UNIVERSITY OF WOLLONGONG AUSTRALIA

Kangaroos in the Australian Capital Territory: An institutional ethnography of human conflicts over wildlife management

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Abstract

Australia has long had the world's worst rate of terrestrial mammalian extinctions. Disagreements over wildlife management can be a significant concern for those trying to address species decline, as they may delay or prevent planned interventions. They also present an opportunity to share previously unconsidered knowledge, strengthen communities, increase socio-ecological knowledge, and enhance participation in social and ecological programs and processes. My thesis aims to shed light on these disagreements and the implications for managing them, focusing on human conflicts over the management of eastern grey kangaroos (*Macropus giganteus*) in the Australian Capital Territory (ACT).

Since the early 1990s, debates have raged in the ACT over whether kangaroo grazing caused detrimental economic and ecological impacts and whether killing them would alleviate these problems. Such concerns were brought before the ACT Civil and Administrative Tribunal (ACAT) three times by three different community groups that challenged the ACT Government's decisions to issue the licences required to kill kangaroos. Each time, the decisions were upheld. The hearings contributed to the creation of radical new legislation: the *ACT Nature Conservation Act 2014*. Following its enactment, protests significantly declined. Outward appearances indicated that the ACT Government's interventions were immensely successful.

However, I attended one of the hearings and observed the starkly inconsistent way the ACAT panel members overseeing the case handled the witnesses and their evidence. The official recordings capture the dialogue throughout the proceedings and illustrate how policy and legal texts central to kangaroo management in the ACT were mobilised and transformed. They also demonstrate how the ACAT panel members developed processes to identify the 'right witness' and determine what constituted acceptable scientific evidence. My investigation reveals how such processes favoured the ACT Government's witnesses and evidence. This ensured a business-as-usual approach to kangaroo management, while maintaining the appearance of delivering on its promised aims of fostering 'open government', particularly by

facilitating ‘public participation’, and using the ‘best scientific knowledge’ to inform kangaroo management practices. The licencing and legislative changes that occurred after the close of the final hearing foreclosed democratic processes and criminalised dissent.

My research is grounded in institutional ethnography (IE), a framework developed by Canadian sociologist Dorothy Smith. IE research examines texts in social contexts to understand how they facilitate the coordination of institutional action. The research commences in people’s everyday worlds to discover how texts coordinate action translocally through what Smith called ‘ruling relations’. At the outset, the researcher identifies a ‘disjuncture’ whereby a way of knowing from a ruling perspective differs from how it is experienced in everyday life. This occurred when I observed the ACAT panel members’ uneven handling of witnesses and their evidence. The researcher then establishes a ‘problematic’ that directs questions not previously posed but ‘latent’ in people’s everyday lives. The problematic I explore asks how human conflicts over kangaroo management in the ACT were suppressed through and beyond the administrative review system. To do so, I trace how documents were mobilised to uphold and extend the ruling relations associated with managing both kangaroos and human conflicts over kangaroo management.

The key contribution this research makes is to trace in great detail the processes employed by the ACT Government that gave the appearance of enacting ‘open government’ and drawing on ‘best science’. I highlight the overriding influence of the economic imperatives of the ACT Government and commercial interests, and how they compromised both democratic processes and the knowledge upon which kangaroo management in the ACT was founded. As this work involved several arms of the government, this research adds to the growing number of institutional ethnographies that span multiple institutions. While institutional ethnographies often reflect how ruling relations are maintained by activating a stable authorising text, my research demonstrates how strengthening ruling relations was possible by maintaining key texts in a state of instability. The IE ontology on which this research is grounded has made significant contributions to wildlife management literature, particularly in relation to enhancing our understanding of human conflicts over wildlife management. Investigations in this area rarely

consider the involvement of the management agency and are overwhelmingly quantitative. My research demonstrates why the former is imperative and how rich and important insights are generated through qualitative research methods, particularly through IE.

Dedication

I dedicate this research to my grandmother, Joan King, who departed before the project was completed. You ignited in all of us a passion for the more-than-human world.

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First and foremost, words cannot express my gratitude to my supervisors, Dr Andrew Whelan and Dr Nicola Marks, for their immense support, patience, encouragement, knowledge, and experience. You are both incredible supervisors, and I sincerely appreciate your guidance and influence on me, this project, and its direction. I cannot imagine what this project would have been like without you.

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I am incredibly indebted to the library staff who went to great lengths to assist me at the University of Wollongong, the Australian National University, Griffith University, the National Library of Australia, the National Museum of Australia Library, Libraries ACT, the ACT Heritage Library, and the Australian Institute of Aboriginal and Torres Strait Islander Studies.

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I want to express my sincere gratitude to John Mahony for his invaluable proofreading; January Cole from January Cole Design, who created Figures 1, 3, and 6; and Jericho Coloma from Emroy, who created Figures 4, 5, 7 and 8. Both January and Jericho were involved in creating Figures 2 and 9. All errors in this thesis, however, are my own.

I sincerely thank my family and friends, especially Stacey Connell. You see in me things that I can't believe are possible. You carried me over the finish line, and I will be forever grateful. I must thank the rest of the extended family: Jeff Connell, Catelyn Connell, Ryan Connell, Karyn Webber, Pauline Meehan, and Chloe Winmill. Your support, encouragement, understanding, and patience were invaluable and immensely appreciated, particularly during the final stages of this project. To my beautiful friend, Kathryn Patterson – thank you for always being there for me, especially when I need it most. David and Teresa King, thank you so much for your support, encouragement and for allowing me to use your beautiful home for writing. I am incredibly grateful for the patience, support, and understanding from loved ones who haven't seen me in person for what seems like an eternity. I would like to express my appreciation for the support of my colleagues during my 'paid study breaks' at the Social Research Centre, as well as the Princess Alexandra, Canberra, and Wollongong Hospitals.

Certification

I, Kathleen Annette Varvaro, declare that this thesis, submitted in fulfilment of the requirements for the conferral of the degree of Doctor of Philosophy from the University of Wollongong, is wholly my own work unless otherwise referenced or acknowledged. This document has not been submitted for qualifications at any other academic institution.

Kathleen Annette Varvaro
13th April 2025

List of Abbreviations

ACAT	Australian Capital Territory Civil and Administrative Tribunal.
ACT	Australian Capital Territory.
ACT KMP	Australian Capital Territory Kangaroo Management Plan.
BNTS	Belconnen Naval Transmission Station, Department of Defence, ACT.
CSIRO	Commonwealth Scientific and Industrial Research Organisation.
EGK	Eastern grey kangaroo (*Macropus giganteus*).
IE	Institutional ethnography.
IUCN	International Union for Conservation and Nature.
IUCNN	International Union for Conservation of Nature and Natural Resources.
LDA	Land Development Agency.
MTA	Majura Training Area, Department of Defence, ACT.
NSW	New South Wales.
RSPCA	Royal Society for the Prevention of Cruelty to Animals.
TAMS	ACT Government Directorate of Territory and Municipal Services.

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Chapter contents

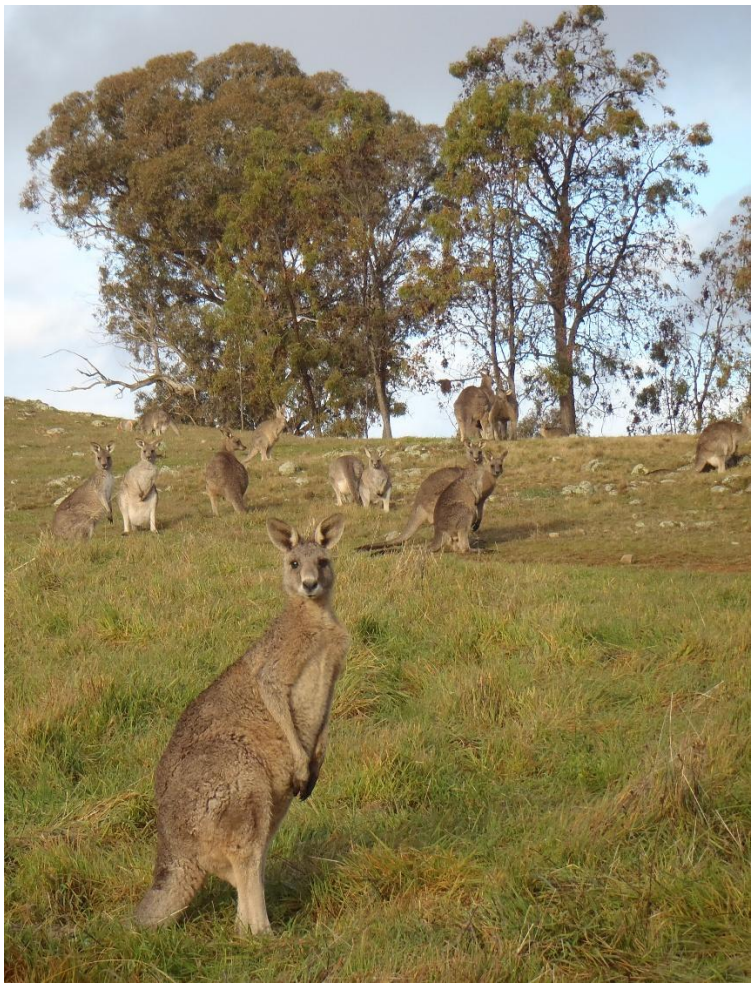
1.1 The context of this research

1.1.1 The problems and potential of human conflicts over wildlife management

As the human population expands in numbers and urban, agricultural and infrastructure development consume greater areas of land, human conflicts over the management of the wildlife living in and around human settlements become increasingly common (Brown, 2009; Rose et al., 2012: 11). Such conflicts can delay or prevent efforts to avert the destruction or degradation of the more-than-human world, fracture social communities, and consume enormous amounts of time, energy, and other resources. This is of particular concern in Australia, which has long had the highest rate of mammalian extinctions in the world, the fourth-worst rate of animal extinctions of any country, and over 1,700 species listed as being threatened (Australian Conservation Foundation, 2018; Department of Climate Change, Energy, the Environment and Water, 2021b; Karki et al., 2018). Human conflicts over wildlife management can also present an opportunity to share previously unconsidered knowledge, strengthen communities, increase socio-ecological knowledge, and broaden participation in social and ecological programs and processes.

My research focuses on eastern grey kangaroos (*Macropus giganteus*), depicted in Photograph 1, which I hereafter refer to simply as 'kangaroos' unless otherwise stated. I use human conflicts over kangaroo management in the Australian Capital Territory (ACT) as a window to better understand how the ACT Government managed such conflicts. Through previous research in 2014, I observed a hearing which was held in the ACT Civil and Administrative Tribunal (ACAT) in which Animal Liberation ACT challenged a decision made by the ACT Government Conservator of Flora and Fauna to issue licences to kill 1,606 kangaroos in eight nature reserves throughout the ACT. The position of the Conservator is held by the Executive Group Manager of Environment Heritage and Parks who acts on conservation matters outlined in the *ACT Nature Conservation Act* (*1980* and *2014*), such as issuing licences to kill native plants and animals, biodiversity research and monitoring, managing nature reserves, and managing threatened species and ecological communities (ACT Government Environment, Planning and Sustainable Development Directorate, n.d.-c). Throughout the 2014

hearing, I noticed a stark difference in how the ACAT members who oversaw the case assessed the witnesses and evidence presented by Animal Liberation ACT compared to that of the ACT Government. This sowed the seed for my current research, which forms the basis of this thesis.



Photograph 1: A mob of eastern grey kangaroos in The Pinnacle Nature Reserve, ACT (Source: K. Varvaro, 9 July 2014.)

My work is informed by institutional ethnography (IE) as developed by Dorothy Smith (1986). IE is a method of inquiry that uses people's lived experiences to uncover the social relations that organise institutions (Smith, 2005b: 225). It aims to map the institutional elements of ruling relationships so people can appreciate how their own activities are coordinated 'with others' doings elsewhere and elsewhen' (Smith, 2005b: 225). Smith (2005b: 225) defined

‘institutions’ as ‘complexes embedded in ruling relations that are organised around a distinctive function, such as education, health care, and so on’. The ‘ethnographic’ aspect of IE ‘addresses the ruling relations as coming into being only in people’s work as coordinated by the materiality of texts activated in text–reader conversations’ (Smith, 2005b: 184). In mobilising the term ‘ruling relations’, Smith (2005b: 227) highlighted how texts mediate social relations across a range of locations. DeVault and McCoy (2001: 741) state that exploring ruling relations reveals how subordination is achieved through specific ideological and social processes. The key areas of focus in IE include understanding how a particular experience happens and how the associated social relations have been organised (Campbell & Gregor, 2004: 7).

In this thesis, I will illuminate how the ruling relations positioned kangaroo grazing as a problem, as it presents a challenge to ‘development’ and the broader economic interests of the ACT Government and other powerful organisations. Directing attention towards kangaroos simultaneously diverts attention away from problems caused by humans, but which are profitable. The ruling relations (reframed as ‘best science’, as I will discuss in section 1.2.3) direct what can be seen and what is sidelined or rendered invisible, thereby positioning some understandings as logical and others as misinformed, unreasonable and/or extremist. In Chapter 7, I will show how this ultimately led to radical legislative changes that criminalised dissent and prevented external scrutiny of government processes associated with kangaroo management.

Texts are central to IE as they are the medium through which such coordination and organisation is achieved. Smith (2005b: 228) defined texts as ‘material in a form that enables replication (paper/print, film, electronic and so on) of what is written, drawn, or otherwise produced’. Smith used the term ‘boss text’ to refer to specific texts which, through institutional procedures, have been imbued with a governing frame that directs specific people to conduct specified acts (unpublished work by Smith (2010) as cited by Bisaillon, 2012: 610; Griffith & Smith, 2014b). Drawing upon the work of Roland Barthes, Smith developed her concept of ‘text–reader conversations’, noting that ‘a text only becomes what it is in the reading, the text is never the same’ (Smith, interviewed by Widerberg, 2004).

The term ‘problematic’ in IE is used to highlight one aspect of everyday life for further

investigation, a ‘territory to be discovered’ (Smith, 2005b: 41). Smith (1988b: 91) used it to ‘direct a possible set of questions that may not have been posed or a set of puzzles that do not yet exist in the form of puzzles but are “latent” in the actualities of the experienced world’. A problematic becomes apparent when a ‘disjuncture’ is noticed (Murray, 2019: 26). Dorothy Smith (1990d: 99-100) positioned a disjuncture as occurring when a way of knowing from a ruling perspective differs from how it is experienced in everyday life. It involves contradictions between ‘standard and standardizing texts of ruling’ and the actualities of people’s lived experiences (Griffith & Smith, 2014b: 18; Smith & Griffith, 2022: 58).

Through my observations during fieldwork in my previous research project, I noted how the ACAT panel members simultaneously aimed to resolve the ongoing contestations over licences being issued to kill kangaroos while actively impeding open discussions on the topic. This was the case even though administrative reviews aim to ensure public confidence in government decisions and enable public participation in democratic processes (see Law Council of Australia, 2021: 5). Therefore, the problematic I explore in this thesis asks how human conflicts over kangaroo management in the ACT were suppressed through and beyond the ACT’s administrative review system. I pay particular attention to how the ACAT panel members assessed the causes of the problems the management interventions aimed to solve, the expert witnesses and their evidence, and their roles in relation to democratic participation, government policy and legislative changes. The main finding of this research is the uncovering of complex documentary practices that enabled the continuation and extension of the ACT Government’s preferred approach to kangaroo management, while reducing resistance to it. I highlight how such documentary practices support an approach to environmental management, and specifically to kangaroo management, that is conducive to the economic imperatives of the ACT Government and commercial interests. This was done in ways that simultaneously compromised democratic processes and the scientific basis of kangaroo management in the ACT, while conveying that the ACT Government had delivered on its commitments to basing kangaroo management on the ‘best available scientific knowledge’ and to ‘open government’, and to public participation more specifically.

1.1.2 Situating my research

Within the scientific discipline of conservation biology is a subfield referred to as the 'human dimensions of wildlife' (see Manfredo, 1989) which is heavily indebted to sociologist Stephen R. Kellert's (1976, 1980, 1995) investigations into human–animal relationships. Scholars from the environmental humanities and social sciences, however, have criticised 'human dimensions' approaches as being simplistic and lacking an appreciation for the sociocultural frameworks that guide understanding of the more-than-human world (see, for example, van Dooren, 2012). This research contributes to those criticisms and calls for those studying human conflicts over wildlife management to expand the scope of their research, as I will discuss in section 1.4.2.

A topic of focus within that subfield is what is commonly referred to as 'human-wildlife conflicts', a term that has been used in reference to human contestations surrounding kangaroo management in the ACT (see Ben-Ami & Mjadwesch, 2017; Howland, 2016; Wimpenny et al., 2021). I instead adopt the term 'human conflicts over wildlife management', as the former term situates nonhuman animals as consciously antagonising humans. A worldwide content analysis of wildlife conservation publications and professional meeting presentations conducted by Peterson et al. (2010) revealed that this was not the case in all cases in their study, except for Australian magpies (*Cracticus tibicen*). Peterson et al. (2010) demonstrated that what was widely thought to constitute 'human-wildlife conflicts' were usually 'human–human conflicts'.

Research into human conflicts over wildlife management was initially developed by and in service to wildlife managers in an attempt to reduce the time they spent on 'people problems' (Teague, 1979: 59). The vast majority of such studies employ quantitative methods. They almost exclusively adopt an outward-facing gaze by analysing those outside the management agency and planning interventions grounded in social psychology and behavioural economics, which often aim to elicit the behavioural changes desired by the management agency (Vaske et al., 2006). To date, I have found no studies that incorporate the influences of wildlife management agencies and their staff on human conflicts related to wildlife management. Many papers have explored the internal cultures of wildlife management agencies (see Bright et al., 1997; Enck & Decker, 1997; Gamborg et al., 2019; Gigliotti & Decker, 1992; Gill, 1996;

Hvenegaard & Perkins, 2019; Minnis & McPeake, 2001; Nielsen, 2001; Phillips et al., 1998). Studies in Australia and the U.S. have illuminated intra-agency barriers to public involvement in wildlife management (see Lord & Cheng, 2006; Miller & Jones, 2005; Mortenson & Krannich, 2001). Some studies have explored the differences between the public and wildlife managers regarding their understanding of specific terms, such as 'living' and 'coexisting' with wildlife (Glass & Pienaar, 2021) and 'risk' (Gore et al., 2007), as well as their attitudes towards large carnivores (Kaltenborn et al., 1999).

As I shall discuss in section 1.2.1, I situated my master's research into human conflicts over Australian white ibis management (*Threskiornis molucca*) (hereafter referred to as 'ibises') in the space between environmental sociology and the human dimensions of wildlife. However, delving deeper into human conflicts over kangaroo management in my doctoral research gave me a much greater appreciation of the complexities of such issues. The conflict I focus on in this thesis has extended far beyond human relationships with the more-than-human world to encompass issues related to democracy, governance, the social construction of knowledge, and legal studies. As I will discuss in section 1.4.2, few institutional ethnographies have been conducted on environmental issues or have investigated polarised issues. Some institutional ethnographers, such as Lund (2024), have identified these areas as requiring attention in IE.

The following discussion provides the context for my research. In section 1.2, I will explain how I came to be involved in this area of research and discuss in greater detail the aim and scope of this project. In section 1.3, I highlight the significance of this work before providing an overview of the structure of my thesis in section 1.4.

1.2 Research motivations, aim and scope

1.2.1 From ibises to kangaroos

I have long been interested in Australian native flora, fauna and ecological communities, and I pursued this interest by completing a Bachelor of Science in Australian Environmental Studies and a Graduate Certificate in Outdoor and Environmental Education. I later directed my

attention towards human conflicts over wildlife management after reading a news article that expressed strongly negative statements about ibises (see Williams, 2009), depicted in Photograph 2. My research project for my Master of Applied Social Research utilised a survey of residents on the Gold Coast in Queensland, Australia, to explore their perceptions of ibises and their management (see Varvaro, 2010). To my surprise, many respondents highlighted that the Gold Coast had been built upon the resumed wetlands, which would otherwise have provided homes and food sources to this and other species. The management interventions respondents favoured focused on human behaviours rather than on the birds themselves, and included discouraging littering and feeding, and extending the provision of bird-proof bins in public spaces. My participant observations and field studies also revealed that, instead of deterring tourists as had been claimed by the Council of the City of Gold Coast (n.d.), tour operators catering to the Chinese market sought out ibis rookeries. Their interest may have been due to the similarities Australian white ibises share with crested ibises (*Nipponia nippon*), which is an endangered species in China (see BirdLife International, 2024; Wen, 2021), as is reflected in Photographs 2 and 3. Resource constraints precluded exploring that possibility.

Photograph 2: An Australian white ibis

(Source: Harrison (2012). Reproduced under the Creative Commons Attribution-Share Alike 3.0 Unported license.)

Photograph 3: A crested ibis

(Source: Danielinblue (2013). Reproduced under the Creative Commons Attribution-Share Alike 3.0 Unported license.)

On completing my master's project, I was concerned about the dearth of studies that incorporated all actors in human conflicts over wildlife management, including the management agency itself. I was also motivated to study one such conflict beyond the constrained lenses of social psychology, behavioural economics, and survey research. I was frustrated that the ibis management appeared to be based less on the scientific knowledge that was available at the time (see, for example, Corben, 2003; Ecosure, 2008, 2009; Kentish, 1994, 1999; Murray, 2005) than on perceptions and arguably on the budgetary constraints of short-term electoral cycles. I spoke of my concerns to an academic and population ecologist who informed me that if I wanted to focus on a population that was well researched, I should study kangaroos, as related research was funded by the levies from the commercial culling industry and by government bodies working to support primary industries (see AgriFutures Australia, n.d.; Kangaroo Industry Association of Australia, 2018; C. Ward, 2014). As well as eastern grey kangaroos, the

macropod species killed commercially include western grey kangaroos (*Macropus fuliginosus*), red kangaroos (*Osphranter rufus*), euros or common wallaroos (*Macropus robustus*), Bennett's wallabies (*Notomacropus rufogriseus rufogriseus*), Tammar wallabies (*Notomacropus eugenii*) and Tasmanian or rufous-bellied pademelons (*Thylogale billardierii*) (AgriFutures Australia, 2020: 4-5).

