in declared natural

disaster areas whose Nature Refuge has been impacted by a natural event such as a bushfire. This funding is initiated by DES, not landholders.

Some local councils offer rate relief to landholders with Nature Refuges.

In addition, the DES offers technical land management advice, primarily via telephone (but occasionally through site visits) to landholders with Nature Refuges. DES also produces a bi-annual newsletter that covers land management issues.

Application process and start-up costs

There is currently no formal process for landholders to initiate the process to establish a Nature Refuge. Rather, the DES will identify properties that meet State priorities and contact landholders directly. As a result, there is no application fee.

State priorities are underpinned by scientific analysis based on CAR principles (which seek to achieve a comprehensive, adequate and representative reserve system).

If the landholder is interested, a DES officer will validate the identified conservation values on ground and negotiate a Conservation Agreement with the landholder over the area/s of the property to be declared a Nature Refuge.



The Minister will execute the Conservation Agreement and the Governor in Council will declare the Nature Refuge by way of regulation.

Legal advice – Landholders interested in establishing a Nature Refuge should seek independent legal advice before signing the Conservation Agreement.

Financial and Taxation advice – A Nature Refuge may impact the value of property so landholders should seek independent financial advice. Taxation advice may be required if the Agreement includes grant funding.

The fees associated with obtaining advice will be the most significant start-up costs.

Enforcement

Conservation Agreements are legally binding and it is an offence to carry out activities in a Nature Refuge that are inconsistent with the management intent of the Nature Refuge.

Minor breaches of a Conservation Agreement will most likely attract a warning from the DES and advice on how to remedy the breach. Serious breaches can be prosecuted and carry significant maximum penalties.

Are Nature Refuges suitable for defending the unburnt?

Nature Refuges provide moderate legal protection for the land. The biggest issue in this regard is that they do not automatically exclude mining, grazing or forestry activities.

Landholder support is available through project grants – these can be negotiated as part of the Conservation Agreement and also applied for afterwards when they become available.

Perhaps the biggest hurdle in terms of using Nature Refuges to defend the unburnt is that there is no procedure for landholders to initiate the process. Rather, the DES approaches landholders whose properties meet State priorities. Unless unburnt areas become a State priority, Nature Refuges will not be available to landholders wishing to help fire-affected landscapes to recover.



Special Wildlife Reserve

What is a Special Wildlife Reserve?

Special Wildlife Reserves provide national park-level protection for private land that has exceptional natural and/or cultural values and is managed in a way that conserves those values.

Like Nature Refuges, Special Wildlife Reserves are secured via a voluntary Conservation Agreement negotiated between the landholder and the QLD Government via the Department of Environment and Science (**DES**). The Conservation Agreement is supported by a management plan that sets out the management targets, actions and outcomes for the Special Wildlife Reserve.

Once finalised, the Minister executes the Conservation Agreement and the Governor in Council declares the Special Wildlife Reserve by way of regulation. The Special Wildlife Reserve will then become part of the private protected areas network in Queensland.

Duration

Special Wildlife Reserves are in-perpetuity. The Conservation Agreement that underpins them is registered on the title to the property and will bind future owners. These agreements can only be revoked by a resolution of the Legislative Assembly of the Queensland Parliament. This should only occur if doing so will advance the conservation of the land, such as by transferring it to the public reserve system.

Land eligibility criteria

Special Wildlife Reserves are expected to have conservation values equivalent to those of national parks and they must be owned by a landholder that can demonstrate well-resourced conservation land management capacity similar to that applied to national parks.

A proposed Special Wildlife Reserve must be considered as one of the most important places in the landscape for conserving a particular natural resource or value. This may include a species, a group of species, a population, a regional ecosystem, a group of regional ecosystems, a vegetation community, an ecological community, a habitat, or an ecological interaction.

Land will be assessed for its ecological and cultural values. A DES officer will consider the following when determining whether a property is suitable:

- the natural and cultural significance of the land;
- the land's connectivity and landscape values;
- the long-term viability of the land's values;
- the land's overall contribution to the protected area estate;
- potential and active threats to the natural and cultural values; and
- the capacity of the landholder to provide an ongoing, professional, well-resourced and high standard of conservation management.



Also relevant to the assessment is a consideration of the possible alternative uses of the land which is carried out in consultation with government industry, planning and heritage departments to avoid conflict with future plans in the area.

Financial and other support

The DES funds conservation activities through NatureAssist. The funding can be negotiated as part of the Conservation Agreement but is delivered through a separate grant deed. Funding will be considered where a proposed project has a clear conservation outcome and enhances the resilience and sustainable management of a proposed Special Wildlife Reserve.

In addition to this, NatureAssist provides small grants of up to \$10,000 to Special Wildlife Reserve landholders from time to time, to undertake activities that protect and enhance the conservation values of their Reserve. These may require an in-kind contribution from the landholder, and projects are to be completed in a short timeframe.

Projects must demonstrate a clear conservation outcome and enhance the resilience and sustainable management of the Reserve. In order to be considered for funding, activities must align with the management actions defined in the Special Wildlife Reserve Management Program. Such activities might include pest and weed

control, installation of fencing to exclude stock, fire management programs, revegetation and other activities deemed relevant to the conservation of the Reserve.

There may also be funding available through NatureAssist to deliver ecosystem recovery payments to landholders in declared natural disaster areas whose Special Wildlife Reserve has been impacted by a natural event such as a bushfire. This funding is initiated by DES, not landholders.

Special Wildlife Reserves may also enable landholders to attract investment from Australian and international conservation organisations to support their conservation efforts.

In addition, the DES offers regular technical land management advice to landholders with Special Wildlife Reserves and monitors the progress of management actions. DES also produces a bi-annual newsletter that covers land management issues.

Application process and start-up costs

There is currently no process for landholders to initiate a Special Wildlife Reserve. The Queensland Government calls for expressions of interest for a Special Wildlife Reserve by invitation only. Once the initial assessment to validate the land's exceptional values and the landholder's suitability has been completed, accepted proposals continue through to the next stage.

Several key processes occur during the second stage, such as:

- Collaboration between the Queensland Government and the landholder to develop the legal documents that outline the terms, conditions and management regime that will govern the Special Wildlife Reserve.
- Consultation with a broad range of interested parties (including State interests, native title interests, interests on title such as leaseholders and mortgagees, and others with an interest in the land) to assess current and potential future land uses and, where necessary, seek consent from those with an interest in the land.
- Engagement with First Nations People to best understand the Aboriginal and Torres Strait Islander cultural heritage of the land, including the exceptional cultural resources and values of the area.