An ideal opportunity to explore the management of a human conflict over wildlife arose in 2014, when tensions erupted over kangaroo management in the ACT, where I was living at the time. Animal Liberation ACT challenged a decision by the ACT Government to issue licences to kill kangaroos in and around nature reserves throughout the ACT (Lawson, 2014). To investigate what ensued, my previous research involved observing the 2014 ACAT hearing, conducting participant observations and semi-structured interviews over an 18-month period, and undertaking 12 months of field observations in one key nature reserve in the ACT.

The questions at the forefront of my mind at the time asked who spoke, who did not, and how and why that occurred. Initially, my main concern was to better understand the causes of the conflicts, explore whether anything could be done to mitigate them, and consider whether any lessons could be drawn from the issue to inform other conflicts in different times and places. I was particularly interested in why the conflicts persisted and exacerbated despite the ACT Government's significant efforts to mitigate the situation.

In that project, I initially presented myself at the ACAT hearing as an impartial observer. Such impartiality was, of course, impossible as it assumed my ability to detach from those I was observing (as discussed by Balcom et al., 2021). At the time, I inwardly believed the news articles that reported that killing kangaroos was necessary to protect vulnerable species and endangered ecological communities (as with McIlroy et al., 2013). My inkling was that the conflict was the result of a combination of poor communication techniques on the part of the spokespeople for the ACT Government and a lack of understanding of the 'facts' by those who opposed the kangaroo management techniques employed in the ACT (as was suggested by Iglesias, 2014b). As is common in institutional ethnographies (see Smith, 2005b: 139, 140) my preconceptions would, and 'perhaps should', be quickly disrupted. My curiosity was piqued by

my observation of the starkly uneven criteria applied by the ACAT panel members to validate expert witnesses and the information they presented to the advantage of the ACT Government.

The political climate around this period must be contextualised to appreciate the decisions of the ACAT panel members and others employed by the ACT Government. Despite being a party to seven international human rights treaties (see Australian Government Attorney-General's Department, n.d.-b), governments across Australia have, over the past twenty years, enacted anti-protest laws that breach human rights (Mejia-Canales, 2024: 4). Such laws have particularly targeted the environmental, climate and animal rights movements (Mejia-Canales, 2024: 5). The reciprocal relationship between protest and suppression has long been studied (as with Carey, 2006), as has been the criminalisation of protest in Australia and around the world (see Gogarty, 2014; International Nework of Civil Liberties Organizations, 2013; McNamara & Quilter, 2019).

From 2014 to 2019, numerous United Nations Special Rapporteurs raised concerns about such legislation (Forst, 2018: section 43; see United Nations Human Rights Council, 2016: section 35; United Nations Human Rights Council, 2020: section 69). In 2018, the Special Rapporteur was ‘alarmed to observe the trend of introducing constraints by state and territory governments on the exercise of this fundamental freedom’ of peaceful assembly (Forst, 2018: section 43). In 2019, the CIVICUS Monitor (2019) downgraded Australia’s ‘civic space rating’ from ‘open’ to ‘narrowed’ due to concerns regarding restrictions on free speech, the intensifying of surveillance and the suppression of protest. The suppression of dissent in Australia has increased even further in more recent years (see Australian Democracy Network, 2024; CIVICUS Monitor, 2019; Maddison et al., 2004; O’Keeffe, 2024).

Within the academy, scholars whose work focuses on wildlife management have marginalised animal activists and advocates (see Banks, 2005, 2007, 2012; Banks & Dickman, 2006; Banks et al., 2012; Jones, 1993: 8; Lunney, 2012a, 2012b, 2012c), particularly those who challenge kangaroo culling (see Fletcher, 2007; Grigg, 2002) and the commercial kangaroo culling industry more broadly (see Cooney et al., 2012; Dayton, 2011; Johnson et al., 2015; Lunney, 2010: 424). Martin has written about the suppression of dissident intellectuals and

experts in Australia, and of environmental scientists more specifically (see Martin, 1981; Martin, 1985, 1986a, 1986b, 1988a, 1988b, 1999, 2016). Animal studies scholars have also been marginalised by academics from the natural sciences and by quantitative researchers in the social sciences (see Lunney et al., 2012: 174-175; Wilkie, 2015). In Chapters 4 to 7, I will outline how the lay and academic dissenters in this issue have been suppressed and legislation was introduced that criminalised dissent.

Understanding the uneven criteria applied by the ACAT panel members required me to read against the grain of the dominant scientific literature and documents associated with the administrative reviews, a practice that is a principle of IE (see Grace, 2019: 117). In her work on *The ethics of reading,* Gallop (2000: 16) proposed 'close reading' and 'close listening' as ethical forms of engaging with discourse, of 'listen[ing] fairly to what the other is saying'. Gallop asserted that most reading and listening is a projection of what we think the writer or speaker would have said, or comprehending our own thoughts, rather than what appears on the page or in the spoken word. Instead, Gallop (2000: 11) encouraged us to look not for the 'already-known', but to scan the small details for the new and surprising. She challenged us to avoid projecting our preconceptions and positions, as it is 'our ethical duty to attempt to hear what someone else is saying' (Gallop, 2000: 12). When applying this to my observations throughout the 2014 ACAT hearing, I could not ignore the differential handling of the witnesses and evidence. After listening to the official recordings of the 2009 and 2013 hearings, I realised these practices had an established history. These earlier investigations led to the research I discuss in this thesis, which primarily focuses on the three ACAT hearings held in 2009, 2013, and 2014.

1.2.2 Processing conflicts through the tribunal system

Three separate community groups challenged the ACT Government's decisions to issue licences to kill kangaroos, including Animal Liberation New South Wales (NSW) in 2009, the Australian Society for Kangaroos in 2013, and Animal Liberation ACT in 2013 and 2014. In Australia, the Animal Liberation groups in each state and territory operate independently and

are not brought together under a single umbrella organisation. In all three hearings, the tribunal ruled in favour of the ACT Government, lending credence to claims of the validity of the science upon which the culls were based. Following the close of the 2014 hearing, clashes between protesters, government staff and those involved in killing kangaroos reached a crescendo. Extensive damage was done to government buildings, vehicles, the fences around nature reserves, and associated research structures within the nature reserves, as depicted in Photographs 4 and 5. While the damage was attributed to people protesting the killing of kangaroos, no one has ever been charged (see Belot, 2014; McIlroy, 2014; Smith, 2014b, 2014c). I will discuss this further in section 2.3.2.

Photograph 4: Damaged windows at the ACT Government's Farrer depot

Peter Galvin, ACT Government Parks and Conservation Area Manager for Urban Reserves, inspected the damage to the depot. (Source: Elesa Kurtz (2014b), reproduced under an open licence (see Copyright Agency, 2024).)

Photograph 5: One of ten government vehicles with broken windows and slashed tyres

Galvin inspected the damage to a new Toyota Hilux at the ACT Government's Farrer depot. (Source: Elesa Kurtz (2014c), reproduced under an open licence (see Copyright Agency, 2024).)

During the 2014 hearing, ACAT President Bill Stefaniak recommended radical licencing and legislative changes that would reduce the frequency of the administrative reviews and ultimately preclude the ability for decisions related to kangaroo management to be reviewed. Refer to Appendix 2 for the details of the expert witnesses who appeared and to Appendix 3 for a list of the ACAT staff members and the legal representatives involved in all three hearings. At the time, the *ACT Nature Conservation Act 1980* was the primary instrument guiding the management of kangaroos and the administration of human conflicts related to kangaroo management. It was revised entirely and replaced by the *Nature Conservation Act 2014,* which was enacted in June 2015. This ushered in a starkly new approach to kangaroo management and to environmental management more broadly. The new Act enabled kangaroos to be reclassified as a 'controlled native species', with the management implications later spelled out in the '*Nature Conservation (Eastern Grey Kangaroo) Controlled Native Species Management Plan 2017*' (hereafter referred to as the *Controlled Native Species Management*

Plan) (see ACT Government Environment Planning and Sustainable Development Directorate, 2017).

At first glance, the ACT Government's actions appeared to present a striking example of successfully managing environmental conflict. This perception was promoted in an article in the *Ecological Management & Restoration* journal, authored predominantly by people who had worked for or with the ACT Government, which concluded that the heated exchanges between protesters and those operationalising the culls 'became insignificant' after the *Nature Conservation Act 2014* was enacted in 2015 (see Gordon et al., 2021: 128). However, by living in the ACT from 2013 to 2017 and being immersed in the issue for much of that time, I was aware of an alternative narrative, which I will explore throughout this thesis.

The ACAT hearings were important events for four reasons. Firstly, they brought the opposing parties together and obligated them to respond to each other's concerns. Secondly, the hearings were recorded, and a document trail was created, which enabled the work done through texts to be analysed. Thirdly, the ACAT hearings enable us to better understand the processes used by the ACAT panel members to arrive at their decisions and the circumstances surrounding the recommendation for licencing and legislative changes. Finally, the ACAT provides a window into how the ACT Government enacted its commitments to 'open government' and the application of 'best science' in managing kangaroos, as I will discuss in section 1.2.3.

1.2.3 Commitments to 'open government' and 'best science'

The management of kangaroos and associated human conflicts over kangaroo management in the ACT have been based on two commitments the ACT Government made to good governance: to enact 'open government' and to ground kangaroo management in the 'best available scientific knowledge'. Open government was described by the then ACT Chief Minister Katy Gallagher (2011) as 'taking a broad approach to enhance the openness of how we govern, encompassing transparency, participation, and collaboration… [A]s a first principle, information available to the Government should be made available for use by the community'. From 2016 to the time of writing, the wording of the ACT Government's commitment to 'open

government' has remained unchanged (ACT Government, 2016, bolding in original):

> The ACT Government is committed to:
>
> - **transparency**
> - in process and information
> - **participation**
> - by citizens in the governing process
> - **public collaboration** in finding solutions to problems and participation in the improved well-being of the community.
>
> For the ACT Government, being an open government means we value collaboration with each other and the community. The Open Government initiatives, including this website, enhance democracy and place the community at the centre of the governance process.

In the case of human conflicts over kangaroo management in the ACT, open government has taken the form of making information publicly accessible, government staff responding to correspondence and freedom of information requests from external groups and individuals, and participating in administrative reviews of decisions made by the ACT Government to issue licences to kill kangaroos, amongst other things. Such reviews were heard in the ACAT. The ACT Government identified 'open government' as being a central component of the governance reforms required of the 'New Public Management' model through which the ACT Government 'focused on ensuring that service delivery is "economic", "efficient" and "effective"' (ACT Government Chief Minister and Cabinet Directorate, 2012: 4, 5). I will expand upon this in section 3.2.3.

While open government and administrative law may be considered practices of good governance, Campbell (2014: 58) noted that 'so-called good governance does not necessarily make these practices into a neutral public good'. The commitments to 'transparency', 'participation', and 'collaboration' are not benign terms. For example, in their study of 'fiscal

transparency', Philipps and Stewart (2009: 799) noted that the term was 'inherently political' as such transparency established credibility for powerful actors who disproportionately benefitted from its effects. Some institutional ethnographies have demonstrated how interventions to increase 'transparency' have reinforced ruling relations (see, for example, Kerr, 2014). In this thesis, I will demonstrate how this is indeed the case in the way human conflicts over kangaroo management have been addressed in the ACT.

The ACT Government's commitment to 'best science' is reflected in key government documents. This is evident in how the requirements outlined in the *Nature Conservation Act 1980* were translated into policy documents, such as the ACT Kangaroo Management Plan (ACT KMP), and applied to management plans, including those that necessitated licences to kill kangaroos. The ACT KMP reiterates this commitment by noting that '[m]ethods of managing kangaroo densities in the ACT are based on the best available scientific knowledge, humaneness, and cost-effectiveness' (see Frawley, 2010: 93). While such a commitment is an enactment of good governance, its enactment in the ACT has raised concerns, as I will outline in Chapter 6. In environmental management and Science and Technology Studies, more broadly, there is a common belief that there is a 'best science' and that it should be mobilised (see International Union for Conservation and Nature, 2012; Norton et al., 2015; Sandström, 2012; Sparrowe, 1995). This is also the case for legal discussions of evidence (as with Millett, 2013; President's Council of Advisors on Science and Technology 2016). In their study of Scientific Certainty Argumentation Methods (SCAMs), Freudenburg et al. (2008: 2) noted that 'science is characterised not by certainty, but uncertainty – meaning that the outcomes of scientific/technological controversies may depend less on which side has the "best science" than on which side enjoys the benefit of the doubt in the face of scientific ambiguity'. In Chapters 4 to 7, I will demonstrate how the ACAT panel members gave the ACT Government 'the benefit of the doubt' and the circumstances under which that occurred.

1.2.4 The scope and aims of my research

The problematic I explore in this thesis asks how human conflicts over kangaroo management in the ACT were suppressed through and beyond the ACT's administrative review system. While I consider the human conflicts over kangaroo management in the ACT from 1994 to the present, I focus on related events between 2007 and 2017. I pay particular attention to the three ACAT hearings in 2009, 2013, and 2014. The data upon which I rely include the official recordings of the hearings and their transcriptions. I also incorporate key documents that were drawn upon throughout those hearings, which include the *ACT Kangaroo Management Plan March 2009 (Public Consultation Draft)* (hereafter referred to as the 'Draft ACT KMP'), the final version of the *ACT Kangaroo Management Plan* (hereafter referred to as the 'ACT KMP'), the *Nature Conservation Act 1980*, the *Nature Conservation Act 2014*, and the *Controlled Native Species Management Plan*, and other relevant scientific papers, government documents, and articles in the popular media which were discussed during the proceedings.

1.3 A brief introduction to institutional ethnography

While I will explain Dorothy Smith's institutional ethnography in greater detail in section 3.2, it is necessary to provide some information about its key concepts to contextualise my research. Many institutional ethnographies illuminate the 'organisational consciousness' of the entities they study. Smith positioned 'organisational consciousness' as:

> constructing 'knowledge, judgement, and will' in a textual mode and transposing what were formerly individual judgements, hunches, guesses, and so on, into formulae for analyzing data or making assessments. Such practices render organizational judgement, feedback, information, or coordination into objectified textual rather than subjective processes. (D. E. Smith, 1990d: 214)

In Chapters 4 to 7, I will trace how the ACT Government infused its 'knowledge, judgement, and will', as noted by Smith above, into the key documents associated with the management of

kangaroos, which would then provide a framework for assessing knowledge and knowledge bearers. Such documents convey the ACT Government's position that kangaroo grazing reduces vegetation, thereby altering the composition of the vegetation and subsequently detrimentally impacting native flora, fauna, and ecological communities (see Parkes & Forsyth, 2014: 10). ACT Government staff, contractors, and associated texts present killing kangaroos as being the most 'humane and cost-effective' solution (Frawley, 2010: 137). I will demonstrate how this understanding of kangaroos has been reflected in decades of government documents produced by different arms of the ACT Government. I argue that this reflects the ACT Government's 'organisational consciousness' regarding kangaroos and guides 'judgement, feedback, information, [and] coordination' of their management.

To achieve this, I focus predominantly on the *ACT Nature Conservation Act* (*1980* and *2014*) and the ACT KMP. These documents were drawn into 'accountability circuits', which enabled considerable and controversial changes to be made to them while adhering to the requirements of their associated boss texts, as I shall discuss in Chapter 7. The concept of 'accountability circuits' was developed by McCoy (1999) and extended by Dorothy Smith (2005b). Griffith and Smith (2014a: 340) defined an 'accountability circuit' as a particular kind of institutional circuit that aims to render workers' performance or outcomes accountable in terms of institutional objectives. They positioned 'institutional circuits' as:

> … locat[ing] sequences of text-coordinated action making people's actualities representable and hence actionable within the institutional frames that authorize institutional action. In institutional circuits, institutional work comprises mining actualities selectively to identify aspects, features, measures, and so on that fit the governing frame (sometimes called a 'boss text'). (Smith & Turner, 2014b: 10)

Griffith and Smith (2014b: 18) indicated that a front-line worker's ability to self-govern becomes co-opted into accountability circuits through their record-keeping practices. In the above passage, Smith and Turner mention 'institutional frames that authorise institutional

action'. Smith uses 'authorise', 'authority' and 'authoritative' in a number of contexts, as with references to texts and acts conducted by a person in a position of influence, such as speakers, writers or analysts (Griffith & Smith, 2014b; Smith, 1993a, 2016). While these and allied terms appear prolifically in IE literature, their meanings remain ill-defined. In the context of my research, I draw on Smith's work to define 'authorising' as empowering or sanctioning a person, document, act, or course of action to direct activities in order to coordinate the local processes and practices of the social relations of ruling (see Smith, 2001; Smith & Griffith, 2022). In some instances, authorisation has been achieved through official texts, such as the *Nature Conservation Act.* In others, authority has been exercised by a person of influence empowered to decide the appropriate course of action. For example, in section 7.4, I will demonstrate how Presidents Crebbin and Stefaniak both upheld the 'Principles applying to the [ACAT] Act', and foregrounded different aspects of those principles (sections 7(a) and 7(b)) to produce vastly different results in and beyond the tribunal hearings.

1.4 Contributions to knowledge

The key contributions to knowledge that my research makes include extending the methods of institutional ethnographies, as I will discuss in section 1.4.2, and expanding the scope of research into human conflicts over wildlife management, which I will explain in section 1.4.3. In section 1.4.4, I note the utility of this research to other areas of scholarship, such as socio-legal studies and Science and Technology Studies.

1.4.1 Economic imperatives and environmental management

As I shall discuss in section 6.7.2, ACT Government Parks and Conservation Director Daniel Iglesias (2014b) presented the ACT Government as acting 'not on ideology but on what the best science is telling us'. Throughout this thesis, however, I will examine how the decisions and documents pertaining to kangaroo management served the economic imperatives of the ACT Government and other commercial interests, including agriculture, commercial kangaroo

culling, marketable research, and urban, agricultural, and infrastructure development. This reflects the ACT Government's stated commitment to the ideals of the 'New Public Management' (NPM) governance paradigm which necessitated the public service be restructured to more closely resemble the private sector. Institutional ethnographers have paid much attention to the influence of NPM on many aspects of the delivery of public services in Western countries, as I shall expand upon in section 3.2.3.1.

1.4.2 Polarised environmental issues in institutional ethnography

Institutional ethnographer Lund (2024) identified two key areas requiring attention in the development of IE: environmental issues and polarised conflicts. The only IE study I have found to date that investigated wildlife management is Randal Hart's (2017) paper on moose management in Nova Scotia. Other environmentally focused IE investigations include Eastwood's (2006, 2014; 2021) examinations of the development of environmental policy by the United Nations, Deveau's (2024) exploration of the 'responsible environmental management' of shale gas, Huang's (2024) investigation into the Holiday Farm fire in 2020, Mills-Novoa's (2021) research into climate change adaptation, the work of Suárez Delucchi and her colleagues on agri-environmental projects in Columbia (Suárez Delucchi et al., 2022), projects focused on water rights and distribution (Prabaharyaka, 2015; Suárez Delucchi, 2018, 2020), and studies of community gardening (see McLarnon, 2021; Silliker, 2024). Little IE research has focused on polarised issues, an exception being Martin's (2018) master's research into conflicts over the management of natural protected areas in Tulum, Mexico. Martin's (2018: 50, 57) work differs significantly from mine in that those most affected by management policies feared publicly expressing their dissatisfaction due to the potential repercussions. My thesis contributes to the growing body of literature in this area.

While some institutional ethnographers consider interviewing to be the central data collection method (see DeVault & McCoy, 2001: 756; DeVault & McCoy, 2006: 22), my research leans more towards the ethnomethodological roots of IE in capturing as much as possible 'naturally occurring data' (see Heritage, 1989), as I will discuss in section 3.3.

As I mentioned in section 1.1.1, IE focuses on texts that are replicable, being able to be read, watched or heard at different times and locations (Smith, 2006a: 66). At numerous points, Smith discussed the stability of the text (see Smith, 2001: 175; 2005b: 102, 105, 107, 108, 166). However, when key government documents I will examine were challenged or mobilised in ways that did not serve ruling relations, they were removed from public access, altered or replaced in ways that ensured they continued to serve the ACT Government's preferred approach to kangaroo management. This is significant as it unsettles the assumed stability of the text that is inherent in many institutional ethnographies. I will expand upon this in section 3.2.1.

Hastings and Mykhalovskiy (2023) have encouraged institutional ethnographers to move beyond the tendency to focus on single institutions. In this thesis, I trace how processes and practices across different arms of the ACT Government contributed to strengthening ruling relations by maintaining the government's preferred approach to kangaroo management. Although my research did not commence as a Political Activist Ethnography (PAE), it nonetheless contributes unique insights to this field. As with IE from which it arose, PAE generates knowledge *for*, not *about*, people. However, PAE extends this work to map social relations to produce knowledge that may improve the effectiveness of activists' efforts (Doll et al., 2024: 4; Frampton et al., 2006b: 9). I will expand how my work contributes to multiple-institution ethnography and the resonances it has with PAE in section 3.2.2.