The landholder is responsible for preparing the management plan in consultation with the DES. There may be costs associated with this, depending on the technical expertise of the landholder. The management plan should provide for monitoring, evaluation and reporting. Undertaking these activities may be ongoing costs for the landholder.

Once the Conservation Agreement and management plan are finalised and signed, the Minister will execute the Conservation Agreement and the Governor in Council declares the Special Wildlife Reserve by way of regulation.

Legal advice – Landholders interested in establishing a Special Wildlife Reserve should seek independent legal advice before signing the Conservation Agreement.

Financial and taxation advice – A Special Wildlife Reserve may impact the value of property so landholders should seek independent financial advice. There are no tax implications inherent in establishing a Special Wildlife Reserve, although landholders should seek advice about the tax implications of any grant funding.

The fees associated with obtaining advice are likely to be the most significant start-up costs unless the landholder needs to pay for technical expertise in the preparation of the management plan.

Enforcement

Conservation Agreements are legally binding and it is an offence to carry out activities in a Special Wildlife Reserve that are inconsistent with the management intent of the Special Wildlife Reserve.

Minor breaches of a Conservation Agreement or Management Program will most likely attract a warning from the DES and advice on how to remedy the breach. Serious breaches can be prosecuted and carry significant maximum penalties.



Are Special Wildlife Reserves suitable for defending the unburnt?

Special Wildlife Reserves provide the strongest possible protection for the ecological values of private land.

Perhaps the biggest hurdle in terms of using Special Wildlife Reserves to defend the unburnt is that there is no procedure for landholders to initiate the process. Rather, the DES seeks expressions of interest by invitation only in line with State priorities. Unless the State prioritises protecting unburnt areas, Special Wildlife Reserves will not be available to landholders wishing to help impacted landscapes to recover.

Furthermore, Special Wildlife Reserves are only going to be available for the most exceptional properties and, while they will offer excellent protection at the property level, the property would have to be very large or strategically located in order for the Reserve to provide significant protection for unburnt landscapes.

Statutory Covenant

What is a Statutory Covenant?

A Statutory Covenant is a voluntary agreement between a landholder (the covenantor) and a State or local government (the covenantee). The landholder can execute a Statutory Covenant with any willing government agency, which gives the landholder some flexibility; but in practice, local councils are the most likely to enter a Statutory Covenant to protect the ecological values of a property. This is because relevant State agencies (like DES) administer their own private conservation mechanisms.

A Statutory Covenant can impose positive or restrictive obligations on the landholder. For example, it may restrict the landholder's ability to clear native vegetation or it may require the landholder to undertake pest and weed control. It can cover the whole, or part of, the property.

The Statutory Covenant will be registered on the property title and bind future owners.

Duration

Because they are registered on the property title, a Statutory Covenant can endure in perpetuity. They can be terminated when an instrument is registered which releases the covenant. The covenantee can do this without the landholder's permission but a landholder needs the covenantee to agree if

they want to release the covenant. The long-term stability of a Statutory Covenant will therefore depend on the covenantee.

If a landholder requests the removal of a Statutory Covenant and the covenantee refuses, the landholder can apply for a court order to have the covenant removed. The Court may order the removal of the covenant if it is satisfied that the covenant has become obsolete, it unjustifiably impedes a use of land, it is against the public interest, or the actions of the covenantee have indicated the covenant should be removed.

Land eligibility criteria

There are no specific land eligibility criteria for Statutory Covenants, although the individual covenantee may have criteria it uses to determine whether to execute a covenant with a landholder.

Financial and other support

Landholders are not guaranteed any financial or other support for executing a Statutory Covenant. Individual covenantees may offer rewards or incentives, such as rate reductions, taxation benefits or management support. Landholders interested in this option will need to speak with the relevant local council or government agency to see whether any support is available.



Application process and start-up costs

Landholders will first need to find a willing covenantee and this is best done by contacting relevant State Government agencies and local councils directly. As previously mentioned, local councils are likely to be the most willing covenantee. They are also arguably the most appropriate covenantee due to their role as assessment manager for development applications which allows them to be aware of any development applications that may be in breach of a covenant.

Once a willing covenantee has been found, the next step is to negotiate the terms of the covenant. One of the key benefits of Statutory Covenants is their flexibility so landholders can work with the covenantee to tailor the covenant to their specific requirements.

Once the terms are agreed, the Statutory Covenant will be executed (signed and witnessed) by both parties and then registered on the title to the property through the Queensland Title Registry. The covenant takes effect once it is registered.

In terms of start-up costs, it may be necessary to pay for technical expertise to identify the ecological features of the property that the Statutory Covenant will protect. Where the covenant covers part of a lot, it may be necessary to attach a survey plan to the covenant in order to identify the protected area and the particular features it is protecting. The landholder will usually have to pay for the survey, which can be expensive for larger properties.

Legal advice – Landholders interested in executing a Statutory Covenant should seek independent legal advice before doing so. It may also be necessary to use the services of a lawyer in order to execute the Statutory Covenant.

Financial and taxation advice – A Statutory Covenant may impact the value of the property so landholders should seek independent financial advice. It may

also be necessary to obtain independent taxation advice if the covenantee offers taxation incentives to landholders who execute a Statutory Covenant and for any grant funding.

Enforcement

Only the covenantee is entitled to enforce the covenant. The effectiveness of a Statutory Covenant in protecting the ecological values of a property therefore relies on the will and resources of the covenantee to ensure compliance with its terms.

Ensuring compliance will often mean refusing development consent for activities that are prohibited by the covenant.

Other important information

All those whose rights will be affected by the covenant must agree before a Statutory Covenant can be executed. This includes all owners and mortgagees.

Are Statutory Covenants suitable for defending the unburnt?

A Statutory Covenant is capable of providing long-term protection for the ecological values of a property. However, interested landholders may find it difficult to find a willing covenantee. There is no program to support landholders who are interested in executing a Statutory Covenant so this option is very much ad-hoc.

There is no guarantee of any financial or other support, so this option is most suitable to landholders who are able to comfortably meet the costs of any management actions.

A restrictive Statutory Covenant – that is, with no management actions required – would suit landholders who want to protect their land without committing to any active management obligations.

Voluntary Declaration

What is a Voluntary Declaration?

A **Voluntary Declaration** is a way for landholders to voluntarily protect high conservation value native vegetation on their properties.⁵⁷ Voluntary Declarations can also be used to protect vegetation that is vulnerable to land degradation.

Land that is covered by a Voluntary Declaration becomes Category A land under the *Vegetation Management Act* and is therefore subject to the tightest possible restrictions on clearing. Broadscale clearing is not permitted, and a permit will be required to authorise any other clearing in most circumstances. Some clearing – known as exempt clearing – will still be permitted, such as clearing for weed control, public safety, fodder harvesting, encroachment, thinning, environmental clearing, and fences, firebreaks, tracks etc. Accepted development vegetation clearing codes do not apply to Category A areas.

Voluntary Declarations are declared by the Chief Executive of the Department of Resources.

Voluntary Declarations are accompanied by a management plan which outlines the management intent and the proposed conservation outcomes of the protected area. The management plan may include activities to be carried out by the landholder, such as weed management, pest control,

fencing, fire management and revegetation. The management plan may also contain restrictions on clearing that would otherwise be permissible under the *Vegetation Management Act*.

Duration

The Voluntary Declaration and accompanying management plan will be registered on the land title so it will bind future landholders.

Voluntary Declarations are capable of providing enduring protection for the land, but are not necessarily intended to last forever. The Chief Executive of the Department of Resources can end a Voluntary Declaration by a further declaration, in one of the following circumstances:

1. The declaration is not in the interests of the State, having regard to the public interest; or
2. The management outcomes of the management plan have been achieved.

Voluntary Declarations can be amended over time through the management plan. This keeps the management actions responsive to new circumstances and is not intended to allow for a reduction in protection.



Land eligibility criteria

Voluntary Declarations can be used to protect high conservation value native vegetation, which is defined as having at least one of the following characteristics:

- Wildlife refugium – an area where species or a group of species has retreated, or been confined, due to a threatening process.
- A centre of endemism – an area containing concentrations of species that are largely restricted to the area.
- An area containing a vegetation clump or corridor that contributes to the maintenance of biodiversity.
- An area that makes a significant contribution to the conservation of biodiversity.
- An area that contributes to the conservation value of a wetland, lake or spring.
- Another area that contributes to the conservation of the environment.

Voluntary Declarations can also be used to protect areas that are vulnerable to land degradation, which includes:

- soil erosion;
- rising water tables;
- salinity;

- mass movement by gravity of soil or rock;
- stream bank instability; and
- a process that results in declining water quality.

There is no minimum area that the Voluntary Declaration must cover.

Financial and other support

The Department of Resources does not offer any financial or other support to landholders with Voluntary Declarations in place. However, it is possible for landholders to have a Voluntary Declaration over their property and still participate in incentive schemes for private conservation.

Application process and start-up costs

The application process is initiated by the landholder requesting a Voluntary Declaration. The landholder makes this request by completing a [form](#)⁵⁸ outlining the purpose of the Voluntary Declaration and accompanied by a proposed management plan. The management plan must outline how the area will be managed to conserve and improve its high conservation value or to repair and restore degraded land and prevent further land degradation.

There is no application fee but the landholder may need to seek technical assistance to prepare the management plan, depending on their own skills and knowledge.

The landholder also needs to include a map containing enough information for the Department of Resources to prepare a property map of assessable vegetation (PMAV).

The Department of Resources will assess the application and may seek further information from the landholder. If satisfied, the Department of Resources will send an offer to the landholder with drafts of:

- the declaration notice;
- declared area code (if applicable);
- PMAV showing the Category A area; and
- declared area management plan, including a map of the declared area.

The landholder can then accept the offer or reject it with reasons. If rejected, the Department of Resources will consider the reasons and may make a new offer. If the landholder accepts the offer, the Department of Resources will make the declaration and prepare the final PMAV. The declaration and management plan will then be registered on the land title by the Department.

Legal advice – Landholders interested in applying for a Voluntary Declaration should seek independent legal advice before doing so.

Financial advice – It may be necessary to obtain independent financial advice before applying for a Voluntary Declaration. There are not likely to be any tax implications of executing a Voluntary Declaration.

Enforcement

Any clearing within a Category A area that is not authorised will generally be an offence under the *Planning Act 2016* and subject to the enforcement powers under the *Vegetation Management Act*. This includes the power of authorised officers to enter a property to investigate suspected breaches. It also includes the power to issue stop work notices and restoration notices. Serious offences may be prosecuted.

Other important information

All those with an interest in the property must consent to the Voluntary Declaration. This includes all owners and mortgagees.





Are Voluntary Declarations suitable for defending the unburnt?

This option is landholder-initiated so it is more accessible than Special Wildlife Reserves and Nature Refuges. The land eligibility criteria for Voluntary Declarations is highly relevant to vegetation that survived the bushfires so this option is certainly suitable for defending the unburnt.

However, the level of protection provided is not as high as other options because Category A land is still subject to exempt clearing work.

There is also no provision for landholder support – either financial or technical – which means landholders bear the cost of performing the management actions in the management plan.



Land for Wildlife

What is Land for Wildlife?

Landholders who wish to manage part or all of their property for wildlife conservation can register their property with Land for Wildlife. This scheme is not legally binding but it encourages and assists landholders to conserve and manage the ecological values of their land.

Because Land for Wildlife is a community-based scheme it is not available in all regions of Queensland. Interested landholders should visit the [website](#) to find out if the scheme operates in their region, and who delivers it.⁵⁹

Duration

Participation in Land for Wildlife is voluntary and carries no legal obligations so the landholder can opt out of the scheme at any time. Future landholders can choose whether or not to participate in the scheme.

Land eligibility criteria

There are no specific land eligibility criteria for participation in this scheme. However, the scheme is focussed on managing wildlife habitat so properties should contain habitat for native species.

Financial and other support

Land for Wildlife supports participating landholders with expertise on wildlife management and provides opportunities for peer-to-peer information sharing.

In south east Queensland, participating landholders receive a one-on-one visit from a local Land for Wildlife Officer who will help the landholder develop a personalised plan for their property to integrate nature conservation with other activities such as residential use and grazing.⁶⁰

Landholders participating in this scheme can access:

- information about wildlife management;
- information about the role of wildlife and native vegetation in sustainable agriculture to control pest species, provide shade and shelter, manage salinity and control wind and water erosion;
- membership links and contacts with like-minded people;
- notes and news on particular management issues;
- signs for registered properties; and
- education programs and activities.