1.4.3 Extending how research into human conflicts over wildlife management is conducted

As I discussed in section 1.1.2, research in the subfield of 'human dimensions of wildlife' is overwhelmingly quantitative. Vaske et al. (2006) identified a small minority of articles in the leading academic journal in the field, the *Human Dimensions of Wildlife*, which employed qualitative methods. An attempt was made to address this with a special issue reporting the results of the 'wildlife value orientations' survey (see Dayer et al., 2007; Jacobs, 2007; Kaczensky, 2007; Raadik & Cottrell, 2007; Tanakanjana & Saranet, 2007; Teel et al., 2007; Zinn & Shen, 2007). No further articles were published on the topic. Qualitative research

continues to be minimally found in the journal and has been positioned as an 'alternative method' that is often 'resisted' by 'human dimensions specialists' (see Decker et al., 2025: 398 ; Frank et al., 2025: 378; Wallen et al., 2025). Few ethnographies have been published in the journal to date (see Davie et al., 2014; Snodgrass et al., 2007). My research demonstrates the rich insights that are produced through IE. It would not be possible to capture the data I have collected through quantitative research methods.

The qualitative approach necessitated by embracing the IE ontology has enabled me to collect data that elucidate the multiple causes and complexities of entrenched conflicts over kangaroo management. Including the ACT Government in the scope of my research illuminates the institutional processes that served to uphold the government's preferred approach to kangaroo management in the face of contradictory evidence while suppressing opposition and criminalising dissent. I provide a detailed analysis of how interests were legitimised and delegitimised in ways that benefitted the ACT Government, from the process of identifying the causes of the ecological problems that needed to be addressed to the sweeping changes made to the *Nature Conservation Act 1980.* Many governmental decisions which inflamed the conflict would not have been apparent in 'human dimensions' studies, which often aim to foster compliance with a particular management intervention through behavioural change using educational programs, economic incentives or disincentives and other means. These insights provide a compelling reason for those working in the field of human conflicts over wildlife management to recognise the importance of incorporating the management agency into the scope of their research, as well as the insights gained from qualitative research and IE, more specifically.

1.4.4 Scholarship in socio-legal studies and Science and Technology Studies

My thesis has much to offer to aligned fields, including Science and Technology Studies (STS), socio-legal studies, critical studies of law and bureaucracy, as well as to professionals such as lawyers, social justice advocates, and policymakers. STS scholars may be interested in how the

specific frames of ‘best science’, ‘scientific expertise’, and ‘scientific knowledge’ produced and reinforced through the ACAT hearings and related policy processes legitimised the positioning of kangaroo grazing, not human activities, as an ecological problem. The methods I employ from IE illuminate how such terms were defined in ways that served ruling relations and constrained democratic participation. In section 3.5.2, I will highlight the narrow representation of expert witnesses in terms of gender, race and class. Feminist STS scholars have long studied such constraints on inclusion.

Scholars and professionals in fields related to law and justice who are interested in changing discriminatory and exclusionary institutional practices may find this research useful. Such practices are evident in the frames the ACAT panel members mobilised to identify the ‘right witnesses’ (Chapter 5) and the evidence upon which they would rely (Chapter 6). I will demonstrate how the decisions served the priorities of the ACT Government and others with aligned economic interests. I traced how the wholly revised *Nature Conservation Act 2014* served to suppress conflict and criminalise dissent, and how both Stefaniak and Corbell presented their related decisions as being in the interests of all parties and extending public participation (Chapter 7). I will discuss this further in section 3.5.3.

1.5 Thesis structure

My thesis contains seven further chapters. In Chapter 2, I provide background information on how human disagreements over wildlife management have been approached in the literature and about the specific contestations over kangaroo management in the ACT. I explain why broadening the scope of studies into human conflicts over wildlife management to include the management agency is critical to achieving a more holistic understanding of such issues. In Chapter 3, I will discuss IE, including how I grounded my research in IE, the challenges I encountered with the data, how I addressed these challenges, and the limitations of my research.

From 2007 onwards, the ACT Government claimed that killing kangaroos on public land was necessary to address or avert ecological degradation. The first step in addressing any

environmental challenge is determining the nature of the problem (Hughes, 2007). In Chapter 4, I will survey the scope of the tribunal's assessment of the causes of the ecological degradation in the sites under consideration. I argue that the constrained range of potential causes permitted to be considered in the hearings greatly impacted the ability to identify the problems that needed to be addressed and narrowed potential pathways for their solution. I do so with reference to Dorothy Smith's (1978) 'cutting-out process', Kameo and Whalen's (2015) 'negotiation erasure' and Montcher's (2017) 'bibliopolitics' to illustrate how the human causes of ecological degradation were removed from consideration, thereby limiting discussions to how many kangaroos to kill.

Having established the cause of ecological destruction at the sites in question, the ACAT panel members had to assess the knowledge bearers presented before them, which I will examine in Chapter 5. I will map the processes the ACAT panel members developed to determine who qualified as expert witnesses throughout the three hearings. I draw upon Smith's (1978) work on the development of social rules, which establishes the membership criteria for specific categories and authorises the version of such rulemaking. I trace how the ACAT panel members developed rules to construct the deviant category of 'wrong witness' and applied such rules to authorise their decisions. I will show how they achieved this by creating and applying the *ACT Civil and Administrative Tribunal (Expert Witness Code of Conduct) Procedural Directions 2009* (see Crebbin et al., 2009) to identify the 'right witness'. I will explain how such guidelines were unevenly applied to the witnesses of the respondent (the ACT Government) and those presented by the applicants (the three community groups). This constructed ACT Government senior ecologist, Dr Donald Fletcher, as the exemplary witness and displaced those presented by the applicants as ineligible.

In Chapter 6, I probe how the ACAT panel members assessed the evidence by employing Smith's (2006b) 'act–text–act sequence' as well as Kameo and Whalen's (2015) 'negotiation erasure'. Due to the prevailing discourse of killing kangaroos for conservation purposes, I limit my discussion to how the ACAT panel members assessed the evidence that kangaroo grazing has deleterious impacts on threatened species and ecological communities. I

follow how this information was presented in the Draft ACT KMP (text), was discussed in the 2009 ACAT hearing (act), and was edited to form the final version of the ACAT KMP (text). In doing so, I illuminate how the comments made by the dissenters on the Draft ACT KMP were used by government staff to further the ACT Government's preferred approach to kangaroo management and disempower the projects of its detractors. I then show how these processes were repeated in the construction of other government documents.

In Chapter 7, I pan out to consider the accountability circuits that government staff engaged in to uphold the ACT Government's commitment to 'open government', focusing predominantly on how they facilitated public participation. I begin by exploring how, during the ACAT hearings, the presidents held themselves accountable to the principles of the *ACAT Act 2008*. I then trace the path from President Stefaniak's advice on legislative changes to how such changes were presented and defended in the ACT Legislative Assembly by the then ACT Government Minister for the Environment, Simon Corbell. Corbell, in turn, held himself accountable when introducing the wholly revised ACT Nature Conservation Bill in 2013 and 2014 by explaining how it conformed to the requirements of the *ACT Human Rights Act 2004*. Despite presenting it as enhancing public participation (see Corbell, 2014c: 11; Rattenbury, 2014: 4242), I show how the new Act foreclosed democratic processes and criminalised dissent.

I conclude my thesis in Chapter 8 by drawing together my discussions from each data chapter to detail how the ACT Government produced the 'decline' and 'insignificance' of dissent from 2015 onwards (see Gordon et al., 2021: 128). In doing so, I highlight how the process of progressively determining the cause of ecological damage, preferred witnesses, preferred evidence, and the boundaries of democratic processes cemented a new knowledge regime (see Campbell, 2014: 68) which has a broad reach throughout and beyond the ACT.

Chapter 2: Background to the administration of kangaroo-related issues in the ACT

2.1 Managing kangaroos and human conflicts over kangaroo management in the ACT

> In a world where biodiversity is threatened and declining, the ACT remains a 'good news story' regarding conservation outcomes. In 2007, the ACT was the only Australian jurisdiction to receive a World Wildlife Fund for Nature (WWF) triple-A rating for its nature conservation estate in terms of its rated comprehensiveness, extent and standard of management. *ACT Government Environment and Sustainable Development Directorate (2013: 2) ACT Nature Conservation Strategy 2013–23.*

The Australian Capital Territory (ACT) Government takes pride in its efforts to conserve the natural environment, as noted in its Nature Conservation Strategy above. It continues to be attentive to monitoring environmental degradation and, where possible, averting future ecological decline (see ACT Government Office of the Commissioner for Sustainability and the Environment, 2024). In the same year the ACT Government was awarded its triple-A rating from the World Wildlife Fund for Nature, it launched its new approach to kangaroo management, beginning with an initial plan to kill 470 kangaroos at the Belconnen Naval Transmitting Station (BNTS) (see Fletcher, 9/7/2013, Recording 2, 1:15:50-1:16:45). The aim was to reduce kangaroo grazing, which was believed to threaten the endangered lowland native temperate grassland ecological community and two endangered species found therein, golden sun moths (*Synemon plana*) and Ginninderra peppercress (*Lepidium ginninderrense*) (Cooper, 2008; O'Flynn, 2007). This was met with intense public opposition that attracted international media coverage and the support of celebrities, including Sir Paul McCartney (see Squires, 2008b). This was followed in 2009 by a plan to kill 7,000 kangaroos at the Majura Training Area (MTA). The Commonwealth Government Department of Defence owns both sites in the ACT. (Refer to Map 1.)

Representatives of a community group, Animal Liberation New South Wales (NSW), challenged the ACT Government's decision to issue the licence required to kill kangaroos at the

MTA. They did so by applying to the ACT Civil and Administration Tribunal (ACAT) for a review of the Conservator of Flora and Fauna's (hereafter referred to as the 'Conservator') decisions to issue a licence to kill kangaroos. Two other community groups would launch similar challenges in 2013 and 2014.

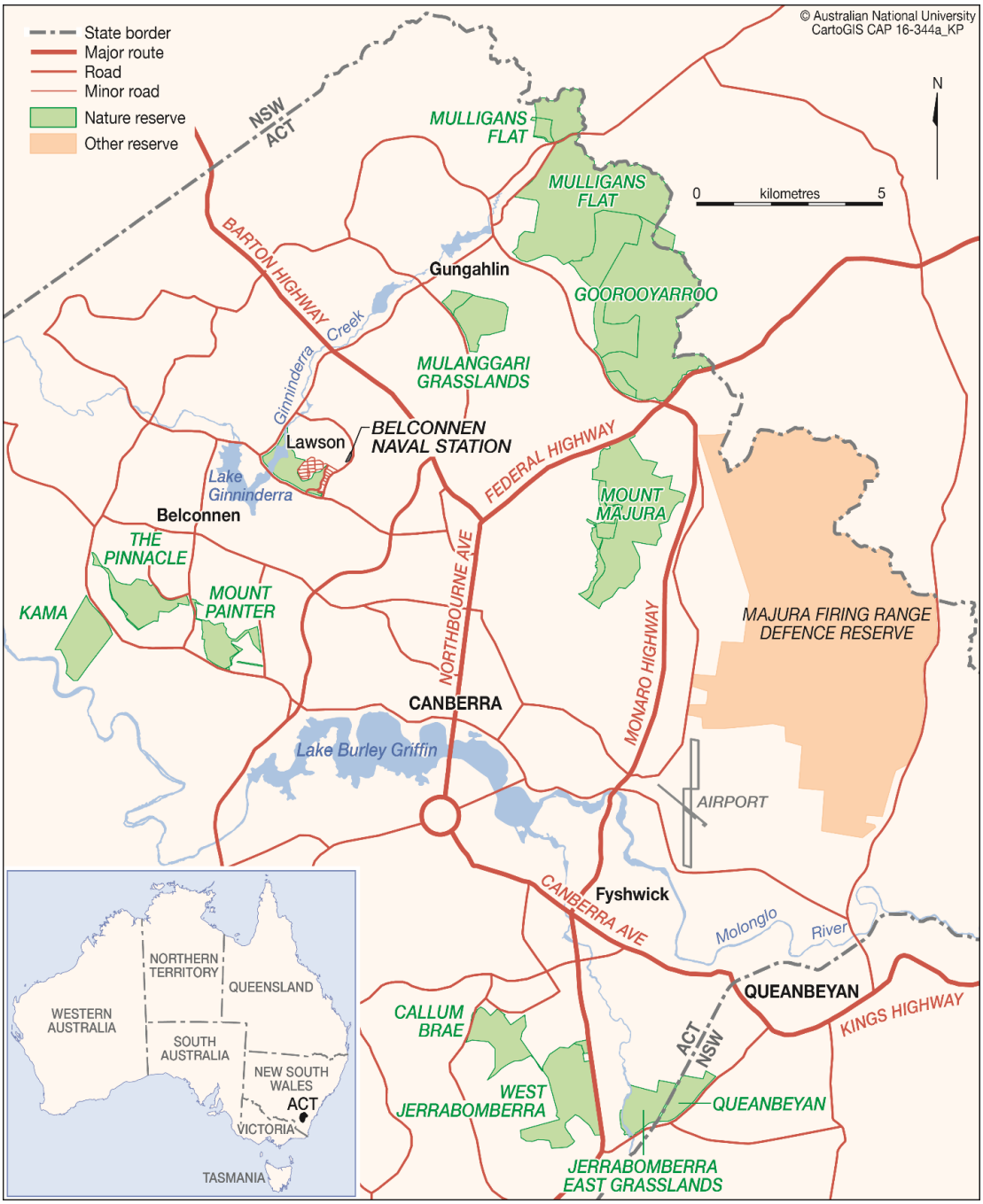
In this chapter, I contextualise the human conflicts over kangaroo management in the ACT and the academic approaches applied to make sense of similar issues. I begin in section 2.2 by providing an overview of the ACT regarding its biophysical and climatic features; kangaroos and other native fauna, flora, and ecological communities; and humans in terms of land use and demographics. In section 2.3, I discuss the contemporary history of human conflicts over kangaroo management in the ACT. I pan in to explain the key events between 1994 and 2006 to establish the foundation for the period I focus on, which is 2007-2017. I survey the main interventions made by the ACT Government to address the human conflicts over kangaroo management and the work conducted by lay and academic dissenters over this period. I sharpen my focus in section 2.4 to consider one facet of the conflict, which is the focus of my thesis: how the contestations played out in the ACAT. I will also discuss why the ACAT was created and describe the key processes associated with administrative reviews.

2.2 Characteristics of the ACT

2.2.1 Kangaroos, threatened species and the biophysical features of the ACT

My research focuses specifically on the ACT and the surrounding areas of NSW (refer to Map 1). The ACT is a temperate area comprising roughly 2,352 square kilometres (581,192 acres), 60% of which is mountainous or hilly, with the remainder being more undulating (NSW Government Office of Environment and Heritage, 2014). Such topography, as well as the small size of the sites where kangaroos are routinely killed, has precluded conducting aerial surveys, which is the most common method used to count kangaroos and estimate their population density (Fletcher, 2006a: 185; Frawley, 2010: 146). The ACT Government Parks and Conservation Service manages almost 70% of the land in the ACT, and 80% of the ACT is

comprised of ‘natural surroundings’ and nature reserves (ACT Government, 2021). Much of the ACT has long been cleared for grazing. The nature reserves under study are former farming properties in various stages of rehabilitation, and many continue to be grazed by sheep or cows.



Map 1: Key sites within the Australian Capital Territory and New South Wales.

The progressive expansion of the Majura Training Area has caused inaccuracies regarding the site’s area and, therefore, the estimated kangaroo population density (see Fletcher, 4/6/2009, 1: 19:50-23:55). The MTA in its entirety currently extends beyond the firing range depicted in Map 1. (Source: Australian National University CartoGIS College of Asia and the Pacific. Date: 14 December 2016.)

There are currently 59 surviving macropod species in Australia, with four others known to be extinct (Eldridge & Coulson, 2015: 630). The macropods endemic to, and currently found in, the ACT include eastern grey kangaroos, red-necked wallabies (*Notamacropus rufogriseus*), swamp wallabies (*Wallabia bicolor*), and common wallaroos (*Osphranter robustus*). In 2019, the taxonomy of macropods was reclassified to move the subgenera of *Osphranter* and *Notamacropus* to the level of genus (Department of Climate Change, Energy, the Environment and Water, 2024a). As such, the papers I cite, which were published before 2019, refer to the previous classification system.

Kangaroos have predominantly been conceptualised as being either pests or resources, generally being seen as resources by the commercial culling industry and, to a lesser extent, tourism industries, and as pests in terms of environmental conservation, agricultural interests, and urban and infrastructure development and maintenance (see Croft, 2000; Grigg, 1996). As a result, much research has been conducted on the four macropod species most frequently killed for commercial purposes. In NSW, which completely surrounds the ACT, these species include eastern grey, western grey, and red kangaroos, as well as wallaroos (Department of Climate Change, Energy, the Environment and Water, 2024b). Previous research on western grey kangaroos and red kangaroos, depicted in Photographs 6 and 7, has been crucial to the construction of knowledge about eastern grey kangaroos. These kangaroos are not endemic to the ACT. With distributions throughout Australia more extensive than that of eastern greys, shown in Photograph 8 for comparison, such research has often occurred in arid and semi-arid areas.

Photograph 6: A western grey kangaroo

(Source: DXR (n.d.), reproduced under Creative Commons licence CC BY-SA 4.0.)

Photograph 7: Red kangaroos

(Source: xopherlance [sic] (see Lance, n.d.), reproduced under Creative Commons licence BY-NC-ND 2.0.)

Photograph 8: A male eastern grey kangaroo in The Pinnacle Nature Reserve, ACT

(Source: K. Varvaro, 9 July 2014.)

Historical agricultural practices and the ACT's development have devastated native flora, fauna and ecological communities. Each year, the ACT Government releases a State of the Environment Report, and most measures reflect a progressively grimmer picture of biodiversity. In 2023, for example, eight species of native flora and fauna were listed as critically endangered, 21 were endangered, and 28 were considered vulnerable (ACT Government Office of the Commissioner for Sustainability and the Environment, 2024: 166). Between 2019 and 2023, an additional six species were added to the threatened species list and three species were ascribed a higher threat status (ACT Government Office of the Commissioner for Sustainability and the Environment, 2019: 206).

The two main endangered ecological communities implicated in this issue are the critically endangered lowland native temperate grasslands and the endangered yellow box-Blakely's red gum grassy woodlands (*Eucalyptus melliodora* and *Eucalyptus blakelyi,* respectively) (Australian Government Department of Environment and Energy, 2016; Environment ACT, 1999). One example of the ACT's lowland native temperate grassland is Mulanggari Grasslands

Nature Reserve, which, as with many of the ACT's other grassland reserves, has been reduced in size by the development of residences and a shopping centre (Dunford et al., 2005: 55), as is shown in Photograph 9.

Photograph 9: Mulanggari Grasslands Nature Reserve

(Source: K. Varvaro, 13 July 2014)

One example of the ACT's yellow box-Blakely's red gum grassy woodland is Mulligans Flat Woodland Sanctuary, which is the largest and most intact area of publicly owned woodland of its type in Australia (ACT Government Parks and Conservation Service, 2016). The woodland comprises over 40% of a continuous area of nature reserves that also includes the Mulligans Flat and Goorooyarroo Nature Reserves. The Woodland Sanctuary is separated from the latter by an electrified 'predator-proof' fence (Parks ACT, n.d.-a, n.d.-b), as is depicted below in Photograph 10.

Photograph 10: Mulligans Flat Woodland Sanctuary

(Source: K. Varvaro, 16 October 2016.)

These ecological communities arrived at their precarious state through habitat destruction, urban development, changes in the uses of rural land, poor weed management, and firewood and other timber cutting (ACT Government Environment, Planning and Sustainable Development Directorate, 2018; see Environment ACT, 2005).

2.2.2 Humans in the ACT

In this section, I provide a brief history of land use in the ACT to the point of federation in 1901. I do this to contextualise the unique 'Crown lease' land tenure system in the ACT, which catalysed a complex and continuing relationship between former landholders, lessees, and the government. Appreciating these characteristics helps to understand the tensions that have arisen regarding kangaroo management. Canberra is the federal capital of Australia and is a self-governing city-state that occupies a small part of the ACT.

European invasion of the area began in 1820, with the first settlement established three years later (Fitzgerald, 1987: 5-6). Efforts to turn the area into pasture lands biophysically decimated it, with native animals being extensively slaughtered (Shumack & Shumack, 1977). The ensuing land clearing and destruction caused by the hard-hooved sheep and cows was environmentally catastrophic, contributing to extensive extinctions (see Caughley, 1987b: 4),

the consequences of which are still being grappled with today.

In 1888, the centenary of the British invasion catalysed calls for the federation of the colonies and the need for a new capital (Fitzgerald, 1987: 91-92). By 1900, the area had become established in wool and grain production, as well as the breeding of horses and cows (National Capital Authority, n.d.: 2). On 1 January 1901, the nation's capital came into existence (Fitzgerald, 1987: 92). In 1908, the Seat of Government Act identified what would come to be known as 'Canberra' as the chosen site. In 1909, the land that was part of NSW was ceded to the federal government (Headon, 2013).

When the ACT was established in 1911, land could be occupied under a leasehold arrangement as a 'Crown lease' for 99-year periods (Dunford et al., 2004: 18; Erskine, 2013). The Vigilance Association (1911) was formed to present the interests of the disenfranchised former freehold landowners to the federal government. The group's contemporary iteration, The ACT Rural Landholders' Association (2024), maintains a close relationship with ACT Government representatives who were and remain attentive to the lessee's perceptions and expectations. This is reflected in government documents and in the deliberations of the associated tribunal hearings (see ACT Government Parks and Conservation Service, 1994; ACT Kangaroo Advisory Committee, 1996b; Stefaniak, 5/6/2009, Recording 1, 33:54-46:02).

In 2016, the ACT had the fastest-growing suburbs in Australia, with a population increase of almost 130% in one year in some areas (Koremans, 2016). The average distance Canberrans live from a park, reserve or forest is less than one kilometre, and it is estimated that no resident lives further than 3.5 kilometres from these areas (ACT Government, 2021). In 2023, over 80% of Canberrans reported spending time in parks or nature reserves in a typical week (ACT Government, 2023).