Application process and start-up costs

Registering with Land for Wildlife is very straightforward for landholders who are in a region where the scheme operates and simply involves contacting the local [regional provider](#).⁶¹ This will be followed up by a site visit.

There are no costs associated with participation in this scheme, and as there are no tax, property value or legal implications it is not necessary to obtain independent advice before signing up.

Enforcement

Registration with Land for Wildlife carries no legal obligations and cannot be enforced against the landholder.

Is Land for Wildlife suitable for defending the unburnt?

This scheme does not provide legal protection for the land but it does connect landholders with educational and technical support to encourage the conservation of wildlife habitat.

While legal protection more effectively defends unburnt landscapes, landholders who want to help defend the unburnt without entering legally binding agreements will find this option compelling.

Furthermore, this option is well suited to landholders who have smaller properties that do not meet the land eligibility criteria of the legally binding options outlined above.

Unfortunately, this scheme is not available across QLD so interested landholders will need to check whether it operates in their area.

The Wildlife Land Trust

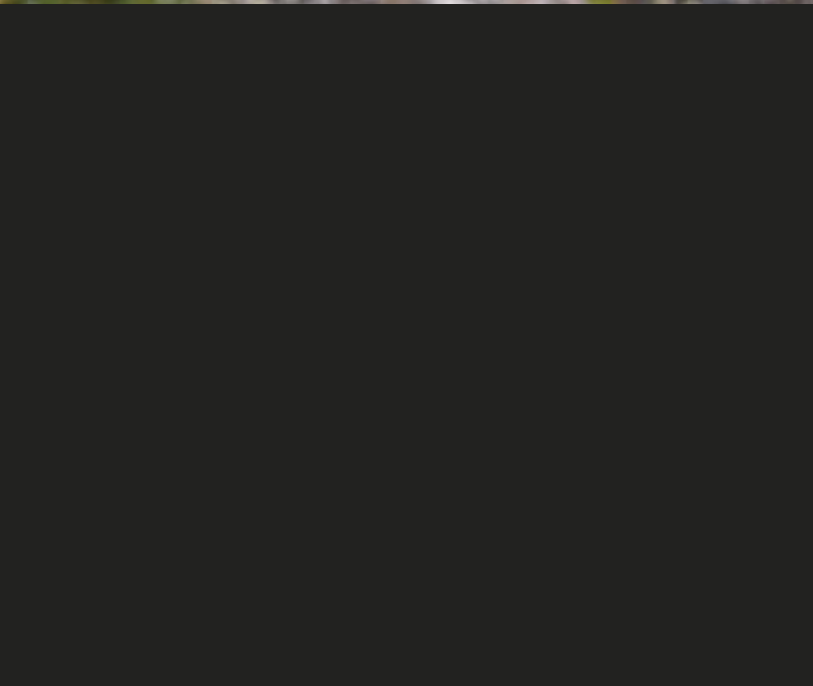
The Wildlife Land Trust is a national scheme and is covered in Part 4.

Commonwealth Conservation Agreement

Commonwealth Conservation Agreements are a national option and are covered in Part 4.

Indigenous Protected Area

Indigenous Protected Areas are a national option and are covered in Part 4.





Part 3 Private Conservation in Victoria

Landholders in Victoria have several options to choose from if they are interested in conserving their land. As with QLD, there is no single agency that coordinates government investment in private conservation.

1. Conservation Covenant
2. Land Management Cooperative Agreement
3. Land for Wildlife
4. The Wildlife Land Trust (national)
5. Commonwealth Conservation Agreements (national)
6. Indigenous Protected Area (national)



Conservation Covenant

What is a Conservation Covenant?

A Conservation Covenant is a voluntary agreement between a landholder and Trust for Nature to legally protect the conservation values of land.⁶² The covenant must be approved by the Minister for Energy, Environment and Climate Change.

Conservation Covenants are negotiated between the landholder and Trust for Nature so they can be tailored to the individual property. However, a Conservation Covenant will typically include restrictions on:

- native vegetation removal;
- the introduction of any non-indigenous species of plant or animal;
- subdivision;
- grazing by livestock;
- deterioration in the quality, flow or quantity of water;
- removal of wood or timber;
- the application of fertilizer;
- pasture establishment; and
- recreational use of trail bikes and other vehicles.

The Conservation Covenant is accompanied by a management plan which identifies the biodiversity values of the land, any threats to those values and actions the landholder will take to manage those threats.

A Conservation Covenant can apply to the whole of a property, or part of it. The covenant can also divide land into tiers with different management actions and restrictions applying to each tier.

Conservation Covenants offer a high level of protection for the land, although mining can be approved over the conserved area despite the Conservation Covenant.

In addition to providing an avenue for conserving private land, Conservation Covenants can be used to offset the clearing of native vegetation by generating native vegetation credits that can be sold to those with approval to remove native vegetation. More information on native vegetation offsetting is available on the DELWP website.⁶³

Duration

Conservation Covenants are intended to last forever (in-perpetuity). They are registered on the property title and bind future landholders.

A Conservation Covenant can only be varied or terminated with the approval of Trust for Nature, the Minister and all parties with an interest in the land. Variations will generally only be approved if the variation does not threaten the land's conservation values.



A landholder can seek a Letter of Approval from Trust for Nature to authorise specific exemptions from the Conservation Covenant's terms. For example, the landholder could seek a Letter of Approval to allow for the keeping of a pet where the Conservation Covenant prohibits this. The exemption only applies to the landholder who requested the exemption, and will not pass on to future landholders.

Land eligibility criteria

Conservation Covenants are available for land that is ecologically significant, of natural interest or beauty, of historic interest or of importance in relation to the conservation of wildlife or native plants.

In determining whether a property is suitable, Trust for Nature will consider:

- the degree of disturbance;
- the diversity of plants and animals;
- whether there are rare or threatened species present;
- the proximity of the property to other bush properties, wildlife corridors etc;
- the size of the area to be conserved;
- the presence of pests and weeds; and
- the management required to maintain the ecological integrity of the site.

Financial and other support

Trust for Nature assists landholders through its dedicated Stewardship Program, which provides landholders with regular conservation support from regional staff, monitoring, practical assistance and a tailored and comprehensive management plan.

Educational support is provided to landholders to improve their knowledge about managing and monitoring their conservation area. This is delivered through Trust for Nature's website, social media, field days, information sheets and one-on one contact with landholders. Trust for Nature also produces an online Conservation Bulletin which is available from its website.

In general Conservation Covenants do not provide ongoing funding to landholders, but Trust for Nature works actively to negotiate project-based funding that can incentivise and support landholders' conservation efforts, including for fencing, weeding and revegetation works. The Trust also helps landholders to access financial support for their conservation activities, and works actively through its policy arm to achieve rate rebates and other tax concessions to benefit Victorian landholders who permanently protect their land.

Application process and start-up costs

Landholders who are interested in entering a Conservation Covenant should contact Trust for Nature by calling (03) 8631 5888 or emailing trustfornature@tfn.org.au. There is no application fee.

If Trust for Nature is interested in a property, a staff member will undertake a site assessment and then prepare a brief for the Board of Trustees. If the property is considered suitable for a Conservation Covenant, Trust for Nature will then negotiate the terms of the covenant with the landholder. Once agreement is reached, Trust for Nature seeks the approval of the Minister. The Minister may direct Trust for Nature to notify landholders in the vicinity of the proposed conservation area that may be affected by the proposed Conservation Covenant and, if this happens, those landholders have one month to make submissions about the proposal. The Minister must take those submissions into account when deciding whether or not to approve the Conservation Covenant.

Once the Conservation Covenant has Ministerial approval, it will be registered on the title to the property.

There is currently a wait-list of interested landholders whose properties are under consideration by Trust for Nature.

Legal advice – Landholders interested in entering a Conservation Covenant should seek independent legal advice before doing so.

Financial and tax advice – A Conservation Covenant may impact the value of property so landholders should seek financial advice. Landholders should also seek independent tax advice before entering a Conservation Covenant if tax incentives are available. The taxation implications of any grant funding should also be considered.

The fees associated with seeking advice are likely to be the most significant start-up costs.

Enforcement

Trust for Nature conducts regular monitoring of the covenanted land to ensure the landholder is complying with the Conservation Covenant. If a breach is detected, Trust for Nature can issue a notice to the landholder requiring the landholder to rectify the breach. Court enforcement is also possible if the breach is significant.

Other important information

Landholders should notify any mortgagees about their intention to enter a Conservation Covenant.

Any tenants or licensees with an interest in the property must be notified of the Conservation Covenant to ensure all rights and restrictions in the covenant are observed.

Are Conservation Covenants suitable for defending the unburnt?

Yes. These agreements will provide strong and permanent legal protection for the land and can connect landholders with a range of support to help improve the biodiversity values of the land.

The biggest issue with this option is that Trust for Nature has a wait-list for interested landholders which may cause significant delays in finalising covenants aimed at protecting unburnt areas. However, Trust for Nature has advised that this is unlikely to be an issue in the East Gippsland area.



Land Management Cooperative Agreement

What is a Land Management Cooperative Agreement?

A Land Management Cooperative Agreement (also known as a s. 69 Agreement under the *Conservation, Forests and Lands Act 1970*) is a legally binding agreement made between a landholder and the Secretary of the [Department of Environment, Land, Water and Planning \(DELWP\)](#) to conserve private land.⁶⁴

The Department uses a template agreement that it modifies to accommodate the specific qualities of the land being protected. Typical provisions include restrictions on the use of land (or conditions upon which certain activities can be carried out), as well as a requirement to undertake specified works for the conservation of plants and animals.

In addition to providing an avenue for conserving private land, these Agreements can be used to offset the clearing of native vegetation by generating native vegetation credits that can be sold to those with approval to remove native vegetation. More information on native vegetation offsetting is available on the DELWP website.⁶⁵

Duration

It is standard practice for Land Management Cooperative Agreements to be registered on the property title and bind future landholders.

The Agreement can be varied or terminated by a subsequent Agreement. However, DELWP is only likely to consent to a variation in instances where there will be a neutral or beneficial biodiversity outcome and is not likely to agree to termination.

If the Secretary and landholder are unable to agree on varying or terminating the Agreement, they can apply to the Minister. The Minister can make an order to vary or terminate the Agreement if allowing the Agreement to remain in its present form would be harsh or oppressive.

If a party disagrees with this outcome, they can apply to the Victorian Civil and Administrative Tribunal for a review of the Minister's decision within 28 days of the decision.



Land eligibility criteria

The land eligibility criteria for Land Management Cooperative Agreements are quite broad. The land does not need to be ecologically significant; rather, the Agreement must be for a relevant purpose (that is, a purpose that achieves the objects of the *Conservation, Forests and Lands Act 1987*).

The Agreement must therefore relate to the management, use, development, preservation or conservation of the land.

Financial and other support

There are no financial or technical support programs connected to Land Management Cooperative Agreements but individual agreements may require the Secretary to provide the landholder with advice, financial or other assistance to help the landholder perform their obligations under the Agreement.

These agreements can also require the Secretary to carry out certain activities on the land for the preservation or conservation of plants and animals (with or without a contribution from the landholder).

It is also possible for the Minister to recommend that the rates payable in relation to the land be remitted if the landholder is not in a position to maintain the land in its natural state without rate relief. The rating authority does not have to provide rate relief to the landholder, but the Minister can offer to reimburse the rating authority for any rates that it does remit for this purpose.

Application process and start-up costs

Land Management Cooperative Agreements are negotiated between the landholder and the Department of Environment, Land, Water and Planning. Interested landholders should contact DELWP to discuss the suitability of their land for a Land Management Cooperative Agreement and any associated fees.

Legal advice – Landholders interested in entering a Land Management Cooperative Agreement should seek independent legal advice before doing so.

Financial and tax advice – A Land Management Cooperative Agreement may impact the value of property so landholders should seek financial



advice. Landholders should also seek independent tax advice before entering a Land Management Cooperative Agreement if tax incentives are available. The taxation implications of any grant funding should also be considered.

Financial and other support

DELWP undertakes monitoring of protected sites both through annual reporting and site visits.

Land Management Cooperative Agreements are binding on both the landholder and the Secretary. If the Agreement is breached, the other party has a range of remedies available for breach of contract.

Damages can be awarded against the landholder if the Secretary proves that the landholder intentionally or recklessly breached the Agreement. In awarding damages, the Court must consider any detriment to the public interest caused by the breach, any financial or other benefit sought by the landholder by breaching the Agreement and any other matter it considers relevant.

The Court also has the power to order the landholder to restore the land to a specified condition.

The Secretary can undertake the works and recoup the costs from the landholder.

The Secretary has the power to seek an injunction to prevent a landholder from breaching the Agreement.

Are Land Management Cooperative Agreements suitable for defending the unburnt?