2.3 Human conflicts over kangaroo management in the ACT: 1994–2017

My thesis predominantly focuses on a period that encompasses the implementation of a new approach to kangaroo management in the ACT. Figure 1 depicts the development of this new approach on the left-hand side of the vertical dotted line and its implementation to the right. I position this new approach to kangaroo management in the ACT as commencing with the announcement of the plan to kill kangaroos at the BNTS in 2007. The period upon which I focus is indicated by the orange circles in Figure 1 and ends with the publication of the '*Nature Conservation (Eastern Grey Kangaroo) Controlled Native Species Management Plan 2017*' (hereafter referred to as the *Controlled Native Species Management Plan*) (see ACT Government Environment Planning and Sustainable Development Directorate, 2017). However, human conflicts over kangaroo management date back much farther. In this section, I will explain the different branches of the ACT Government responsible for aspects of kangaroo management in subsection 2.3.1 and the role of advocacy in subsection 2.3.2. In subsection 2.3.3, I will discuss how a new approach to kangaroo management was developed from 1994 to 2006. In subsection 2.3.4, I will trace how the new approach was progressively implemented between 2007 and 2017.

2.3.1 Relevant sections of the ACT Government

Monitoring and ideally averting ecological degradation in the ACT is carried out through the ACT Government's Environment, Planning and Sustainable Development Directorate, a large and complex government department comprising two arms. As its name suggests, one arm focuses on the environment, while the other focuses on planning and development. Up until a recent restructuring (see ACT Government, 2024), the arm tasked with delivering 'positive environment outcomes' was split into an 'Environment Division' and a 'Climate Change and Sustainability Division'. The former was responsible for 'heritage, conservation research, nature conservation policy, catchment management and water policy and environment protection

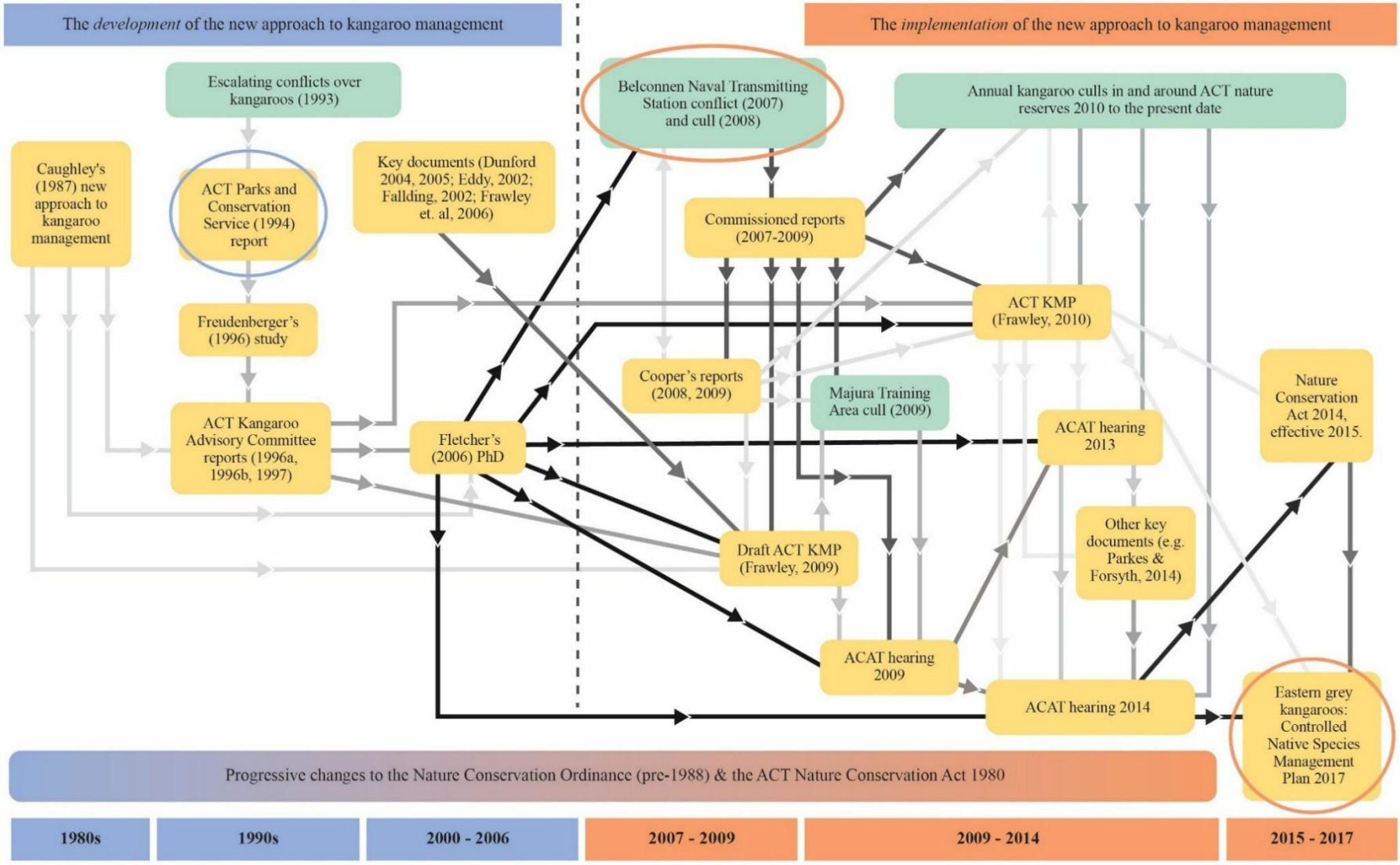


Figure 1: Kangaroo management in the ACT (1993–2017): Key documents and events

policy, and includes the ACT Parks and Conservation Service' (ACT Government Environment, Planning and Sustainable Development Directorate, 2025). During the period under study, the Conservation Research section of the Environment and Sustainable Development Directorate was responsible for research on kangaroo management, and the Parks and Conservation Service conducted the process of killing the kangaroos. The Conservator aimed to halt or slow down environmental degradation by issuing licences that authorised the killing of kangaroos.

The Office of the Commissioner for Sustainability and the Environment functions as an independent statutory body, which was established by the ACT Government Commissioner for Sustainability and the *Environment Act 1993*. The functions of the commissioner include:

- Investigating complaints about the management of the environment by the ACT Government and matters pertaining to ecologically sustainable development within the Territory,
- Conducting investigations as directed by the Minister,
- Conducting investigations on their own initiative regarding the actions of an ACT Government agency 'where those actions would have a substantial impact on the environment of the ACT', and
- Delivering the State of the Environment Reports. (ACT Government Office of the Commissioner for Sustainability and the Environment, 2023).

While successive Commissioners have engaged in all these activities related to kangaroo management in the ACT, I will focus on two reports prepared by Commissioner Maxine Cooper (2008, 2009b) under the direction of the then ACT Government Minister for the Environment, Water and Climate Change, Jon Stanhope. Determinations of human conflicts over kangaroo management have taken place within the ACAT, which is a part of the ACT Government Justice and Community Services Directorate (see ACT Government, n.d.-b). It is also through

this Directorate that protesters have been disciplined by ACT Policing, the Magistrates Court and the Supreme Court.

2.3.2 The role of advocacy

Those who have appeared publicly to challenge the ACT Government's approach to kangaroo management represent the spectrum of expressions of dissent from conservative to radical. They ranged from academics whose work directly related to kangaroo management or plant physiology to activists who ran into nature reserves at the sound of shooting and attempted to stop the killing. Their tactics and strategies varied widely and often conflicted, causing friction, fractures and alliances. In my previous research, the radical activists were the only dissenters to identify with a specific category of activism. While I use 'conservative', 'moderate' and 'radical' for analytical purposes, the differentiation between the dissenters is far more blurred and complex than can be represented with simplistic categories.

The more conservative dissenters had the social capital to enable them to secure meetings with the Commissioner of the Office of the Commissioner for Sustainability and the Environment (as with Taylor et al., 2013) with one being the editor of a local newspaper (see Taylor, 2010, 2017). More moderate dissenters engaged in lobbying, protests and/or civil disobedience but publicly denounced the property destruction that was attributed to the activists (as with Soxsmith, 2014, 2015, 2016b). Their stance on vandalism was crucial to maintaining their public image, garnering public support, and energising the substantial lobbying they had conducted.

Most of the radical activists self-identified as such and as anarchists who were committed to the abolition of all systems of oppression, including but not limited to nonhuman animal exploitation, as discussed by Best (2007, 2009) and others (see Nocella II et al., 2015; Pellow, 2014; Springer, 2021). The beliefs and work practices of some radical activists aligned with the Animal Liberation Front, a leaderless resistance movement that holds economic sabotage and property damage as one of their core tactics (Animal Liberation Front, (n.d.)-a). These activists functioned in small, leaderless and autonomous 'cells' that operated

spontaneously and fluidly in response to the circumstances faced (see Kornegger, 2012: 26-27). In 2005, the U.S. Government designated the Animal Liberation Front a terrorist group (see United States Senate Committee on Environment and Public Works, 2005). While members of the Animal Liberation Front have claimed responsibility for extensive property damage in Australia and overseas, its proponents have adhered to its credo 'to take all necessary precautions against harming any animal, human and non-human' (see Animal Liberation Front, (n.d.)-b). Some radical activists spoke publicly about their actions and defended property destruction, maintaining a commitment to nonviolence that defines 'violence' as harming a human or other–than–human animal (as with Drew, 2014; Drew, 2015a, 2015c).

In 2012 and 2014, ACT Government representatives blamed activists for the extensive property destruction of government buildings and vehicles, fences surrounding nature reserves, and research structures (see Belot, 2014; Iglesias, 2012, 2014c; Knaus, 2012). Graffiti and online posts suggest they were responsible. For example, one of the vandalised government vehicles (see Photograph 11) was tagged with the logo of the Animal Liberation Front (see Image 1), and some of the acts of vandalism were reported on the website of the Animal Liberation Front (2014a, 2014b, 2014c).

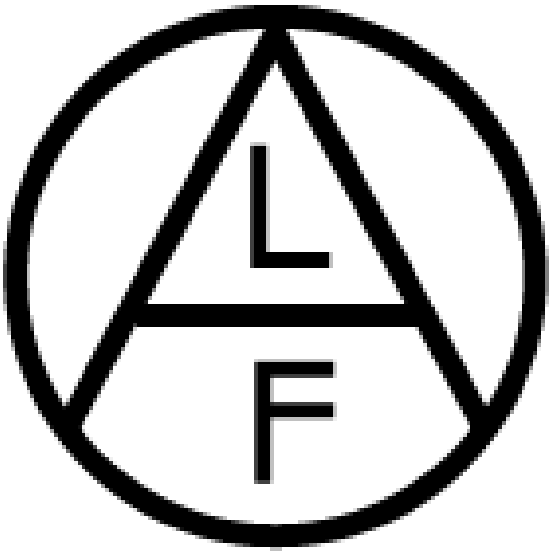


Image 1: The logo of the Animal Liberation Front

(Source: SlimVirgin (2007), reproduced under Creative Commons CC0 Licence.)

Photograph 11: The Animal Liberation Front logo graffitied on a vandalised vehicle

(Source: Elesa Kurtz (2014a), reproduced under an open licence (see Copyright Agency, 2024).)

In terms of advocacy in support of killing kangaroos, a group of scientists formed the Limestone Plains Group in 2007 to support the ACT Government's preferred approach to kangaroo management. While Dr David Shorthouse (2007) appeared in the media as the group's spokesperson, it was not noted that from 1994 until his retirement in 2007, he had been the senior manager of the ACT Government's Wildlife Research and Monitoring Unit, which was responsible for advising the Conservator as to the need to kill kangaroos in the Territory (see ACT Government, n.d.-a; Shorthouse, 2023). Three years later, the Australian Wildlife Management Society held a symposium on 'Research and policy: Spanning the divide' and video recorded the presentations. ACT Government senior ecologist Dr Donald Fletcher (2010) delivered a paper entitled 'Science advocacy and the ACT kangaroo management' which highlighted the benefits of having an external group, such as the Limestone Plains Group of scientists, which largely supported the ACT Government's position on killing kangaroos. He noted the ACT Government's involvement in the formation of the group: 'In terms of advocacy from outside the government, Limestone Plains Group was fantastic and anything we did to

encourage it to form, not that I would ever admit to anything like that, was a very good idea' (see Fletcher, 2010: 30:56-31:11). A subsequent journal article Fletcher coauthored obfuscated the relationship between the group and the ACT Government: 'An important factor in overcoming this challenge [resistance to the culling program] was the formation of the "Limestone Group" of Canberra-based scientists and conservation group representatives who provided supportive commentary independent of government' (Gordon et al., 2021: 127).

Having discussed the sections of the ACT Government associated with kangaroo management and the wide-ranging ways people have acted as advocates on the issue, I will now discuss the period preceding these events to contextualise how the government's preferred approach to kangaroo management was developed.

2.3.3 Developing the new approach to kangaroo management: 1994–2006

A new approach to kangaroo management developed throughout the 1980s, led by ecologist Dr Graeme Caughley (see Caughley, 1987a), as depicted on the left-hand side of Figure 1. This occurred concurrently with ongoing human conflicts over kangaroo management in the ACT (see ACT Government Parks and Conservation Service, 1994: 4). The ACT Government Parks and Conservation Service (1994) responded by publishing a report on kangaroo management. It also formed the ACT Kangaroo Advisory Committee (1996a, 1996b, 1997) which produced three reports that were informed, in part, by Caughley's work.

Rapid changes in environmental knowledge in the early 2000s led to a shift away from the management of single species to management at the ecosystem level (see Lindenmayer et al., 2007). This process identified 'priority' species and ecological communities to which resources would be directed to achieve the 'maximum effect in conservation activities' (Dunford et al., 2004: 1). Action plans were developed, the key ones for my research being Dunford et al.'s (2004) *Woodlands for Wildlife: ACT Lowland Woodland Conservation Strategy. Action Plan No. 27* (hereafter referred to as the '*Woodland Strategy*') and Dunford et al.'s (2005) *A Vision Splendid of the Grassy Plains Extended: ACT Lowland Native Grassland Conservation Strategy. Action Plan No. 28* (hereafter referred to as the '*Grassland Strategy*').

Although it is not central to my research, the key texts I examine also mention Lintermans et al.'s (2007) *Ribbons of Life: ACT Aquatic Species and Riparian Zone Conservation Strategy. Action Plan No. 29* (hereafter referred to as the '*Riparian Strategy'*). The *Grassland* and *Woodland Strategies* were drawn upon heavily in shaping understandings about kangaroos and their management in the ACT, either by endorsing or critiquing the knowledge they contained.

The ACT Kangaroo Advisory Committee (1997: 12) flagged the need for a model to be developed that would predict kangaroo population densities and could be used to guide kangaroo management in the ACT. This led to the ACT Government funding doctoral research conducted by Fletcher (2006a: 1-2) entitled 'Population dynamics of eastern grey kangaroos in temperate grasslands'. The new approach to kangaroo management followed the publication of Fletcher's doctoral thesis with the announcement of the initial plan to kill 470 kangaroos at the BNTS in 2007 (see Fletcher, 9/7/2013, Recording 2, 1:15:50-1:16:45). I will pick up from that point in section 2.3.4. I will now discuss Caughley's work (section 2.3.3.1), which was foundational to kangaroo management in the ACT throughout the 1990s (section 2.3.3.2), and Fletcher's (2006a: iv) doctoral research, which was conducted between 2001 and 2006 (section 2.3.3.3).

2.3.3.1 The 1980s: Caughley's model and 'ecological carrying capacity'

Caughley worked for the Commonwealth Scientific and Industrial Research Organisation (CSIRO) in the ACT and studied the local kangaroos at the population level. He is widely regarded as the progenitor of the dominant paradigm in contemporary macropod management (see Fletcher, 6/6/2014, 1:52:46-1:54:28; Tyndale-Biscoe, 1999). Caughley (1976) developed a 'herbivore-vegetation' model to better understand the interrelationships between rainfall, temperature, vegetation ('pasture biomass') and kangaroo population density. Within the field of agronomy, a model was developed for the animal-industrial complex to maximise the production of pasture, which, in turn, would maximise the number of animals raised for slaughter from a given area of land. Central to this model is the concept of 'carrying capacity',

which Caughley (1979: 2) defined as ‘an equilibrium between animals and vegetation, and we index the position of that equilibrium by its characteristic density of animals’. In commercial contexts, Caughley (1979: 5-6) identified this as the ‘economic carrying capacity’. He adapted the agroeconomic model to apply it to ecological settings by constructing an ‘ecological carrying capacity’ (Caughley, 1979: 5-6). This enabled the model to be applied to managing native herbivores in parks and nature reserves (see Caughley, 1976; Caughley, 1979, 1987a). Centrally positioning agriculture as the frame through which to view wildlife management has reinforced the historical construction of kangaroos as either pests or resources (see Cunningham, 1981). They are regarded as pests when they eat crops or are perceived to compete with marketable animals for vegetation, and as resources when they are killed and sold for their flesh as human and pet food and for their skins.

Caughley’s model was not only inspired by agronomy, but was closely tied to and supportive of the commercial kangaroo culling industry (Caughley, 1983; Caughley & Grigg, 1981; Caughley et al., 1977; Shepherd & Caughley, 1987). He was a strong and successful advocate for the exportation of kangaroo meat (Tyndale-Biscoe, 1999). Key ecologists who support the killing of kangaroos in the ACT are also strong advocates for the commercial culling industry more broadly and for transforming the ACT’s operations into profitable ventures (see, for example, Cooney et al., 2009; Read et al., 2019; Read et al., 2021; Wilson, 1975, 1988, 2004, 2018b).

2.3.3.2 The 1990s: Initial responses to conflicts over kangaroo management

In Australia, the bulk of the responsibility for wildlife management lies with the states and territories. The federal government addresses matters of national significance, such as threatened and migratory species. In the ACT, wildlife management was predominantly, although not solely, guided by the *Nature Conservation Act 1980*. The ACT Government reported receiving complaints from rural lessees since ‘at least the 1970s’ regarding kangaroo grazing (ACT Government Parks and Conservation Service, 1994: 4). In response, ‘agricultural

rangers' estimated kangaroo numbers and a proportional rental rebate was offered to the lessees as compensation from 1974 (ACT Government Parks and Conservation Service, 1994: 4, 8). Although their methods were not reported, the cost of the rangers' efforts was deemed to exceed the rebates issued. As a result, the field estimates were discontinued in 1990, but the rebates 'remained static' (ACT Government Parks and Conservation Service, 1994: 4).

Lessees saw the problems they believed to be associated with kangaroo grazing as being exacerbated by the creation of reserve areas, although no studies were conducted to investigate such claims (ACT Government Parks and Conservation Service, 1994: 4). In response to the conflicts over kangaroo management, the then ACT Government Minister for the Environment, Bill Wood, requested the ACT Government Parks and Conservation Service (1994: 1) investigate the situation and develop policies to manage rural lands in the ACT sustainably. This report marked the beginning of the ACT Government's documents associated with addressing human conflicts over kangaroo management in the ACT, as is indicated by the blue circle in Figure 1. It was responsive to how rural lessees 'viewed', 'considered', 'claimed' and 'believed' kangaroo grazing to be the cause of economic loss, but the report did not cite any evidence (see ACT Government Parks and Conservation Service, 1994: 2, 4, 5).

In September 1994, the ACT Government issued approvals to kill kangaroos on rural leases, but later that year reversed that decision after sustained public objections. In 1995, the incumbent Liberal government established the ACT Kangaroo Advisory Committee (1996b: 1-4) which recommended reinstating approvals to kill kangaroos as 'damage mitigation'. This aimed to 'relieve undesired economic or social effects of kangaroos' (see Frawley, 2010: 158). The term 'damage mitigation' was used throughout government documents up until 2010 (see ACT Government Parks and Conservation Service, 1994; ACT Kangaroo Advisory Committee, 1996b; Frawley, 2010). After this, the term 'conservation culling' was almost exclusively used.

The intensity of conflicts over kangaroo management prompted the ACT Government to develop a more informed approach to macropod management (ACT Kangaroo Advisory Committee, 1996b: 4-5). The ACT Government established the ACT Kangaroo Advisory Committee in mid-1995 (1996a, 1996b, 1997), commissioned a study into kangaroo densities in

the ACT (see Freudenberger, 1996), acknowledged that further research needed to be conducted, and made numerous recommendations to improve the management of both kangaroos and the associated human conflicts over their management. The commissioned study by Dr David Freudenberger, a senior research scientist from the Division of Wildlife and Ecology within the CSIRO, was entitled 'Density of Eastern Grey Kangaroos on rural leases and nature reserves in the ACT during November 1995'.

Like other commissioned studies that would follow (see Hodgkinson, 2009: 6; McIntyre et al., 2010: 332-333), the project was organised at short notice to be conducted in a tight time frame and with limited funding. As such, Freudenberger (1996: 3-4) did not have the measuring devices required for the task (a Global Positioning System and a prismatic or laser rangefinder) and had to 'eyeball' the distances and angles required for his population density estimates. While it is beyond the scope of this chapter, other aspects of Freudenberg's study contravened the recommended practices for such an investigation (see Anderson & Southwell, 1995: 857; Buckland et al., 1993: 224-225, 319, 335-6; Nussbaum, 2006: 311; Southwell, 1994: 349). In contrast to the estimated kangaroo population densities obtained in other studies (see Coulson, 1993; Jarman & Taylor, 1983; Southwell, 1994), Freudenberger (1996: 8) found those obtained throughout the nature reserves in the ACT to be 'greater than that reported for any macropod population elsewhere in Australia'.