Land Management Cooperative Agreements provide strong and enduring legal protection for the land and would be suitable for defending the unburnt. They can provide for financial and other support for landholders, although this is not guaranteed and must be negotiated as part of the Agreement.

In addition to providing an avenue for conserving private land, Land Management Cooperative Agreements can be used to offset the clearing of native vegetation.



Land for Wildlife

What is Land for Wildlife?

Under the Land for Wildlife program, landholders voluntarily register their properties to indicate they are committed to managing their property for nature conservation.

This scheme involves no agreement and no legal obligations so it can be viewed as an entry level to private land conservation.

The only requirement for participation in this scheme is for landholders to incorporate nature conservation into their land management practices.

This might involve:

- retaining and protecting remnant vegetation;
- allowing leaf litter, fallen logs and branches to accumulate in habitat areas;
- fencing areas near native bush to allow regeneration;
- restricting livestock access to stream banks;
- fencing natural wetlands;
- leaving river snags in place for fish habitat;
- protecting dead trees with hollows;
- planting local native trees, shrubs and grasses;
- constructing a wildlife dam (with an island, shallows and natural vegetation); or
- controlling pests, environmental weeds, rabbits and foxes.

This scheme offers no legal protection for the land.

Duration

Participating landholders can withdraw from the program at any time and if the property is sold the new owners will need to apply to register with the program.

Financial and other support

Some non-financial support is available to participating landholders. This includes:

- an on-site visit to provide advice and answer questions;⁶⁶
- advice about how landholders can contribute to biodiversity conservation;
- field days, neighbourhood days, open-properties and information sessions;
- a regular Land for Wildlife newsletter;
- Land for Wildlife Notes with detailed information on specific topics; and
- A Land for Wildlife sign if the property is fully registered.



Application process and start-up costs

Landholders interested in registering with Land for Wildlife need to complete a simple [application form](#) and send it to:⁶⁷

Peter Johnson
Land for Wildlife Coordinator
Department of Environment, Land,
Water and Planning
Box 3100, Bendigo Delivery Centre
BENDIGO VIC 3554
peter.johnson@delwp.vic.gov.au

Once the form is received, a Land for Wildlife officer will contact the landholder and arrange for a meeting to discuss the application. Subject to a favourable assessment, the property will be entered on the Land for Wildlife register. Landholders who do not qualify can work towards registration with the assistance of Land for Wildlife staff.

There is no application fee and, as there are no tax, property value or legal implications, it is not necessary to obtain independent advice before signing up.

Enforcement

Participation in this program is completely voluntary and involves no enforceable obligations. If a participating landholder is failing to incorporate nature conservation into the management of their property they may be de-registered.

Is Land for Wildlife suitable for defending the unburnt?

This scheme does not provide legal protection for the land but it does encourage the conservation of wildlife habitat.

While legal protection is more effective at defending unburnt landscapes, landholders who want to help protect the unburnt without entering legally binding agreements will find this option compelling.

Furthermore, this option is well suited to landholders who have smaller properties that don't meet the land eligibility criteria of legally binding options.

The Wildlife Land Trust

The Wildlife Land Trust is a national scheme and is covered in Part 4.

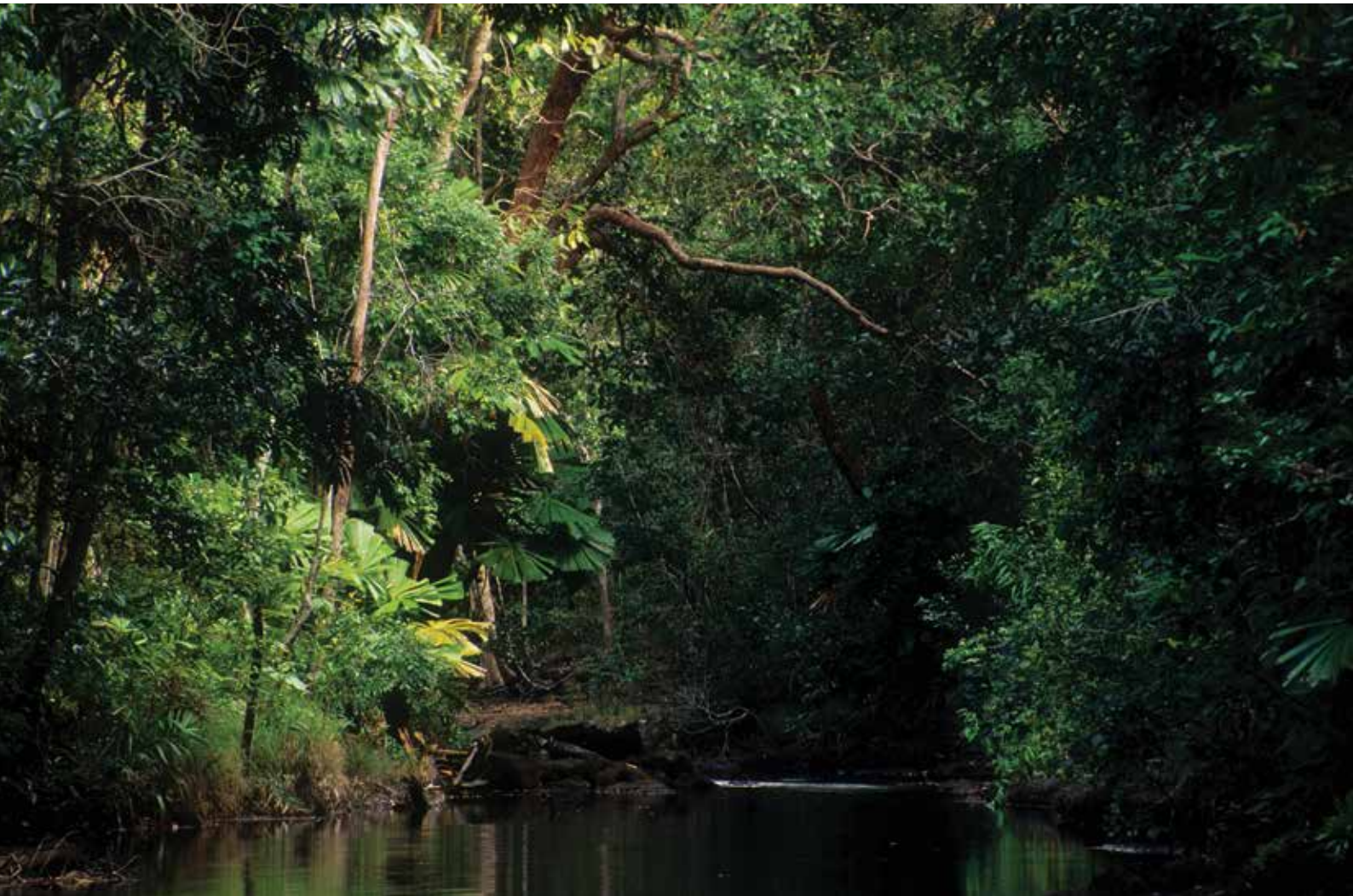
Commonwealth Conservation Agreement

Commonwealth Conservation Agreements are a national option and are covered in Part 4.