2.3.3.3 2000–2006: Fletcher and the new approach to kangaroo management

The aforementioned shifts in environmental thought in the early 2000s identified 'priority' species and ecological communities. New methods were developed to better understand kangaroos' relationships with vegetation, rainfall, and temperature, and to identify ideal kangaroo population densities. Fletcher was inspired by Caughley's work and used his 'herbivore-vegetation' model as a foundation for his doctoral research. His doctoral thesis served as a bridge between the development of a new approach to kangaroo management and its implementation in the ACT, as illustrated in Figure 1. Fletcher's thesis aimed to:

> increase knowledge of population dynamics of eastern grey kangaroos in temperate areas by estimating the pasture response, functional response and numerical response equations for Caughley's (1976a, 1987) interactive model, and evaluating the potential for the model to be applied to eastern grey kangaroo populations in temperate grasslands. (Fletcher, 2006a: 1)

He also aimed to address recommendations made by the ACT Kangaroo Advisory Committee (1997: 12) which urged that 'kangaroo management in the ACT should be based on sound scientific method' and that a model be developed that would predict kangaroo population densities and could be used to guide kangaroo management in the ACT (Fletcher, 2006a: 1-2).

Due to time and budgetary constraints associated with his doctoral research, Fletcher (2006a: 183) developed a 'novel apparatus to increase the data recording rate'. This involved mounting a spotlight, laser rangefinder and compass on the outside of his vehicle and driving instead of walking to capture data (Fletcher, 2006a: 191). The *walked* line transect is the technique widely relied upon in the estimation of kangaroo densities (see Clancy et al., 1997; Coulson & Raines, 1985; le Mar et al., 2001; Southwell, 1994). Conducting a line transect in a vehicle, as Fletcher had done, was subsequently criticised in a review commissioned by the ACT Government (see Parkes & Forsyth, 2014: 23) as it can provide highly biased population estimates. Marques et al. (2013: 66, 77) found that conducting a line transect along certain features, such as roads or rivers, as would be done when using a vehicle, led to biased distance sampling estimates if the animals of interest are attracted to or repelled from such features. The resulting density would be overestimated in the former scenario and underestimated in the latter (see Marques et al., 2013: 77). While they provided a workaround for such concerns using Global Positioning System telemetry (see Marques et al., 2013: 77-78), Parkes and Forsyth (2014: 23) positioned it as being logistically and financially prohibitive for regular application in the ACT. This is important to note as the kangaroo populations Fletcher (2006a: iv) studied at three sites 'were found to have the highest densities of any kangaroo populations'. As I

discussed in section 2.3.3.2, Freudenberger (1996: 8) similarly found kangaroo densities in the ACT to be 'greater than that reported for any macropod population elsewhere in Australia'. However, both Freudenberger and Fletcher employed improvised measuring equipment and methods that compromised the results according to the field's standards, as I have cited.

Shortly after the publication of Fletcher's thesis, the ACT Government announced its intention to kill kangaroos at the BNTS. Fletcher assisted Frawley by 'significantly' contributing to drafting the ACT Kangaroo Management Plan (ACT KMP) (see Fletcher, 2/6/2009, Recording 3, 1:00:41-1:00:51; Frawley, 2010: vii). Caughley's 'herbivore-vegetation' model would become the model upon which kangaroo management in the ACT was based (Fletcher, 2006a; 2014: 56-58; Frawley, 2010: vii, 36-37, 56, 103, 134, 157). In addition to Fletcher's thesis, a number of other key documents would be drawn upon in drafting the ACT KMP, including the *Grassland* and *Woodland Strategies* (Dunford et al., 2004; Dunford et al., 2005) and, to a lesser extent, *A Planning Framework for Natural Ecosystems of the ACT and NSW Southern Tablelands* (Fallding, 2002: 15), *Managing native grassland: A guide to management for conservation, production and landscape protection* (Eddy, 2002) and *National Recovery Plan for Natural Temperate Grassland of the Southern Tablelands (NSW and ACT): An endangered ecological community* (Frawley et al., 2006), as is shown in Figure 1.

2.3.4 Implementing the new approach to kangaroo management: 2007–2017

From 2007 to the present day, the ACT Government has maintained that the ongoing killing of kangaroos in sizeable numbers is required for 'conservation' purposes, claiming that kangaroo grazing reduces the food sources, compromises habitat required by threatened species, and can cause erosion (see Fletcher, 12/05/2009, Recording 2, 1:07:43-1:12:17; 5/6/2014, 3:40:00-3:40:39). In 2007, the ACT Government announced plans to kill kangaroos at two sites owned by the Australian Department of Defence. The first was scheduled to occur in 2007 at the BNTS, followed by another at the MTA. Intense public opposition and international attention catalysed a series of reports generated within or commissioned by the ACT Government. These

are indicated as ‘Commissioned reports (2008, 2009)’ on the right-hand side of Figure 1, and include:

- Cogger et al. (2007), ‘Management of kangaroo-related environmental and animal welfare issues. Expert panel assessment – August 2007’;
- Peachey et al. (2007), ‘RSPCA investigation into the ACT Lowland Native Grasslands. Belconnen Naval Transmitting Station’;
- Braid et al. (2008), ‘Final Expert Report – 19 February 2008’;
- McIntyre et al. (2008), ‘Belconnen Naval Transmission Station, ACT – matters agreed by members of the two expert panels’;
- Cooper (2008), ‘Report on Belconnen Naval Transmission Station (BNTS) Site as part of the Investigations into ACT Lowlands Grasslands by Dr Maxine Cooper Commissioner for Sustainability and the Environment. 26 February 2008’.

Following Commissioner Cooper’s conclusion that the evidence supported the ACT Government’s decision, the killing of 470 kangaroos at the Belconnen site commenced on 26 May 2008 (see Fletcher, 9/7/2013, Recording 2, 1:15:50-1:16:45; Squires, 2008a). It is unclear when in 2008 the killing of kangaroos concluded, as approximately ten more kangaroos were killed later that year, but the event was not publicised (see Fletcher, 09/07/2013, Recording 3, 1:16:29-1:16:45). In the lead up to the killing of 7,000 kangaroos at the MTA in 2009, further reports and plans were completed, including:

- Braid et al. (2009) ‘Advice from the expert panel’,
- Hodgkinson (2009) ‘Future Proofing Natural Temperate Grasslands in urban and peri-urban Canberra’,

- Cooper (2009b) ‘Report on ACT Lowland Native Grassland Investigation by Dr Maxine Cooper, Commissioner for Sustainability and the Environment, 12 March 2009’, and
- Frawley (2009) ‘ACT Kangaroo Management Plan March 2009 (Public Consultation Draft)’.

Most of the aforementioned reports were completed by external consultants (including Braid et al., 2009; Braid et al., 2008; Cogger et al., 2007; Hodgkinson, 2009; McIntyre et al., 2008; Peachey et al., 2007). While the first-author references give the impression of an array of consultants who prepared the reports from 2007 to 2009, most were involved in two to four of these reports, with only three of the eleven authors contributing to a single report. This practice, which the dissenting witnesses noted (as with Fillinger, 3/6/2014, 3:59:54-4:00:49; Taylor, 4/6/2014, 2:36:49-2:41:51) helped to create the impression that the ACT Government ‘had the backing of pretty much the entire scientific establishment in Australia’ (Kvinta, 2015).

Equally important to consider is the narrow scope of the backgrounds of the external consultants, which included expertise in fertility control research (Coulson et al., 2008; Cripps et al., 2011; Hardy & Braid, 2007; Herbert et al., 2010; Nave et al., 2002; Poiani et al., 2002), managing kangaroos as an overabundant species (Coulson, 2001, 2007; Lunney et al., 2007; Morgan, 2008), the lethal management of vertebrate species considered to be pests (Braid, 2008; Lunney et al., 2007), the integration of conservation and agricultural practices (Braid, 2008; Cooney et al., 2009; Hodgkinson, n.d.; McIntyre, 2008; Wilson, 2004), and using market mechanisms to guide kangaroo management (Wilson & Mitchell, 2004, 2005; Wilson & Smetana, 1997). The narrowed scope applied to government advisors helped refine what the ACT Government meant by the term ‘best science’ upon which it promised to base kangaroo management. Dorothy Smith (1990d: 105) highlighted the importance of contextualising the social settings out of which terms such as ‘best science’ arose to illuminate the ‘debris of meaning’ left behind through its development:

> In description, whether the informant's or sociologist's, terms are wrenched out of the setting. The social relations of which they are part and which control how they mean in the setting (where control is a social not an individual process) are suppressed. The terms are entered into a form of social relation of which the descriptive process is a practice. They enter trailing a debris of meaning behind them which we may describe as "connotation" when we attempt to analyze the present intimations of its uses in an original and absent setting. That debris of meaning originates in the social organization and relations of the setting to be described; it bleeds properties of that organization and those relations into the descriptive text.

Hiring advisors whose work resonated with the approach adopted by the ACT Government's preferred approach to kangaroo management ensured the resulting reports would be conducive to that project.

Both versions of the *Nature Conservation Act* (*1980* and *2014*) govern kangaroo management, human relationships and interactions with kangaroos and other fauna and flora, and regulate the expression of dissent. They also outline which actions taken by ACT Government staff and which documents they produced may be subject to an administrative review in the ACAT. The *Nature Conservation Act 1980* enabled the ACT Conservator of Flora and Fauna to grant a licence under section 104. Section 116 and 'Schedule 1 Reviewable Decisions' enabled persons whose interests were affected by a decision to grant a licence, such as licences that enabled the killing of kangaroos, to apply to the ACAT for a decision to be reviewed.

The killing of kangaroos in the ACT's parks and nature reserves and on surrounding private land became routinised, occurring annually from 2009 to the present day (ACT Government Territory and Municipal Services database, as cited by Mjadwesch, 08/07/2013, Recording 3, 00:49-24:20). Following Animal Liberation NSW's 2009 application, both Animal Liberation ACT and the Australian Society for Kangaroos applied for a review in 2013, and Animal Liberation ACT made a further application in 2014. Although both the Australian

Society for Kangaroos and Animal Liberation ACT were granted standing in the 2013 hearing, only the former participated in the substantive hearing. The latter withdrew in the interest of efficiency, as the two groups would be duplicating the testimony of the same witnesses.

In all three administrative reviews, the ACAT panel members upheld the decisions to issue the relevant licences to kill kangaroos. Advice from ACAT President Bill Stefaniak in 2014 contributed to conversations within the ACT Government regarding the need to overhaul the dated *Nature Conservation Act 1980*. This led to its being scrapped and replaced with the wholly revised and vastly expanded *Nature Conservation Act 2014*. This, in turn, enabled the creation of the *Controlled Native Species Management Plan*. Unlike the ACT KMP, the *Controlled Native Species Management Plan* focuses solely on eastern grey kangaroos and functions to respond to new 'developments' not covered by the ACT KMP, which were categorised as legal, scientific, policy and administrative procedures, social, land use planning, and a review which I will discuss in section 5.6 (ACT Government Environment, Planning and Sustainable Development Directorate, 2017: 4).

This overview of the key events and documents involved in managing kangaroos and human conflicts over such management efforts reflects only a portion of the enormous amount of time, effort, and other resources the ACT Government has invested in attempting to quell human contestations over kangaroo management. I will now explore the key documents associated with administrative reviews in greater detail.

2.4 The functioning of administrative reviews in the ACAT

2.4.1 The creation of the ACT Civil and Administrative Tribunal

The Australian Government Attorney-General's Department (n.d.-a) defines administrative law as the 'body of law that regulates government decision making' and positions administrative reviews of government decisions as 'a key component of access to justice'. The Law Council of Australia (2021: 5) states that the system of administrative law is 'intended to provide a web of accountability which protects individuals against unfair and arbitrary use of public power; is

needed to legitimise and ensure public confidence in government; and enables informed participation in democratic processes'. In Australia, the two forms of administrative adjudication are merits reviews and judicial reviews. The former reconsiders whether a decision that has been made was correct or, in the case of a range of possible decisions, preferable (Downes, 2004: 3). A judicial review is concerned with the lawfulness of the decision (Downes, 2004: 3). The hearings that are the focus of this thesis are merits reviews.

In the following discussion, I provide the background information necessary to understand the complexities of the hearings, which I will explore in the following chapters. In this section, I describe how and why the ACAT was created and the physical layout of the hearing rooms. In section 2.4.2, I explain the general sequence of events in the reviews of administrative decisions to issue licences to kill kangaroos in the ACT. In section 2.4.3, I outline the important terms in the *ACAT Act 2008* and its key sections, which I discuss at length in Chapters 4 to 7. In section 2.4.4, I provide an overview of the key events associated with the three hearings.

The ACAT was formed by consolidating sixteen jurisdictions and tribunals into one 'super tribunal' (ACT Civil and Administrative Tribunal, n.d.-a). Some of these included the Administrative Appeals Tribunal, the Discrimination Tribunal, the Guardianship and Management of Property Tribunal, the Mental Health Tribunal, the Residential Tenancies Tribunal, the Liquor Licencing Board, and Civil Dispute (Small Claims) Matters Under $10,000 AUD (Casey, 2009). The *Explanatory Statement for the ACT Civil and Administrative Tribunal Bill 2008* states that the consolidation enacted the ACT Government's commitment to 'review tribunal structures, with a view to increasing efficiency and cost-effectiveness'.

When I observed the 2014 hearing as part of previous research, the ACAT was on the fourth floor of a high-rise building in Canberra's central business district. Around the reception area were doors leading to the hearing rooms and a small consultation area. The hearing rooms were quite small, as seen in Photograph 12.

Photograph 12: The layout of one of the ACAT hearing rooms

This photograph is indicative only; the people depicted did not participate in the hearings under study. (Source: Selby (2024), reproduced under an open licence (see Copyright Agency, 2024).)

A raised table and chairs were at the room's far end. In the preliminary proceedings, the ACAT president sat there. In the substantive hearings, the president was joined by two other ACAT members. The court associate, referred to by counsel as 'Madame Usher', sat to their left. In the 2014 hearing, media representatives, supporters of both parties and other observers attended the proceedings. On the day the decision was handed down, there were so many observers that they had to stand along the walls. During the hearing, witnesses testified from a seat at the table. Often, this was a seat that would be positioned in the foreground of Photograph 12, but this was not strictly adhered to due to the limited availability of seating.

2.4.2 Preliminary proceedings and substantive hearings

The work conducted within the hearings was guided by the *ACAT Act 2008* and the *Nature Conservation Act 1980*. Section 23 of the *ACAT Act* allows the tribunal to 'decide its own procedure' and section 24 empowers it to 'make rules in relation to the practice and procedure of the tribunal'. The *ACAT Act* empowered the *ACT Civil and Administrative Tribunal Procedure Rules 2009* to make rules which, in turn, authorised the *ACT Civil and Administrative Tribunal (Expert Witness Code of Conduct) Procedural Directions 2009* (see

Crebbin et al., 2009), a subsidiary document that is central to Chapter 5.

These texts employ terms with a high degree of generality, granting a broad scope to ACAT panel members, as I will outline below. Therefore, the transcripts and official recordings of the proceedings become important documents to examine how the ACAT panel members interpreted and applied the provisions of these boss and subsidiary texts. The *Reasons for Decision* documents explain the ACAT panels' conclusions and would be used to guide subsequent hearings. The transcripts of the hearings provide an essential link between the *Nature Conservation Act 1980* and the *Reasons for Decision* document. They convey the messy details of the competing frames of knowledge, recommended courses of action, and how the ACAT panel members navigated through such information to arrive at and justify their decision. Tracing the intertextual transitions between the transcribed proceedings and the statements of reasons for the decisions makes the ruling relations most apparent.

In this section, I will provide a broad overview of the sequence of events involved in an administrative review of the Conservator's decision to issue licences to kill kangaroos. Figure 2 illustrates the sequence of events before, during and after administrative reviews. The blue section (steps 1 to 4) outlines the work done by ACT Government staff and contractors, which resulted in the issuance of a licence to kill kangaroos. The orange section (steps 5 and 6) pertains to the preliminary proceedings, beginning with the application for review of the decision and concluding with the application being accepted. This allowed the case to proceed to the substantive hearing, which is depicted in the purple section (steps 7 and 8). The yellow section (step 9) encompasses the actions following the decision being upheld, including the completion of the killing of the kangaroos and the necessary preparations to apply for further licences the following year. The data chapters will discuss steps 1 to 5 and analyse steps 6 to 9. In the following discussion, I will provide a detailed explanation of steps 5 to 7.

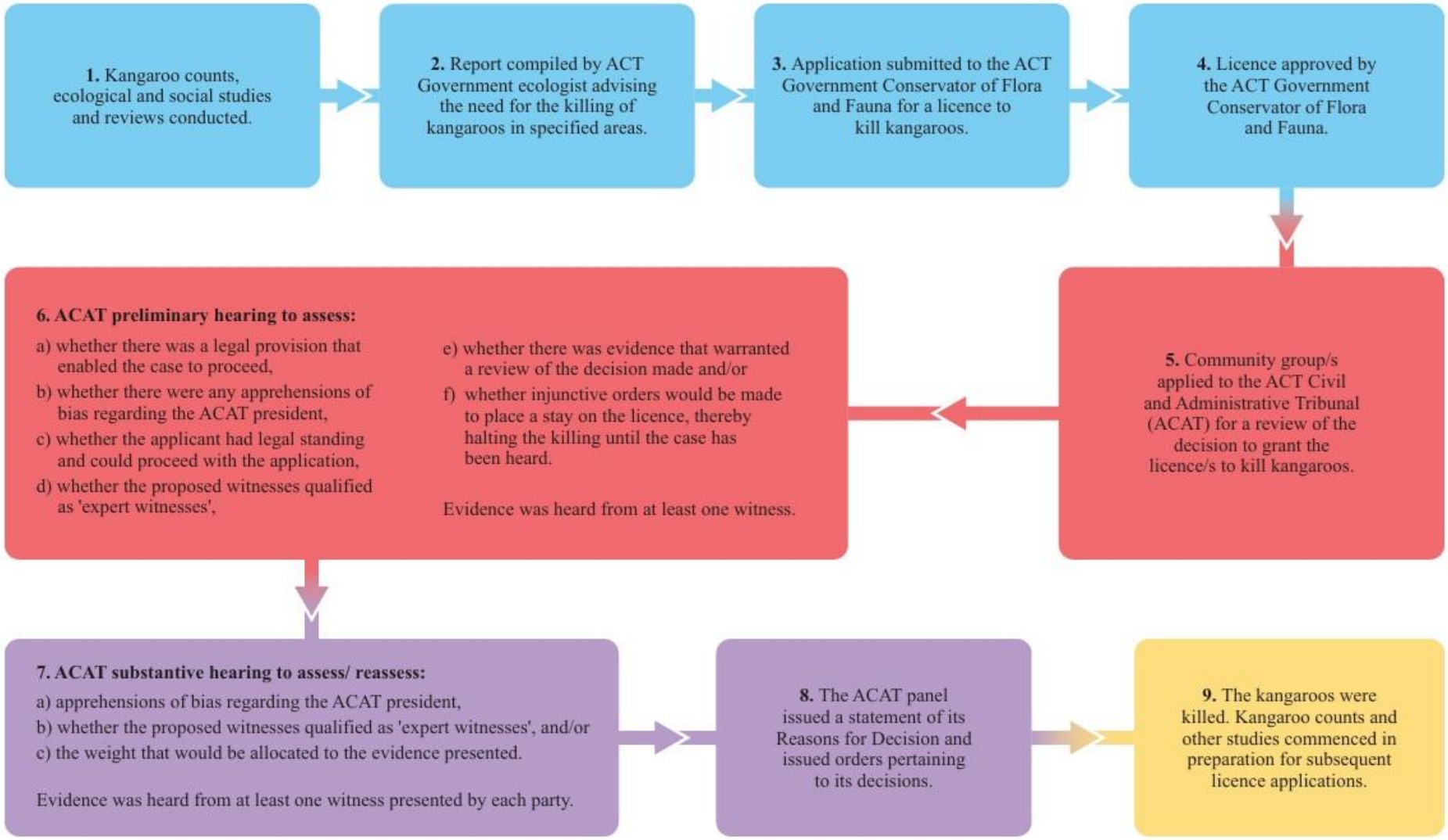


Figure 2: Sequence of events in reviews of administrative decisions about kangaroo management in the ACT

The community groups submitted their applications to the ACAT for a review of the decision to grant the licences to kill kangaroos. From 2010 onwards, the community groups were registered as stakeholders on the issue of kangaroo management in the ACT, thereby obligating the ACT Government to inform them when a decision to grant a licence to kill kangaroos on public land had been granted (see Arthur, 29/5/2014, 5:46:46-5:53:50). In 2013 and 2014, however, the ACT Government did not do so within an appropriate time frame, and the relevant community groups were made aware of the Government's decision when it was reported in the media (see Arthur, 29/5/2014, 5:47:55-5:53:50; Ward, 12/6/2013, Recording 1, 17:11-18:12).

Upon receiving an application for a review of an administrative decision in the ACAT, a date was set for the commencement of the preliminary proceedings, during which several key issues would be addressed. The ACAT often rearranged its planned hearings to accommodate the application at short notice. This is indicated in step 6 of Figure 2. Those involved had to establish the legal provisions that enabled the case to proceed (step 6(a)). Any apprehensions of bias regarding the ACAT president then had to be considered (step 6(b)).

In the 2009 hearing, Caulfield raised concerns regarding the 'apprehension of bias' due to Stefaniak's previous employment with the party joined, the Department of Defence (see 2/6/2009, Recording 1, 1:48-6:03). In the 2014 hearing, Ward also expressed concern for the 'apprehension of bias' as Stefaniak had been involved in all three hearings, he was part of the panel that upheld the previous two decisions, and was a member of the Sporting Shooters Association of Australia (see 20/5/2014, 7:15:06-8:02:16). Prior to the commencement of the hearings, Stefaniak discussed these matters with the ACAT registrar, then responded to and dismissed them during the hearings.