Indigenous Protected Area

Indigenous Protected Areas are a national option and are covered in Part 4.





Part 4
Private
Conservation
at the
National level

At the national level, there are three options available:

1. The Wildlife Land Trust
2. Commonwealth Conservation Agreement
3. Indigenous Protected Area

These options are available to landholders in NSW, QLD and VIC.



The Wildlife Land Trust

What is the Wildlife Land Trust?

The [Wildlife Land Trust](#) is Humane Society International's (HSI) national network of privately-owned wildlife sanctuaries.⁶⁸ The scheme is intended to create a community of conservation-minded landholders and support them in their conservation efforts. It is also intended to complement other private conservation initiatives, such as the legally binding options discussed throughout this report.

In order to participate in the Wildlife Land Trust, landholders register their property as a wildlife sanctuary by entering a non-binding letter of agreement with Humane Society International and committing to preserve wildlife and habitats on their land.

Duration

Participation in the Wildlife Land Trust is voluntary and carries no legal obligations so the landholder can opt out of the scheme at any time. Future landholders can choose whether or not to participate in the scheme.

Land eligibility criteria

The Wildlife Land Trust program focuses on conserving land for wildlife so any property of an acre or more that contains wildlife habitat is eligible.

Financial and other support

Participation in the Wildlife Land Trust scheme connects landholders with significant support to encourage best practice private conservation. HSI facilitates communication between members both nationally and internationally to allow for peer-to-peer support and education. HSI staff and experienced land managers/wildlife rehabilitators also offer practical support where needed. Landholders can access help and advice about the legal and ecological integrity of their property and can also receive the Wildlife Lands newsletter and a sign to erect on their property.

In addition to this, the Biodiversity Conservation Trust recognises the conservation value of this scheme and, as such, participating landholders from NSW are eligible to apply for grants through the BCT's [Conservation Partners Program](#) to assist them to maintain the ecological values of their properties.⁶⁹ This program provides grants of up to \$2,000 per year for three years to eligible landholders.



Application process and start-up costs

Registering a property with the Wildlife Land Trust is very straightforward. There is an [application form](#) online or interested landholders can download and complete the PDF form and send it to HSI in Sydney.⁷⁰

There are no costs associated with participation in this scheme, and as there are no tax, property value or legal implications it is not necessary to obtain independent advice before signing up.

Enforcement

Wildlife Land Trust agreements are not legally binding and cannot be enforced against the landholder.

Is the Wildlife Land Trust suitable for defending the unburnt?

This scheme does not provide legal protection for the land but it does connect landholders with educational and technical support to encourage best practice private land conservation.

Participating landholders from NSW are also eligible to apply for grants through the BCT's [Conservation Partners Program](#) to fund projects that improve the ecological values of the land.

While legal protection would more effectively defend unburnt landscapes, landholders who want to help protect the unburnt without entering legally binding agreements will find this option compelling.

Furthermore, this option is well suited to landholders who have smaller properties that don't meet the land eligibility criteria of the legally binding options outlined above.

Commonwealth Conservation Agreement

What is a Commonwealth Conservation Agreement?

A Commonwealth [Conservation Agreement](#) is a legally binding agreement between the Federal Environment Minister (through the Department of Agriculture, Water and the Environment) and a landholder for the protection and conservation of an area of land or sea.⁷¹

Commonwealth Conservation Agreements can require the landholder to:

- carry out activities that promote the protection and conservation of biodiversity;
- refrain from, or control, activities that may adversely affect the species, ecological communities, or habitat covered by the Agreement;
- permit access to the place by specified persons;
- contribute towards the costs incurred under the Agreement;
- spend any money paid to them under the Agreement in a specified manner; and
- forfeit any money paid to them under the Agreement if they contravene the Agreement.

The Agreement will be accompanied by a management plan that sets out the management actions the landholder must carry out.

Duration

The Agreement itself will specify how long it is intended to last as well as whether it can be terminated before that time (and if so, the process for termination). The Environment Minister can unilaterally terminate or vary the Agreement if it is not achieving its purpose.

While the Agreement is in place it will bind current and future landholders.

The Agreement may also be varied by a further agreement between the Minister and relevant landholder/s.



Land eligibility criteria

Because these Agreements are made under the Federal environmental law (the *Environment Protection and Biodiversity Conservation Act 1999* or EPBC Act), they must relate to one or more matters protected by that Act (known as **matters of national environmental significance**). These include:⁷²

- nationally listed threatened species and ecological communities or their habitats;
- the World Heritage values of declared World Heritage properties;
- the Commonwealth Heritage values of Commonwealth Heritage places;
- the ecological character of a declared Ramsar wetland;
- the environment, in respect of the impact of a nuclear action;
- the environment in a Commonwealth marine area; and
- the environment on Commonwealth land.

To be eligible, the area to be covered by the Agreement must contain one or more of these matters of national environmental significance. The relevant matters of national environmental significance will be noted in the Agreement.

Financial and other support

The Agreement can provide for funds, resources and advice to be provided to the landholder to assist with the implementation of specific actions in the management plan. This support will need to be negotiated at the time the Agreement is being made.

Application process and start-up costs

Commonwealth Conservation Agreements are negotiated directly between the Commonwealth and the landholder. Interested landholders should contact the **Department of Agriculture, Water and Environment** directly.⁷³

When the Minister is considering entering into a Conservation Agreement, the Minister must take into account any responsibilities of other Commonwealth Ministers that may be affected by the Agreement and must also be satisfied that the proposed Agreement will result in a net benefit to the conservation of biodiversity, and is not inconsistent with a recovery plan, threat abatement plan or wildlife conservation plan.

Legal advice – Landholders interested in entering a Commonwealth Conservation Agreement should seek independent legal advice before doing so.