The next step was to determine whether the applicant had the necessary legal standing to proceed with the application (step 6(c) in Figure 2). The *Nature Conservation Act 1980* empowered an 'entity that has interests affected by a licence' to apply for a review of a decision to grant a licence under Schedule 1 Reviewable decisions, item 7. Section 22Q of the *ACAT Act 2008* outlines how the ACAT presidents were to determine whether an entity possessed such

interests. It requires a body to demonstrate that its 'interests that are affected by a decision' are reflected in the 'objects or purposes of the body'. Throughout the hearings, it became apparent that only incorporated organisations could apply for an administrative review. To verify the 'objects or purposes', the tribunal scrutinised related documents such as the organisation's constitution and the minutes of the meeting in which the organisation's members ratified the constitution. I will discuss this in detail in section 7.4.2.1.

As is depicted in step 6(d) in Figure 2, the next stage of the preliminary proceedings was to determine whether the proposed witnesses qualified as 'expert witnesses' according to the *ACT Civil and Administrative Tribunal (Expert Witness Code of Conduct) Procedural Directions 2009 (No 1) Notifiable Instrument NI2009-642* (see Crebbin et al., 2009), hereafter referred to as the '*Code of Conduct*'. While witnesses in the 2009 hearing were required to adhere to the *Code of Conduct*, it was not formally published until after the close of that hearing. The stipulations in the *Nature Conservation Act 1980*, the *ACAT Act 2008* and the *Code of Conduct* allow room for interpretation as they are very generalised. For example, section 5(a) of the *Code of Conduct* states that an expert witness's report must specify 'the person's qualifications as an expert'. Combined with the abovementioned section 25 of the *ACAT Act* ('The tribunal may inform itself in any way it considers appropriate'), 'qualifications as an expert' could be interpreted in infinite ways.

The ACAT president must then determine whether evidence existed to justify a review of the decision, as reflected in step 6(e) of Figure 2. I will elaborate on this in Chapter 7. A final stage (step 6(f) in Figure 2) relevant to all three cases was to determine whether injunctive orders should be issued to halt the killing until the case was heard. In all three cases, this was granted. This was enabled through section 53 of the *ACAT Act*, which I have reproduced below as it appears in the original document (bolding and emphasis in original):

53 Interim orders

(1) This section applies if, before the hearing of an application—

(a) a party to the application applies to the tribunal for an order under this section; and

(b) the tribunal is satisfied that, if an order under this section were not made before the hearing of the application, the party applying for the order would be disadvantaged or suffer harm.

(2) The tribunal may make any order (an ***interim order***) it considers appropriate to protect the position of the party that applied for the order.

Note The tribunal must observe natural justice and procedural fairness (see s 7).

(3) An interim order remains in force until the earliest of the following happens:

(a) the end of 12 weeks after the day the order is made;

(b) the tribunal orders otherwise;

(c) the tribunal makes an order at the end of the hearing to which the interim order relates.

(4) The tribunal may, on application by a party while an interim order is in force—

(a) vary the order; or

(b) revoke the order; or

(c) extend the order for a further 14 days.

Once an ACAT president had decided that an applicant had standing, they gave orders on how the applicant and the respondent were to prepare for the substantive hearing, thereby progressing to step 7 in Figure 2. In all three hearings, the ACAT presidents issued orders regarding the compilation and sharing of relevant documents among the parties involved. In all

three hearings, the person who presided over the preliminary proceedings was not a part of the panel of ACAT members who oversaw the substantive hearing. This is important to note as considerable evidence was presented in the preliminary proceedings, which were not aired in the substantive hearings.

Section 68(3)(b) of the *ACAT Act 2008* requires the ACT panel members to make an order to confirm the decision, vary the decision, or set aside the decision. In the case of the latter, they must either make a substitute decision or 'remit the matter that is the subject of the decision for reconsideration by the decision maker in accordance with any direction or recommendation of the tribunal'. Having made such an order, section 60 of the *ACAT Act* requires the ACAT panel members to provide a statement regarding the reasons for the decision if a party to the proceedings requests it, as is depicted in step 8 of Figure 2. Such statements identify the relevant legislation, the key texts drawn upon, the orders made, and the reasons for the decision. While the 'reasons for the decision' is one section of a broader document, I will refer to this as the '*Reasons for Decision*' document, as that section is most relevant to my investigation. The production of a '*Reasons for Decision*' document was done as a matter of course in all three hearings.

2.4.3 Key sections of and terms used within the ACAT Act 2008

At the commencement of an administrative review hearing, the ACAT president required confirmation of an authorising law that allowed the hearing to take place (see, for example, Crebbin, 12/5/2009, Recording 1, 1:30-2:13). This is shown in step 6(a) in Figure 2 above. I discussed the relevant sections of the *Nature Conservation Act 1980* in section 2.4.2. The objects and principles of the *ACAT Act* guided the hearings and were frequently referenced by the ACAT panel members and legal counsel throughout all three hearings under study. Sections 6 and 7 are central to my discussions in the data chapters of this thesis. I have reproduced them below as they appear in the original document.

6 Objects of Act

The objects of this Act are—

(a) to provide for a wide range of matters arising under legislation to be resolved by the ACT Civil and Administrative Tribunal; and

(b) to ensure that access to the tribunal is simple and inexpensive, for all people who need to deal with the tribunal; and

(c) to ensure that applications to the tribunal are resolved as quickly as is consistent with achieving justice; and

(d) to ensure that decisions of the tribunal are fair; and

(e) to enhance the quality of decision making under legislation; and

(f) to encourage, and bring about, compliance in decision making under legislation; and

(g) to encourage tribunal members to act in a way that promotes the collegiate nature of the tribunal, and

Note Unless otherwise provided by this Act, the tribunal for the exercise of functions, other than functions in relation to applications, is made up of the presidential members (see 93).

(h) to identify and bring to the Attorney-General's attention systemic problems in relation to the operation of authorising laws.

7 Principles applying to Act

In exercising its functions under this Act, the tribunal must—

(a) ensure the procedures of the tribunal are simple, quick, inexpensive and informal as is consistent with achieving justice; and

(b) observe natural justice and procedural fairness.

While the *ACAT Act 2008* was regularly republished, the above wording was consistent across the republications that were current for the 2009, 2013 and 2014 hearings. Other sections in the *ACAT Act* grant the ACAT panel members considerable powers to run the proceedings as they see fit, as is exemplified in sections 8, 23 and 26:

> **8 Rules of evidence**
>
> To remove any doubt, the tribunal need not comply with the rules of evidence applying in the ACT.
>
> […]
>
> **23 Tribunal decides own procedure**
>
> The tribunal may decide its own procedure in relation to a particular matter in a hearing or a step in dealing with an application if no procedure is prescribed under this Act, an authorising law for the application or the rules.
>
> […]
>
> **26 Tribunal may inform itself**
>
> The tribunal may inform itself in any way it considers appropriate in the circumstances.
>
> **Examples**
>
> 1 asking an assessor for expert advice on a matter
>
> 2 relying on previous experience in relation to the matter

Stefaniak clarified the above sections by stating that 'we certainly can't disregard legal norms and what the legal situation is, but we do have a fair grade of flexibility' (see 8/7/2013, Recording 1: 58:06-59:49). These sections were discussed throughout the three hearings, as I shall return to in the following chapters. Given how closely I interrogate section 7 of the *ACAT Act* throughout my thesis, it is necessary to examine the terms in section 7(b), 'natural justice' and 'procedural fairness', as they have specific legal definitions.

McMillan (2008) defines 'natural justice' as involving decision making that is 'free of bias and conflict of interest, and that a person affected adversely and directly by an administrative decision should be given a prior warning and opportunity to comment'. In the ACT, the Chief Minister, Treasury and Economic Development Directorate published 'Decision Making Guidelines' which outlines the meaning of 'natural justice' and 'procedural fairness'. The Guidelines note three aspects of natural justice:

> 1. **The notice requirement** – Notice to the affected person must identify the critical issues and contain sufficient information for the person to be able to participate meaningfully in the decision making process.
> 2. **The fair hearing rule** – A fair hearing means that the affected person is given a reasonable opportunity to 'speak or respond' and also that the decision-maker genuinely considers the affected person's submission in making the decision.
> 3. **The lack of bias rule** – The person making the decision must act impartially in considering the matter. Bias is a lack of impartiality for any reason and may be in favour of or against the affected person. It may arise from the decision maker having some financial or other personal interest in the outcome of the decision (conflict of interest) or giving the impression that they have prejudged the issue to be decided (pre-judgement). (Chief Minister, Treasury and Economic Development Directorate, 2020: 12).

The Australian Law Reform Commission (2016: 14.11) defines 'procedural fairness' as 'acting fairly in administrative decision making' and clarifies that this involves 'the fairness of the procedure by which a decision is made, and not the fairness in a substantive sense of that decision'. Similarly in the ACT, the 'Decision Making Guidelines' state that procedural fairness is 'concerned with procedures used by a decision-maker, rather than the actual outcome reached' and 'requires a proper procedure be used when making a decision' (Chief Minister, Treasury and Economic Development Directorate, 2020: 8). The Chief Minister, Treasury and

Economic Development Directorate (2020: 9) expanded on this:

> The rules of procedural fairness require that:
>
> • a person is given a hearing appropriate to the circumstances, which may include sending a show cause notice and allowing the person to make submissions before a decision is made that negatively affects a right, an existing interest or legitimate expectation which is held.
>
> The person has a right to receive all relevant information before preparing their reply, which includes:
>
> ▷ Description of the possible decision;
>
> ▷ Criteria for making that decision;
>
> ▷ Information on which any such decision would be based;
>
> ▷ Any negative information held about the person is disclosed to that person;
>
> ▷ Summary of the issues being considered by the decision maker.
>
> ▷ Hearing the other side of the story is critical to good decision making.
>
> - you make reasonable inquires [sic] or investigations before making a decision;
> - you approach the decision with an open mind;
> - you take into account relevant factors;
> - you conduct investigation without unnecessary delay;
> - you keep full record of investigations made.

Issues of natural justice and procedural fairness arose throughout the three tribunal hearings, which I will discuss in this thesis.

2.4.4 The proceedings as they panned out

Since 2007, the ACT Government has stated that ecological damage was apparent at several sites, including the BNTS, the MTA, and several nature reserves that form part of the Canberra

Nature Park. Government staff attributed the damage to kangaroo grazing, an assertion affirmed by several reports commissioned by the ACT Government. As a result, the ACT Government claimed that the ongoing killing of kangaroos in sizeable numbers would reduce their population density to levels that would cease having an ecologically detrimental impact. The ACT Conservator of Flora and Fauna enabled this by issuing the relevant licences. In this section, I will provide an overview of the key events associated with the ACAT hearings in 2009, 2013 and 2014, through which community groups challenged those decisions.

2.4.4.1 The 2009 ACAT hearing

The ACAT commenced operations on 2 February 2009. On 9 April 2009, the Conservator issued a licence that authorised the killing of 7,000 kangaroos at the MTA (Stefaniak, 05/06/2009, Recording 1, 0:42-2:31). Without notifying the public, the contractors commenced shooting on 5 May 2009 (see Roser, 13/05/2021, Recording 2, 14:05-14:54). Repeated enquiries made by dissenters to the Department of Defence regarding the proposed cull, along with a slip in communication on the part of the Department on 21 April, unintentionally informed the dissenters that a licence had been approved. On 9 May 2009, Animal Liberation NSW applied to the ACAT for a review of the Conservator's decision.

Government ecologist Dr Donald Fletcher listed many species of flora and fauna that the ACT Government claimed were threatened by kangaroo grazing (Stefaniak et al., 2009: 15-16). He provided estimates of the number of kangaroos and of the population density at the site, which he positioned as being so high that the population was outstripping the food supply and was on the verge of crashing to a much lower level (Stefaniak et al., 2009: 16-18). Animal Liberation NSW challenged the assertion that kangaroos at the site were starving, the kangaroo population density estimates, the evidence for the recommended 'carrying capacity' of kangaroos at the site, and the evidence presented that positioned kangaroo grazing as a threat to vulnerable species of Australian native flora and fauna (Stefaniak et al., 2009: 14). While the ACT Government asserted that killing 7,000 kangaroos at the Majura Training Area was

necessary to protect the habitat of several species, Animal Liberation NSW asserted that the threatened habitat comprised approximately 2% of the total area of the site and was protected by a fence (Stefaniak et al., 2009: 14).

The hearing took place from May 12 to June 22, 2009. The preliminary proceedings took place on 12, 13, and 14 May, and the substantive hearing took place each day from 2 to 5 June. ACAT President Crebbin oversaw the preliminary matters, and President Bill Stefaniak oversaw the substantive hearing. Before discussing the details of the hearing, I must highlight a pivotal decision about the type of witness the ACAT panel members would rely upon.

By 2009, the ACT Government's discourse of kangaroo grazing deleteriously impacting other species and the environment more generally had spanned over a decade (see ACT Kangaroo Advisory Committee, 1997; Frawley, 2009; Watkinson, 2007). From 2007 to the present day, the ACT Government has maintained that the ongoing killing of kangaroos is required for 'conservation' purposes to reduce the impacts of kangaroo grazing on the food sources and habitats of endangered species and ecological communities (ACT Government Environment Planning and Sustainable Development Directorate, n.d.-b; Frawley, 2010; Watkinson, 2007). It must be noted, however, that the qualifications of the witnesses presented by the ACT Government, and accepted by the ACAT panel members, were not in areas associated with endangered species or ecological communities. Fletcher was the sole witness presented by the ACT Government in the 2009 and 2013 hearings and the key witness in the 2014 hearing. He specialised in managing species considered 'overabundant' and oversaw and coordinated kangaroo research and management in the ACT (see Fletcher, 05/05/2014, 2:06:44-3:09:51). In the 2009 hearing, Fletcher attempted to interpret data on threatened species that was prepared by a colleague working in that area. As he struggled to do so, President Crebbin requested that the ACT Government present an alternative witness who worked in that area:

> Crebbin: Is there anyone else in Dr Fletcher's office or works with Dr Fletcher who might be able to provide information, if necessary, tomorrow about these things? Presumably, he doesn't work alone, and these are, to a large extent, business records of

the respondent.

Jarvis: I'd be guided by what Dr Fletcher says, and he can answer for himself, but as I understand it, he is in somewhat of a unique position being a leading expert on the particular species here in this very area, and there's no one else quite like him in the unit.

Fletcher: We can qualify. I have indicated that I'm representing the data collected by someone else, for example.

Crebbin: Yes, yes!

Fletcher: There are those other people. So, in the unit, there are people who have expertise on some of these different species that have been mentioned.

Crebbin: People who are familiar with these tables?

Fletcher [speaking over Crebbin]: I'm here primarily because it's a kangaroo issue, but if we're talking about ground cover and vegetation and so on, then we can find someone else for that part.

Crebbin: Yes. Alright. Good oh. (See 12/5/2009, Recording 2, 2:12:10-2:13:21).

The fact that this issue was never revisited in that hearing or the subsequent hearings indicates that Fletcher successfully positioned the ecological degradation at the sites in question as a 'kangaroo issue'.

Matt Roser, representing the Department of Defence in the preliminary proceedings, applied and was approved by ACAT President Linda Crebbin to act as a party joined to the proceedings as the Department was the landholder and had relevant and substantial evidence, such as consultants' environmental reports, about the site. As Roser could not attend the substantive hearing, Andrew Berger, a barrister from a different legal firm, represented the Department of Defence. Berger postulated that when a legal issue is heard in the ACT involving the ACT and the Commonwealth Governments, Commonwealth law invalidates the ACT's proceedings, according to Chapter 3 of the Constitution (Berger, 2/6/2009, Recording 1: 16:29-40:33). He asserted that the proceedings would be invalidated if the Department of Defence

continued as a party joined to the proceedings. As such, he requested that the Department withdraw as a party joined and continue in the role of *amicus curiae*, or 'friend of the court'. While this was hotly debated, the ACAT panel members approved Berger's request as they did not want to test his assertion (see Stefaniak, 2/6/2009, Recording 2: 1:00-4:48). I note this to contextualise Roser and Berger and their roles in the proceedings, as they provided important evidence throughout the substantive hearing in 2009.

The 2009 hearing was unusual in that the proceedings were adjourned on 5 June, and the ACAT panel forwarded to the relevant parties a written statement of their orders and the reasons for their decision on 22 June (see Stefaniak et al., 2009). In the subsequent hearings, the ACAT panel members prepared a statement that was read to those in attendance on the final day of the hearing, thereby enabling their orders to take effect immediately. Following the ACAT panel members' decision, the operation was completed on 7 July 2009 (ABC News, 2009).

2.4.4.2 The 2013 ACAT hearing

On 14 May 2013, the Conservator issued licences for the killing of a total of 1,455 kangaroos throughout seven nature reserves that comprise part of the Canberra Nature Park. These reserves included Kama, The Pinnacle, Mount Painter, Mulanggari, Goorooyarroo, Mulligans Flat, and Callum Brae, as depicted in Map 1. The ACT Government argued that issuing licences to kill kangaroos in and around nature reserves throughout the ACT was justified as their numbers and corresponding population densities were high, and the resulting grazing would detrimentally impact ecosystem function and threaten endangered flora and fauna. Killing them was positioned as being necessary to protect the 'integrity of these ecosystems' (see ACT Government Territory and Municipal Services Directorate, 2013: 1). The Australian Society for Kangaroos applied for a review of the Conservator's decision to issue licences to kill the kangaroos in the aforementioned nature reserves. The reasons given to support their application included challenging the methods employed to count kangaroos, the resulting estimates of kangaroo population densities and population growth rates, the evidence presented to position

kangaroo grazing as a threat to vulnerable species of Australian native flora and fauna, and the level at which kangaroo population densities could be considered 'sustainable' (see Katavic, Recording 2, 8/7/2013, 2:19-2:58).

The hearings usually proceeded at a rapid pace. On 6 June 2013, the ACT Government issued a media release stating that the aforementioned nature reserves would be closed in the evenings from the following day until 31 July that year to kill kangaroos. The ACT Government solicitor was served the applications from Animal Liberation ACT at 5 pm that day and from the Australian Society for Kangaroos at noon on the following day (Katavic, 17/6/2009, 14:12-18:01). President Crebbin commenced the preliminary proceedings on the afternoon of June 7 and reconvened on June 12 and July 3. When both groups were granted standing to proceed with their cases, Animal Liberation ACT withdrew to avoid delays caused by two similar and concurrent cases. President Stefaniak oversaw the substantive hearing, which took place each day between July 8 and 10. The decision was handed down on July 10, and clarifications of the decision were delivered on July 12.

While approving the licences, the ACAT panel members took advantage of the provisions in the *ACAT Act 2008* to vary the decision. In reviewing the Conservator's decision, section 68(3) of the Act required the ACAT panel members to:

> (a) confirm the decision; or
>
> (b) vary the decision; or
>
> (c) set aside the decision and—
>
> > (i) make a substitute decision; or
> >
> > (ii) remit the matter that is the subject of the decision for reconsideration by the decision-maker in accordance with any direction or recommendation of the tribunal.

In the *Reasons for Decision* document, the ACAT panel members approved the numbers of kangaroos to be killed for the Goorooyarroo and Mulligans Flat sites as they were the study

sites for research collaborations involving the ACT Government, the Australian National University and James Hutton Institute (UK) (see Gordon et al., 2021; Howland, Stojanovic, Gordon, Fletcher, et al., 2016; Howland et al., 2014; Howland, Stojanovic, Gordon, Radford, et al., 2016; Manning et al., 2011). Fletcher reported that the research funding amounted to 'several million dollars' (see 9/7/2013, 3: 43:36-44:49). However, the ACAT panel noted that when determining his target kangaroo population densities across different sites, Fletcher worked within a range of approximately 0.6 to 1.5 kangaroos per hectare in grassland areas (Stefaniak et al., 2013a: 248-249; 2013b: 8). They adjusted the number of kangaroos to be killed in the remaining reserves (Kama, The Pinnacle, Mount Painter, Mulanggari, and Callum Brae) so they corresponded to the upper limit of a population density of 1.5 kangaroos per hectare (Stefaniak et al., 2013b: 13). This reduced the total number of kangaroos to be killed from 1,455 to 1,244 (Stefaniak et al., 2013a: 13-15). The shooting ceased on 31 July 2013 (Raggatt, 2013).

The ACT Government took a considerable risk in announcing its plan as late as 6 June, as it has a policy that the killing must cease after 31 July each year. This afforded little time for completion by that deadline if there was an application for the decision to be reviewed in the ACAT. It is important to contextualise the 31 July deadline. Frawley (2010: 46) acknowledged that kangaroo breeding elsewhere is 'opportunistic' in the sense that it is responsive to rainfall, temperature and subsequent pasture growth. However, drawing on Fletcher's (2006a) thesis, Frawley (2010: 29-30, 58) claimed kangaroo breeding in the ACT occurred irrespective of food availability. Dissenting ecologists consistently challenged this assertion (see, for example, Mjadwesch, 4/6/2014, 1:19:59-1:24:28). Given the predictable breeding cycle asserted by Fletcher, the deadline of July 31 was imposed 'to minimise the rate that shooters will encounter female kangaroos' with 'very small hairless young' (Frawley, 2010: 79) which are too small to shoot. According to the Code of Practice for the Humane Destruction of Kangaroos, hairless joeys must be killed by a 'single forceful blow to the base of the skull sufficient to destroy the functional capacity of the brain' or 'stunning, immediately followed by decapitation by rapidly severing the head from the body with a sharp blade' (Natural Resource Management Ministerial Council, 2008a: 13). This provision resulted from 'community concern' for 'animal welfare'

(Frawley, 2010: 10-11).

Historically, the ACT Government has been attentive to the fact that rural lessees stated pasture growth was lowest in the ACT's colder months (May to October) and 'considered' kangaroo grazing of said pastures to reduce the 'economic return from their leases' (ACT Government Parks and Conservation Service, 1994: 3, 5; ACT Kangaroo Advisory Committee, 1996b: 10). More recent knowledge concurs that pasture growth is minimal below 8°C (46.4°F) (Clements et al., 2003: 8). The average lowest temperatures in the ACT fall below 8°C from April to October, with the lowest temperatures (under 1.5°C/34.7°F) occurring from June to August (Bureau of Meteorology, 2024). June and July are important months when the rural lessees need pasture as lambs are born and commence suckling (Clements et al., 2003; Meat and Livestock Australia, n.d.). The availability of grass is crucial from September to November to ensure lamb growth rates peak in preparation for their slaughter (Meat and Livestock Australia, n.d.). Thus, killing kangaroos, particularly if doing so occurs before the end of July, may have the political advantage of appeasing the rural lessees' perceptions that kangaroo grazing deleteriously impacts the economic viability of their enterprises.

2.4.4.3 The 2014 ACAT hearing

On 12 May 2014, the Conservator issued licences to kill 1,606 kangaroos in total across eight nature reserves, including Kama, The Pinnacle, Mount Painter, Mulanggari, Goorooyarroo, Mulligans Flat, Callum Brae and Jerrabomberra East, as depicted in Map 1. The ACT Government asserted that this ensured the environmental objectives outlined in the ACT Nature Conservation Strategy were met (Lunney et al., 2014: 8). Its representatives claimed that the 'precautionary principle' required kangaroos to be killed to protect vulnerable species and ecosystems (Lunney et al., 2014: 9). The 'precautionary principle' was defined in Principle 15 of the Rio Declaration, produced at the 1992 United Nations Conference on Environment and Development: 'Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent

environmental degradation' (United Nations, 1992). A lack of evidence, therefore, is no barrier to embarking on ecological interventions. That the principle is not without its detractors (see, for example, Read & O'Riordan, 2017) is beyond the scope of this chapter. Suffice it to say, some of its critics, such as Bourguignon (2015: 12), position it as arbitrary, unscientific and dangerous.

The ACT Government relied on the ACT Kangaroo Management Plan to argue that shooting was the preferred method and positioned other alternatives as being impractical (Lunney et al., 2014: 9). In contrast, Animal Liberation ACT contended that the decisions to issue licences to kill kangaroos were 'contrary to environmental objectives', applying the 'precautionary principle' would require the kangaroos to be left unharmed, the ACT Government had failed to adequately consider alternatives (such as translocation and the use of kangaroo fertility drugs), and the killing process breached animal welfare legislation (Lunney et al., 2014: 7-8). The latter point was made in reference to joeys orphaned when their mothers were killed and the intergenerational psychological impacts of the process on the surviving kangaroos. While the ACT Government did not respond in the hearing to the orphaning of joeys due to the killing process, the ACAT panel members deemed it as being acceptable and not in breach of the ACT Animal Welfare Act 1992 (Lunney et al., 2014: 7). They also rejected the evidence of the psychological impacts of killing kangaroos on the survivors (Lunney et al., 2014: 4).

On 13 May 2014, the day after the licences were issued, Animal Liberation ACT applied to the ACAT for a review of the Conservator's decision to issue them. The 2014 hearing commenced the following day, running from May 14 to June 11. ACAT President Stefaniak oversaw the preliminary proceedings on May 14, 20, and 29. The tribunal held the substantive hearing each day from 3 June to 6 June, presided over by ACAT Senior Member Lunney. On 11 June 2014, ACAT Senior Member Lunney verbally delivered the reasons for their decision to uphold the Conservator's decisions to issue the licences authorising the killing of kangaroos on public land, which reached completion on 31 July 2014 (Smith, 2014a).

Throughout this chapter, I have provided background on the ACT, the conflict under

study, and the functioning of the ACAT. I have outlined how public administrative systems have influenced the management of kangaroos and human conflicts related to kangaroo management. This begs the question of how to make sense of a system like that. I address this in the following chapter, where I discuss why and how I have approached my project as an institutional ethnography.

Chapter 3: Creating an institutional ethnography of human conflicts over wildlife management

Chapter contents

3.1 Applying the lens of institutional ethnography to human conflicts over wildlife management

The historical overview I provided in Chapter 2 foregrounded the role of public administration and bureaucracy in addressing the management of kangaroos and human conflicts over kangaroo management through the Australian Capital Territory (ACT). The disjunctures I observed in the 2014 ACAT hearing, as identified through previous research, prompted me to conduct an institutional ethnography (IE). In this chapter, I will discuss why IE is the most appropriate approach for my research. I commence in section 3.2 by explaining IE as developed by Dorothy Smith and the key tools I draw from IE that are central to my analysis. I proceed in section 3.3 to outline how I approached this research project as an institutional ethnography. In section 3.4, I explicate the data upon which I rely, how I collected it, the challenges I faced in the data collection process, and how I addressed them. I present the limitations of my research in section 3.5.

3.2 Dorothy Smith's institutional ethnography

3.2.1 Key concepts in IE

Dorothy Smith (1974) criticised mainstream sociology for imposing an already established framework onto the actualities of people's everyday lives, thereby establishing the boundaries of their inquiries. She developed an alternative sociology, which she termed 'institutional ethnography', that employs a type of critical ethnography (Smith, 1974, 1979, 1986). Through IE, Smith (1986: 6) aimed to position people not as objects of study, as is often the case in mainstream sociology, but as subjects with actual, embodied, situated knowledges and experiences. IE was initially *for,* not *about,* women, but was later extended to be a sociology for people (D. E. Smith, 1988a; Smith, 2005b). For Smith, IE commenced from 'people's everyday/everynight experiences':

> As a project of inquiry rather than of theory, it must rely on the possibility that truth can be told in the following very ordinary sense: that when people disagree about statements made about the world, accuracy or truth is not decided on the basis of 'authority' or on the basis of shared beliefs of a community but by referring back, in principle at least, to an original state of affairs, extraneous to the accounts they have given. … It is committed to inquiry and investigation, to *finding out* 'how things are put together', and hence to producing knowledge that represents the social as it happens. (Smith, 1999: 97, emphasis in original)

To do so, she drew upon Marx's materialism, Garfinkel's ethnomethodology, and the self and language as understood by George Herbert Mead and Bakhtin, amongst other influences (D. E. Smith, 1988b; Smith, 1996, 2005b). IE aims to discover how people's activities are coordinated by broader social relations that are not apparent at the local or individual level and how people engage in and contribute to such relations (Smith, 2005b: 36, 60). In this section, I will define some key concepts in IE and discuss others in the chapters where I apply them.

Smith employed 'institutions' and 'ethnography' in specific ways that I clarified in section 1.1.1. Similarities exist between what some have called 'traditional' ethnography (as with Balcom et al., 2021) to IE. For example, both draw upon insiders' knowledge to better understand specific social situations (Campbell & Gregor, 2004; Fetterman, 1998). However, the researchers' intentions for their data vary considerably. While the former strives to produce a formal and accurate account of customs and traditions from the perspective of the insider in the local setting (Balcom et al., 2021), the latter aims to map the social forces that rule people's everyday lives in ways that are usually not readily apparent (Smith, 1986, 2001; Turner, 2006).

'Standpoint' is a 'methodological starting point in the local particularities of bodily existence' which must be considered in the design of a research project (Smith, 2005b: 228). Smith (2005b: 228) positioned the establishment of such a subject position in contradistinction to the 'objectified subject of knowledge of social scientific discourse'. When viewed from this position, ruling relations are illuminated (Smith, 2005b: 228). While institutional ethnographers explore the relationship between individuals' 'work' and institutional discourse processes,

Smith (2002: 52) adopted a broad definition of 'work' which encompassed 'what people do that takes some effort and time, that they mean to do, that relies on definite resources and is organised to coordinate in some way with the work of others similarly defined'.

Texts are central to IE. Smith (2005b: 228; 2006b: 66) defined 'texts' as words, images or sounds whose materiality and replicability enable them to extend across different times and simultaneously to different places. This allows us to explore how they exist in our daily lives while simultaneously connecting us to social relations in other times and places (Smith, 2005b: 228). Smith (2005b: 228) postulated that this ensures stability or replicability of the ways processes are coordinated or of the organisation itself. Smith (2005b: 183) positioned texts that 'constitute and regulate' as shaping the work of others or, more specifically, 'textually specified capacities to control and mobilize the work of others'. They, therefore, mediate ruling relations (Smith, 1989: 41) and are central to establishing what Osbourne (1994: 290) referred to as 'the ethical competence to rule'. Hart demonstrated how this was the case in the context of wildlife management through his institutional ethnography of moose management in Nova Scotia:

> … it is through texts that behaviors are officially deemed (and enforced as) healthy or unhealthy and normal or deviant; it is through texts that wilderness areas are created and preserved and animal populations managed. Texts do not just inform and coordinate human social relations, but constitute mundane existence. (Hart, 2017: 396)

Dorothy Smith (1990a: 120-121) mobilised the term 'active text' to challenge the 'assumption of the inertia of the text' by situating texts as 'organizing a course of concerted social action'. She used the term 'text–reader conversation' to establish the reading of a text as 'an actual interchange between a reader's activating of the text and her or his responses to it' (Smith, 2005b: 228). Smith (1974, 1993b) highlighted that the way texts are activated helps us to appreciate that they are an implicit part of social relations and, therefore, as being 'in action'. Through the text, certain voices or discourses are 'authorised'.

Smith (1990c: 74) used the term 'textual time' to refer to a point when an account had

become fully worked up and the traces of its construction (such as early drafts, tracked changes, etc.) were removed. The text then functions as 'an autonomous statement representing the actuality of which it speaks' that can make new statements, provided key attributes are preserved, such as the original conceptual structure and the order of space and time (D. E. Smith, 1990c: 74). It is at that stage that Smith (1990c: 74) positioned the text as having become stabilised.

As I discussed in section 1.4.2, Smith discussed the stability of the text in a number of her papers (see, for example, Smith, 2001: 175; 2005b: 102, 105, 107, 108, 166). While she did not define what she meant when referring to the 'stability' of the text, she indicated this in features of the text, such as its 'constancy' that 'provides for standardization', the 'multiple replication of exactly the same text', its 'stasis', it 'remains the same', and is 'fixed' (Smith, 2001: 175; 2005b: 102, 105, 166). Many institutional ethnographers have upheld Smith's positioning of texts as being 'stable' (see Cunliffe, 2007: 78; 2013b: 41; Kameo & Whalen, 2015: 210; Suárez Delucchi, 2020: 34; Whelan, 2021: 336). A text's stability enables the regulation of the coordination of people's work in ways that render them accountable to the institution (Smith, 2005b: 118). Cunliffe and Cameron (2007: 6) state that the replicability and stability of texts make possible the coordination of institutional processes necessary for governance to take place on the scale and in the manner it does. The instability of texts lies in the fact that they may be read and activated in a multitude of ways (Smith, 1999: 107; Smith & Turner, 2014a: 68).

Institutional ethnographers have traced how interested parties have jostled to have their interests prioritised in policy documents, as seen in Eastwood's (2002, 2021) examinations of the construction of the United Nations' environmental policies. This resonates with my discussions in sections 6.5 and 6.7, where dissenting experts attempted to influence the contents of government documents such as the Draft ACT Kangaroo Management Plan. However, my research also challenges the aforementioned assumptions that ruling relations are enacted through a stable text. In section 7.5, I demonstrate that when the boss text, the *Nature Conservation Act 1980*, failed to stabilise institutional accounts or uphold the 'organisational

consciousness' (D. E. Smith, 1990d: 214) of the ACT Government, it was changed in ways that fortified ruling relations. Such a process is quite different to stakeholders angling to increase their influence on documents. This is significant as it unsettles the assumed stability of the text that is inherent in many institutional ethnographies.

Smith (2005a: 226) borrowed the term 'intertextuality' from literary theory to highlight how institutional texts are interdependent and form a hierarchy in which 'higher level texts establish the frames and concepts that control and shape lower-level texts'. The primary intertextual hierarchy I will discuss in the following chapters is the sections of the *Nature Conservation Act 1980* that allowed government decisions to be reviewed. How such reviews were conducted was in accordance with the *ACT Civil and Administrative* (*ACAT) Act 2008,* which, in turn, authorised subsidiary documents such as the *ACT Civil and Administrative Tribunal (Expert Witness Code of Conduct) Procedural Directions 2009 (No 1) Notifiable Instrument NI2009-642* (see Crebbin et al., 2009), hereafter referred to as the '*Code of Conduct*'.

Smith (2003: 155) positioned the reader as 'activating' texts by taking the words, making them their own, and 'activating' their meaning. Turner (2014: 15) detailed the ways that 'readers-speakers' activated visual and written texts in relation to each other in an organisational context, a process she referred to as 'intertextual work'. The key 'intertextual work' I will explore in this thesis is how the ACAT panel members ensured their work remained accountable to the relevant boss texts, the *Nature Conservation Act 1980* and the *ACAT Act 2008*, and to the subsidiary documents to make their decisions, which they explained in their *Reasons for Decision* documents.

Dorothy Smith (1990d: 211, 216) acknowledged IE's ethnomethodological roots, and the work of Garfinkel (1967) more specifically, when positioning reasoning, knowledge, facticity, judgement, evaluation, decision making and similar acts as social practices, with 'facts' arising through text-mediated processes. She focused not on actualities, but on how 'facticity' was established (Smith, 1978). She used 'actual' and 'actuality' as 'always pointing to the outside-the-text … to the world to be explored by the ethnographer' (Smith, 2005b: 223) and defined 'facticity' as 'the property of being factual' (D. E. Smith, 1990d: 10). Similarly, my

research does not focus on whether the knowledge claims made by the parties involved were valid. Instead, I concentrate on how facticity was developed through the texts they mobilised on topics surrounding the cause of ecological damage, the validation of witnesses, the identification of the knowledge upon which the ACAT panel's decisions would be based, and the decisions as to the ideal course of action following the close of what would be the final hearing.

3.2.2 Multiple-institution IE, PAE and institutional ethnographies of law

In this section, I will discuss how this thesis adds to institutional ethnographies that span multiple institutions. Although not commencing as such, I will acknowledge the resonances between my research and Political Activist Ethnography (PAE). Although I have primarily focused on the ACAT, I will also explain why I have not approached this project as an institutional ethnography of law.

Hastings and Mykhalovskiy (2023) have encouraged institutional ethnographers to move beyond the tendency to focus on single institutions. In this thesis, I examine how processes and practices across various arms of the ACT Government contributed to strengthening ruling relations and maintaining the government's preferred approach to kangaroo management. In the following four chapters, I will highlight the involvement of sections of the ACT Government involved in environmental management (including the Territory and Municipal Services Directorate, Conservation Research, and the Office of the Commissioner for Sustainability and Environment), law (including the Department of Justice and Community Services, particularly the ACAT) and the Legislative Assembly. While it is beyond the scope of this thesis, ACT Policing, the Magistrates Court and the Supreme Court have also been involved in the disciplining of dissent.

Although my research did not commence as a Political Activist Ethnography, it has strong resonances with it. PAE is a form of social scientific enquiry that was developed by and out of the work of institutional ethnographer George W. Smith (1990: 629), who used 'political confrontation as an ethnographic resource'. PAE research commences from the standpoint of

social movements, the oppressed and people making change (Doll et al., 2024: 8; Frampton et al., 2006b: 10). Frampton et al. (2006a: 41) emphasised the importance of this area of scholarship in stating that the 'world cannot be known from some objective standpoint outside and above social struggles but only from within the social and by learning from people about how their lives and relations of struggles are put together'. While both IE and PAE generate knowledge *for*, not *about*, people, the latter maps the social relations (both the ruling relations and those of the activists) to produce knowledge that may improve the effectiveness of activists' efforts (Doll et al., 2024: 4; Frampton et al., 2006b: 9). By understanding the minute details of how oppression happens, activists can know where to focus their efforts to mitigate such oppression. PAE is also attentive to the ruling relations associated with the work of activists and social movements (Doll et al., 2024: 10; Hussey, 2012). I touch upon this in section 3.5, where I note the disintegration of the relationships between the Aboriginal and non-Aboriginal activists early in the conflict (see Coe, 2008a; Coe, 2008b), and the minimal inclusion of one female expert witness out of the eight witnesses presented by the community groups across the three ACAT hearings.

I mentioned in section 1.4.4 that my focus is on the sociocultural aspects of environmental conflict, and that I do not ground my research in institutional ethnographies of law or related areas of scholarship, such as socio-legal studies, critical studies of law or critical studies of bureaucracy. Institutional ethnographer and socio-legal studies scholar Doll (2017: 22, 71-80, 236, 262) has identified many areas of each field of inquiry that may strengthen the other. In section 3.5.3, I will discuss why I have not positioned my work in any of these areas.

3.2.3 IE, New Public Management and kangaroo management in the ACT

In this section, I will discuss how matters of public administration have been studied, focusing on 'New Public Management' (NPM). Many institutional ethnographers have been attentive to the influences of NPM on public administration, including the contributors to a volume edited by Griffith and Smith (2014c) entitled 'Under New Public Management: Institutional Ethnographies of Changing Front-Line Work'. In section 3.2.3.1, I outline how institutional

ethnographers have examined NPM before exploring how the ideals of NPM have been applied to wildlife management in section 3.2.3.2. I will sharpen my focus in section 3.2.3.3 by explaining how the ACT Government has applied the ideals of NPM, particularly with reference to kangaroo management.

3.2.3.1 IE and New Public Management

Post-World War II economic theories, in part, formed the intellectual roots of NPM (Hood, 1991: 5). NPM is a key aspect of neoliberalism that aims to restructure the public sector to resemble the private sector. This necessitates new accountability routines, which, in turn, require the development and application of an array of textual technologies (Griffith & Smith, 2014b: 6). From the 1980s onwards, NPM emerged as the predominant governance paradigm embraced by the public sector in Western countries (Griffith & Smith, 2014b: 5, 6; Hood, 1995). While 'NPM' is a broad catch-all term for a family of approaches, Hood (1995: 95-97) identified seven elements of NPM for which the different perspectives shared a degree of overlap, including:

1. Unbundling of the PS [public service] into corporatized units organised by product,
2. More contract-based competitive provision, with internal markets and term contracts,
3. Stress on private-sector styles of management practice,
4. More stress on discipline and frugality in resource use,
5. More emphasis on visible hands-on top management,
6. Explicit formal measurable standards and measures of performance and success,
7. Greater emphasis on output controls.

Dorothy Smith (1989: 47) positioned the 'main business' of ruling as 'facilitat[ing] the self-expanding dynamic of capital.' It is unsurprising that many institutional ethnographers have, therefore, applied a critical gaze to the imposition of NPM ideals in public management, with the resultant effects being 'fail[ing] people and moreover, obscure[ing] that failure' (see, for

example, McCoy, 2008). I turn now to consider how this 'self-expanding dynamic of capital' has been applied in wildlife management.

3.2.3.2 The marketisation of wildlife management: The IUCN, the academy and the ACT

The International Union for Conservation of Nature and Natural Resources (IUCNN), later shortened to the International Union for Conservation and Nature (IUCN), was formed in 1948 and aimed to 'encourage international cooperation and provide scientific knowledge and tools to guide conservation' (IUCN, n.d.). By 1980, the IUCNN adopted a more economistic lens, translating NPM into the wildlife management arena through its promotion of the 'sustainable use' of wildlife (International Union for Conservation of Nature and Natural Resources et al., 1980). In the 1980s, the IUCN teamed with the United Nations Environment Programme and the World Wildlife Fund to promote 'sustainable development' and 'so shaped the global agenda' (International Union for Conservation and Nature, n.d.). They later defined the term as 'improving the quality of human life within the carrying capacity of supporting ecosystems' (International Union for Conservation and Nature et al., 1991: 10). This energised debates within the academy and beyond on the issue of the commercial culling of kangaroos, with key academics past and present publicly lobbying on both sides (see, for example, Cairns, 2005; Croft, 2000; Tyndale-Biscoe, 1999; Wilson, 1988, 2018b), as I shall explain later in this section.

The Australian Committee for International Union for Conservation of Nature was founded in 1979 with the purpose of 'contribut[ing] to the conservation and restoration of the natural environment in Australia and the appreciation of its diverse values' (Department of Climate Change, Energy, the Environment and Water, 2021a). Their contemporary role is staunchly economistic, with publications such as 'Valuing Nature: Protected Areas and Ecosystem Services' and 'Maintaining Australia's Natural Wealth: Priorities for Terrestrial Conservation', which includes sections exploring 'Valuing nature's green infrastructure in Australia' and 'Australia's outstanding environment - the urgency, challenges and obligation to conserve our natural capital' (see Figgis et al., 2015; Sinclair, 2015; Zischka et al., 2017). The IUCN and the Australian Committee for IUCN have been positioned as being 'apolitical,

championing good policy through good science and knowledge' (see Department of Climate Change, Energy, the Environment and Water, 2021a).

At around the same time as the IUCN was developing its policies on the sustainable use of wildlife, the science upon which the commercial kangaroo culling industry would be based was being developed through different organisations, including the Commonwealth Scientific and Industrial Research Organisation (CSIRO). Within agronomy, a model was developed for the animal-industrial complex to maximise pasture production, which, in turn, would maximise the number of animals raised for slaughter from a given area of land. As I discussed in section 2.3.3.1, conservation biologist Caughley (1976, 1987a) overlaid this approach onto the management of native herbivores in parks and nature reserves. In the case of kangaroo management, this lens has also resonated well with commercial interests, such as urban developers, and marketable research into kangaroo management techniques, including fertility control drugs, as I will discuss in section 6.4.

Australian ecologists and zoologists have had a long history of lobbying in support of the 'sustainable wise use of wildlife', and macropod management more specifically (see, for example, Baxter et al., 2018; Grigg et al., 1995). Caughley's colleague, Dr Gordon Grigg, positioned replacing sheep with kangaroos as necessary for environmental protection (Caughley & Grigg, 1981; Grigg, 1988, 1989). However, efforts to allow the market to solve the environmental degradation caused by sheep grazing failed spectacularly (see Grigg, 2002, 2017). Instead of shifting the consumption of sheep to less expensive and more ecologically sensitive kangaroos, Australia became the world leader in exporting goat meat, whose sheer numbers, grazing habits and the tracks they make have greatly exacerbated environmental destruction (see Grigg, 1984; Grigg, 2002; 2017: 150-151). Despite this, Grigg and his colleagues continue to promote what he refers to as his 'sheep replacement therapy' (see Lunney et al., 2018; Wilson, 2021).