Financial and tax advice – A Commonwealth Conservation Agreement may impact the value of property so landholders should seek financial advice. Landholders should also seek independent tax advice before entering a funded Commonwealth Conservation Agreement.

The fees associated with seeking advice are likely to be the most significant start-up costs.

Enforcement

If a person bound by a Commonwealth Conservation Agreement contravenes (or proposes to contravene) the Agreement, the Environment Minister or any other person bound by the Agreement can apply to the Federal Court for an injunction.

The Court can issue an injunction to restrain the contravention and, if necessary, make orders requiring the repair or mitigation of any harm that has been caused.

Are Commonwealth Conservation Agreements suitable for defending the unburnt?

These Agreements will provide strong legal protection for any matters of national environmental significance on the land. This makes them appropriate for defending priority unburnt landscapes as they contain many federally listed threatened species and ecological communities.

As there is no program underpinning these Agreements, their effectiveness very much depends on the Agreement itself; that is, what has been negotiated between the landholder and the Department. An Agreement that provides for financial and other support to the landholder would be preferable to an Agreement that does not.

There is also some doubt as to how 'available' these Agreements are as there is no publicly available information about the application process and the Department does not appear to be promoting these Agreements to landholders. It is possible that this is due to a lack of resourcing for these Agreements which would limit their suitability for defending the unburnt.



Indigenous Protected Area

What is an Indigenous Protected Area?

An Indigenous Protected Area (**IPA**) is an area of land or sea country that traditional owners have voluntarily agreed to manage for conservation. The agreement is made with the Australian Government.

IPAs are accompanied by a management plan which sets out how country, its natural and cultural values and any threats to those values will be managed. Management plans are negotiated between the traditional owners and the Australian Government and are tailored to the particular country they relate to. Management actions tend to be carried out by Indigenous rangers and typically include clearing weeds, trapping feral animals, protecting rock art, working with researchers, managing burning regimes and welcoming visitors.

Once declared, an IPA forms part of Australia's national reserve system and contributes to biodiversity conservation. IPAs also help Indigenous communities protect the cultural values of their country for future generations and can result in significant health, education, economic and social benefits.

The IPA program is administered by the [National Indigenous Australians Agency](#)⁷⁴ in partnership with the [Department of Agriculture, Water and Environment](#).⁷⁵

Duration

The IPA program is not prescriptive and this enables each Indigenous group to determine their own goals and methods. Individual IPAs will set out their duration and process for variation and termination (if applicable).

Land eligibility criteria

IPAs can apply to land and sea country. They can also apply to a range of land tenures, including national parks, local government reserves, private land and native title returned lands, under co-management arrangements.

Financial and other support

IPA projects are supported through a multi-year funding agreement. Many Indigenous organisations also supplement this funding through fee-for-service or other income generating activities, as well as support from private sector and philanthropic organisations.

The IPA framework encourages traditional owners to enter partnerships with conservation and commercial organisations to provide employment, education and training opportunities for Indigenous people.

In 2017, the Australian Government committed \$15 million under the New Indigenous Protected Areas Program, to assist Indigenous groups to undertake



consultation and planning for the establishment of new IPAs between 2017-2021.

Funding for IPAs is delivered through the [Indigenous Advancement Strategy](#).⁷⁶

Application process and start-up costs

There is no application process for IPAs. The Agreements are negotiated between traditional owners and the Australian Government through the [National Indigenous Australians Agency](#).⁷⁷

Before an IPA can be declared, community consultation needs to take place and a plan of management needs to be prepared. The Australian Government can support traditional owners to consult with their community.

Legal advice – Traditional owners interested in entering an Indigenous Protected Area Agreement should seek independent legal advice before doing so and to support them through the process.

The cost of legal support is likely to be the most significant start-up cost.

Are Indigenous Protected Areas suitable for defending the unburnt?

IPAs currently make up about 46% of the national reserve system so their contribution to biodiversity protection is already significant. IPAs are proven to have positive conservation outcomes and they also deliver socio-economic benefits to traditional owners and the wider community. The employment of Indigenous rangers to manage the land is also a key benefit to these Agreements.

Aboriginal communities in fire-affected areas will find this Indigenous-led program offers a proven and effective way to defend what remains.



End Notes

¹ Parliament of Australia, 2020, 2019–20 *Australian bushfires—frequently asked questions: a quick guide*, available at https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1920/Quick_Guides/AustralianBushfires. We note that some reports state 34 deaths, however we have been unable to confirm this number.

² Arriagada, N.B, et al;2020, Unprecedented smoke-related health burden associated with the 2019–20 bushfires in eastern Australia. *Med J Aust* 2020; 213 (6): 282-283. || doi: 10.5694/mja2.50545. Available at <https://www.mja.com.au/journal/2020/213/6/unprecedented-smoke-related-health-burden-associated-2019-20-bushfires-eastern>

³ AFAC (Australasian Fire and Emergency Service Authorities Council) (2020) *Cumulative Seasonal Summary*, AFAC National Resource Sharing Centre, 28 February 2020. Accessed at <https://twitter.com/AFACnews/status/1233262259612213248/photo/1>.

⁴ See, for example, Department of Agriculture, Water and the Environment, 2020. Greater Blue Mountains Area State of Conservation update - April 2020, available at <http://www.environment.gov.au/system/files/resources/2073fd28-88e8-42f6-8b2a-20a811f7a279/files/greater-blue-mountains-area-state-conservation-update-april-2020.pdf>

⁵ See, for example, Queensland Government, 2020, *Altered fire regimes pressure on the Gondwana Rainforests*. Available for viewing at <https://www.stateoftheenvironment.des.qld.gov.au/heritage/world/altered-fire-regimes-pressure-on-the-gondwana-rainforests-of-australia>

⁶ NSW Government, 2020. *Bushfire impacts on water quality*, February 2020, available at <https://www.epa.nsw.gov.au/-/media/epa/corporate-site/resources/water/20p2093-bushfire-impacts-on-water-quality.pdf>

⁷ DISER, 2020, *Estimating greenhouse gas emissions from bushfires in Australia's temperate forests: focus on 2019-20*, Australian Government, available at <https://www.industry.gov.au/data-and-publications/estimating-greenhouse-gas-emissions-from-bushfires-in-australias-temperate-forests-focus-on-2019-20>

⁸ Professor Chris Dickman, Faculty of Science, University of Sydney. For an explanation of Professor Dickman's estimates see <https://www.sydney.edu.au/news-opinion/news/2020/01/08/australian-bushfires-more-than-one-billion-animals-impacted.html>

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