Caughley, upon whose work Fletcher's thesis and, by extension, the ACT Kangaroo Management Plan were based, lobbied ardently in support of exporting kangaroo products (see Tyndale-Biscoe, 1999: 372). Similarly, Professor George Wilson, an expert witness presented

by the ACT Government in the 2014 ACAT hearing, had long conducted contract work associated with kangaroo management for the ACT Government. He has intensely lobbied the federal and Territory governments in an attempt to ensure market mechanisms are relied upon to guide wildlife management (see, for example, Wilson, 2014a; Wilson, 2015, 2016, 2018a; Wilson et al., 2016, 2018; Wilson & Mitchell, 2005).

As I noted in section 2.2.2, the area now known as the ACT has, since the European invasion of the area, been regarded in an extractive way through the clearing of land to support sheep and cows (see Caughley, 1987b: 4; Fitzgerald, 1987: 5-6; Shumack & Shumack, 1977). Killing kangaroos in the ACT was initially presented as aiming to mitigate the economic damage rural lessees perceived kangaroo grazing had on their properties (ACT Government Parks and Conservation Service, 1994). There is a direct link from this historical extractive lens to the contemporary 'conservation culling' of kangaroos and the commercialised culls under the guise of 'carcass utilisation' in the ACT Government's '*Nature Conservation (Eastern Grey Kangaroo) Controlled Native Species Management Plan 2017*' (hereafter referred to as the *Controlled Native Species Management Plan*) (see ACT Government Environment Planning and Sustainable Development Directorate, 2017). Section 6.3 of the *Controlled Native Species Management Plan* succeeded in bypassing longstanding public opposition to the introduction of commercial kangaroo culling in the ACT by creating a novel term, 'carcass utilisation', which masked how the bodies of killed kangaroos were used (see ACT Government Environment Planning and Sustainable Development Directorate, 2017: 55-57). Information about the carcasses that have been 'utilised' is not available through the *Freedom of Information Act 2016*, as it has been deemed 'contrary to the public interest' by Bren Burkevics (2023: 2), the ACT Government Executive Group Manager of Environment, Heritage and Water, as I shall expand upon in section 7.6.3.

From 2010 onwards, the need to kill kangaroos was framed as an ecological imperative. While the term 'conservation culling' was not used in the ACT KMP (see Frawley, 2010) or earlier documents, it proliferated in ACT Government documents related to kangaroo management thereafter. Büscher et al. (2012: 7) assert that such ecological crises, or perceived

crises, are ‘opportunities for capitalist expansion’. This, indeed, appears to be the case in the ACT, where the purported threats of kangaroo grazing to threatened species and ecological communities energised the creation of new environmental legislation and a management plan, the latter of which enabled ‘carcass utilisation’.

3.2.3.3 New Public Management and the ACT Government

In 2011, NPM was the management model embraced by the ACT Government, which focused its efforts on ‘economic’, ‘efficient’ and ‘effective’ service delivery (ACT Government Chief Minister and Cabinet Directorate, 2012: 4; ACT Government Territory and Municipal Services Directorate, 2011: 272). In 2012, the ACT Chief Minister and Cabinet Directorate (2012: 4-6) highlighted shortcomings of NPM, which included positioning public servants as ‘the arbiter of the public good’ and the public as consumers rather than as citizens. While the ACT Government would continue to draw on the tools of NPM, it turned its attention to ‘Public Value Management’ (see ACT Government Chief Minister and Cabinet Directorate, 2012: 10). This term, first coined by Moore (1995), argues that government interventions should meet public demands for both positive social and economic outcomes. Critical to the creation of public value is consideration of public service, interest and reason (Quirk, 2011). To focus the attention of government staff on ‘solving the problems that the public care most about,’ the Directorate of the Chief Minister and Cabinet issued the goal that ‘all that we do should be aimed at enhancing the quality of life for our citizens and future generations’ (ACT Government Chief Minister and Cabinet Directorate, 2012: 9). It went on to highlight the differences between NPM and Public Value Management (ACT Government Chief Minister and Cabinet Directorate, 2012: 8):

New public management	Public value management
• Informed by private sector management techniques • Services delivered more flexibly with more managerial autonomy and tailored to the requirements of consumers • Enabling ('steering') • Certain services to be delivered through collaborative partnerships with public, private and voluntary sectors • Service delivery audited to measure economy, efficiency and effectiveness	• The overarching goal is achieving public value that in turn involves greater effectiveness in tackling the problems that the public most care about: stretches from service delivery to system maintenance • Public managers play an active role in steering networks of deliberation and delivery • Individual and public preferences are produced through a process of deliberative reflection over inputs and opportunity costs • No one sector has a monopoly on public service ethos; shared values are seen as essential • Emphasis on the role of politics in allocating public goods

While being receptive to Public Value Management, the ACT Government indicated adopting a blend of the two paradigms would meet 'the need for community ownership of governance problems and solutions to provide the conditions for accountability, legitimacy and sustainable futures as well as the NPM appeal for 'value for money'' (ACT Government Chief Minister and Cabinet Directorate, 2012: 10). In the Australian context, Goldfinch and Halligan (2024: 2542) note that while such changes dilute NPM systems, they are resistant to the incorporation of new techniques and approaches.

Institutional ethnographers Corman and Melon (2014: 171) have stated that forms of governance informed by NPM and neoliberalism present 'many hidden dangers' in the way

work and knowledge are socially organised, valorising specific information considered relevant and silencing other understandings. When overlaid onto environmental management, NPM ideals are apparent in key documents in the need to kill kangaroos as 'efficiently' and 'cost-effectively' as possible (see Frawley, 2010: 79, 98; Royal Society for the Prevention of Cruelty to Animals Australia, 2002: 4-5). This was extended to other related species such as sheep and cows, who were constructed as being superior environmental labourers to kangaroos in reducing the fire risk of vegetation due to the difficulty in controlling the latter's movements (Fletcher, 9/7/2013, 1: 1:06:36-1:09:17; Frawley, 2010: 35, 50, 104, 108).

In the first two chapters of this thesis, I mentioned the ACT Government's 'preferred approach to kangaroo management'. Throughout this thesis, I argue that this approach is grounded in the values of NPM, specifically in 'cost-effectiveness' and 'efficiencies'. This focus requires a style of kangaroo management guided by market mechanisms, which extend beyond facilitating the introduction of commercial kangaroo culling in the ACT through 'carcass utilisation' provisions I discussed in the previous section. It also delivers kangaroo management methods that appease the 'beliefs' held by rural lessees of the economic damage they suffer due to kangaroo grazing (see ACT Government Parks and Conservation Service, 1994; Frawley, 2010) and meets the needs of other commercial interests, particularly urban developers whose profits are shared with the ACT Government, as I shall discuss in section 4.2.

The language in later government documents indicates the influence of Public Value Management. For example, a journal article coauthored by ACT Government senior ecologist Donald Fletcher and his colleagues noted 'the need for government agencies to work in collaboration with stakeholders across civil society to ensure a social licence to operate' (Gordon et al., 2021: 128). In this context, a 'social license' refers to the perceptions of key stakeholders that the ACT Government's approach to kangaroo management operates in a socially acceptable or legitimate manner (see Raufflet et al., 2013). Despite this, the discourse surrounding kangaroo management has remained replete with terms characteristic of NPM. Of the seven elements of NPM identified by Hood (1995: 95-97), two are particularly relevant to understanding how knowledge informing kangaroo management in the ACT has been created:

the application of private sector management practices to the public sector, and discipline and parsimony in the use of resources.

Private sector management terms have been applied to the nature reserves, which are evaluated based on their efficiency and productivity. The model upon which Fletcher's thesis and, by extension, kangaroo management in the ACT has been based was drawn from agronomy, as I mentioned above. Dissenting scientists and citizens have adopted similar language, which now pervades conservation biology in highlighting that kangaroos provide key 'ecosystem services' (see Mjadwesch, 9/7/2013, 3: 10:17-11:29; Taylor et al., 2013: 129). The ACT Government Environment and Sustainable Development Directorate (2013: 33) defines 'ecosystem services' as the services that are essential to 'human survival and wellbeing' that are provided by the functioning of natural ecosystems.

ACT Government documents associated with kangaroo management have been strongly associated with commercial interests. For example, the initial report on kangaroo management was responsive to the perceptions of rural lessees and did not incorporate any scientific evidence (see ACT PCS, 1994). Before and soon after the introduction of the 'carcass utilisation' provision in the *Controlled Native Species Management Plan,* the ACT Government, industry representatives and academics maintained pressure to instigate commercial culling in the ACT (see ACT Government Parks and Conservation Service, 1994; Borda, 2015; Frawley, 2010: x, 6, 12, 54, 138-139; Robin, 2015; Wilson, 2018b, 2019). As I shall discuss in section 4.2, key environmental management plans were coauthored by the Housing Industry of Australia. In section 6.4, I will detail how the ACT Kangaroo Advisory Committee flagged the need for basic research into herbivore grazing, but funding was instead directed to marketable research, such as the ongoing trials to produce kangaroo fertility control drugs (see ACT Government Environment, Planning and Sustainable Development Directorate, 2024; ACT Kangaroo Advisory Committee, 1996b: 3; 1997: 2; Frawley, 2009: 96-97; Vassarotti, 2022).

In this section, I have situated my research as an institutional ethnography, noted its resonances with PAE and multiple-institution IE, and flagged the influence of NPM on kangaroo management. I will now explain the details of how I applied IE to this project.

3.3 My research as an institutional ethnography

I did not commence this research as an institutional ethnography, but was drawn to IE through the research process and from the data as it arose. I begin my discussion in subsection 3.3.1 by explaining how I conducted my research before going on to highlight how I relied heavily on 'naturally occurring data' in subsection 3.3.2. In subsection 3.3.3, I contextualise how I apply the lens of 'bibliopolitics' to better understand the work done through the construction of government documents. Before doing so, however, I will mention the tensions within IE regarding 'orthodoxy'.

As a field of inquiry develops, the work done within and produced by that field will naturally specialise and diversify (Areekkuzhiyil, 2017). Boundaries surrounding how knowledge is produced within a field are established, maintained, challenged and reconfigured (Klein, 1996). Thus, differences within a field of study may mark its growth and development. With the passing of roughly 50 years since Smith sowed the seeds that would lead to her development of IE, such differences are apparent. In this section, I will discuss two areas of divergence associated with methodological 'orthodoxy' in IE and 'appropriate' research methods.

Mykhalovskiy et al. (2021: 56) noted the 'tensions between the foundational dimensions of IE and IE's openness to change'. Smith (1992: 89; 1993a: 184, 188) addressed this by noting how others had constructed a 'straw Smith' that misrepresented her work. She urged against the development of a group of 'insider' institutional ethnographers who 'insist on a kind of orthodoxy in its practice' and impose 'methodological dogma' (Smith, 2006b: 1-2). In contrast, Rankin (2017b: 1) remains attentive to those who 'risk… straying from IE's core epistemology and ontology' and works to keep IE 'on track with its theoretical underpinnings'. Mykhalovskiy et al. reject such concerns, positioning them as:

> relations of thought, research, and writing that rigidly police intellectual boundaries and promote fidelity to a canonical formulation of a given approach to social inquiry. Such relations can produce IE as a sociology that is insular and self-sufficient, with little interest in other approaches to social research, and that can only be done in one way. (Mykhalovskiy et al., 2021: 53-54)

Grace (2019: 121, 123) similarly cautioned against 'too narrow a commitment to any single approach' in IE, which 'dangerously limits us as thinkers and researchers'. Stanley (2018: 115, 124) positioned the boundary setting and defending within IE as having arisen by an 'inner circle' of 'second generation' scholars who were supervised by or worked with Smith. Cross-referencing each other's work and positioning Smith in a 'more distant totemic way as the founding figure' replicates the canonical aspects of mainstream sociology that Dorothy Smith challenged through IE (see Stanley, 2018: 115). Stanley (2018: 115) saw this as being the case with a special issue of the *Journal of Sociology and Social Welfare* on 'New scholarship in institutional ethnography' edited by Luken and Vaughan (2015).

Another area of tension within IE concerns appropriate research methods. IE investigations frequently commence with observations and interviews, although much IE research does not include the former (see Rankin, 2017a). DeVault and McCoy (2001: 756; 2006: 22) positioned interviewing as being 'present in some form in just about all institutional ethnographic studies'. In the following subsection, I will discuss how I have approached my research as an institutional ethnography.

3.3.1 My research process

As I mentioned in section 1.2.1, I initially wondered whether human conflicts over kangaroo management in the ACT resulted from poor communication by government spokespeople and a lack of understanding of the 'facts' by the dissenters. Through previous research, I observed the 2014 ACAT hearing, conducted participant observations and semi-structured interviews over an

18-month period, and undertook 12 months of field observations in one key nature reserve in the ACT. During that project, I observed the ACAT panel members handling the witnesses and evidence in starkly different ways, to the advantage of the ACT Government. I was also present when President Stefaniak advised the government representatives in attendance on ways of minimising the ACT Government's obligation to respond to opposition to its preferred approach to kangaroo management through licencing and legislative changes. Having lived in the ACT from 2013 to 2017, I saw the introduction of such licencing changes, the enactment of the wholly revised *Nature Conservation Act 2014*, and the publication of the *Controlled Native Species Management Plan 2017.* I was also present when the third survey of community attitudes towards kangaroos and their management in the ACT was published (see Micromex Research, 2015).

I became aware of the work done through these and other related documents and began examining them in greater detail. I traced the changes made in each republication of the *Nature Conservation Act 1980* and the changes introduced when it was replaced by the *Nature Conservation Act 2014.* I investigated in detail how the community surveys were conducted and reported (see Micromex Research, 2008, 2012, 2015). I listened to the recordings of the 2009, 2013, and 2014 tribunal hearings in their entirety many times over and transcribed much of their content. I also reviewed the documents cited by the participants in the hearings, as well as all the key ACT Government documents and the key references they cited.

While the work conducted through these documents was fascinating, I kept returning to the perplexing events I observed in the 2014 ACAT hearing. As it would be impossible to study all the aforementioned documents in detail within one doctoral dissertation, I limited my focus to the three tribunal hearings. I shifted my attention to exploring how the institutional practices of an administrative tribunal permeated and organised the lived experiences of the lay and academic dissenters who attempted to contribute their knowledge to the ongoing discussions about kangaroo management in the ACT. After gaining a better understanding of individuals' experiences and interactions within the social order they were part of, I looked towards the macro level to better comprehend the influences that guided individual experiences and

practices.

IE presented an ideal method of inquiry through which to examine the conflict as it unfolded during and beyond the ACAT hearings. As I had previously observed, the bolstering of ruling relations was starkly apparent in how the hearings were conducted. However, there was a sharp disconnect between the documents that guided the proceedings, how they were employed, the evidence presented, and the documents that flowed from the hearings, such as the *Reasons for Decision* document and media interviews with government representatives. The lens of IE enabled me to shift from the longstanding fieldwork I had engaged in through previous research and trace how the work of the dissenters was mobilised to disempower their projects and embolden those of the ACT Government.

Given the enormous amount of data generated by the official recordings of the hearings and the documents they discussed therein, I had to further limit my focus to the areas that stood out as 'disjunctures', which I discussed in section 1.1.1. This was most evident to me in the ways that the ACAT panel members determined the causes of ecological damage at the sites in question, how they qualified expert witnesses, the processes they used to determine which evidence they would rely upon to make their decisions, and the advice they gave the ACT Government representatives as to how to mitigate the ongoing conflicts over kangaroo management. I continued to pore over the official recordings and associated documents to gain a deeper understanding of how the ACAT panel members arrived at the above determinations.

3.3.2 Ethnomethodology, conversation analysis and naturally occurring data

As I mentioned in section 3.1, Dorothy Smith was influenced by Garfinkel's (1967) ethnomethodology. In this thesis, I move a little closer to IE's ethnomethodological roots by drawing in part upon what Sacks (1984: 21) described as 'actual, naturally occurring social events' and Garfinkel (1964: 225) referred to as 'natural facts of life', which he saw as being the 'massive facts of the [society] members' daily existence both as a real world and as the product of activities in a real world'. Potter (2002: 541) attempted to overcome the difficulties of

defining ‘natural’ or ‘naturalistic’ data by focusing on researcher agency through what he termed ‘a (conceptual) dead social scientist’s test’. This determined whether the data generated would have arisen in the absence of the researcher.

Ethnomethodologists and conversation analysts collect naturally occurring data through audio or video recordings to illuminate the socially organised aspects of talk in context (Heritage & Atkinson, 1985: 2, 4, 5). They capture great detail, create records of interactions that can be subjected to repeated and detailed examination and are, ideally, accessible to others, including the public, for re-analysis (Heritage & Atkinson, 1985: 3-4). Heritage and Atkinson (1985: 2-3) assert that such data provides a wider ‘range, scope and variety of behavioral interaction’, the findings of which can be extrapolated to ‘real situations of conduct’.

In some circles, data acquired through interviews is considered ‘contrived’ data. The benefits and disadvantages of ‘contrived’ data compared to ‘natural’ or ‘naturalistic’ data have been debated in many fields beyond IE, including ethnomethodology, discourse analysis and conversation analysis (as with Potter, 1997; Potter, 2002; Speer, 2002; ten Have, 2002). Potter and Hepburn identified problems with relying on interview data, which include:

> (1) the deletion of the interviewer; (2) the conventions for representing interaction; (3) the specificity of analytic observations; (4) the unavailability of the interview set-up; (5) the failure to consider interviews as interaction. Necessary problems include: (1) the flooding of the interview with social science agendas and categories; (2) the complex and varying footing positions of interviewer and interviewee; (3) the orientations to stake and [sic] interest on the part of the interviewer and interviewee; (4) the reproduction of cognitivism. (Potter & Hepburn, 2005: 281)

While interviewing is often considered the central data collection method in IE (see DeVault & McCoy, 2001: 756; DeVault & McCoy, 2006: 22), this is also the case in qualitative research more broadly (De Fina & Perrino, 2011: 1). I noted in section 3.3.1 that my current

research was preceded by a project which involved ethnographic observations and interviews which occurred over a period of 18 months. While I do not draw on those data in this thesis, that 'naturally occurring data' was foundational to my current project. In this thesis, a substantial part of my analysis draws upon recorded conversations throughout the ACAT hearings. The conversations captured in the official recordings and transcripts unfolded 'naturally' and were not directed towards or related to my research. To a much lesser extent, I captured other forms of naturally occurring data arising from recordings and transcriptions of discussions during academic conferences (particularly Fletcher, 2010). Such data is 'natural' in that the speakers conducted their everyday work and voiced their thoughts in conversations that were not oriented toward my research, as would be the case had I conducted interviews with them. As will become apparent in Chapters 4 to 7, this yielded very rich data that illuminates the inner workings of how the ACT Government addressed human conflicts over kangaroo management.

3.3.3 Bibliopolitics and the construction of government documents

In defining 'bibliopolitics' as an 'interpersonal system of political communication', historian Montcher (2017: 206, 207) foregrounded the importance of understanding how learned communication assisted the development and continuation of political communication. Montcher (2023) studied how 'mercenaries of knowledge' continued and developed political communication during war in the seventeenth century through practices such as exchanging books and pillaging libraries, archives and other collections.

In this thesis, I primarily focus on bibliopolitical citational practices that enabled ACT Government staff to construct reports in a manner that advanced the ACT Government's preferred approach to kangaroo management. This was achieved by incorrectly referencing primary sources, creating complex citational chains that obfuscated or misrepresented the original sources, and altering claims made in texts without providing substantiating references. This spanned government staff working in different arms of the ACT Government, including ACT Commissioner for Sustainability and the Environment Dr Maxine Cooper's (2009b)

construction of her grassland report (Chapter 4); Stefaniak et al. (2009), who constituted the 2009 ACAT panel, in deciding the cause of the ecological degradation apparent at the Majura Training Area (MTA) (Chapter 4); Dr Kevin Frawley (2009, 2010) who was credited as writing the draft and final versions of the ACT KMP for the Territory and Municipal Services Directorate (Chapter 6); and Dr Donald Fletcher, senior ecologist from the ACT Government's Conservation Research section, and Dr Douglas Jarvis, the ACT Government's barrister, in delivering their evidence in the ACAT hearings (Chapter 6).

3.4 The data

Textual analysis is central to my thesis. In this section, I will discuss the main and subsidiary documents I will draw upon in my analysis in Chapters 4 to 7 (subsection 3.4.1), the challenges I faced accessing them (subsection 3.4.2), and how the official transcripts were produced and may be accessed (subsection 3.4.3). In subsection 3.4.4, I highlight the problems and politics of transcription practices. I will explain why I conducted my own transcribing and the approach I adopted to do so.

3.4.1 The key documents

I have mapped the key documents related to kangaroo management and administrative reviews to illustrate their chronological appearance and intertextual hierarchies. Before discussing this, however, I must contextualise the mapping process in IE. Texts reveal how authority is produced through social structures and institutions and are, therefore, central to shaping individual experiences and actions (Smith, 2001: 175). The writing that is conducted after the data have been collected is an important analytical stage of IE research (Campbell & Gregor, 2004: 93). Interpretation and analysis occur in the process of writing, which maps the way particular social processes connect local experiences to extra-local contexts (Campbell & Gregor, 2004: 90). Mapping demonstrates how ruling relations function through institutions (Smith, 2005b: 225). Smith originally mobilised the term metaphorically, noting that a map:

> … directs us to a form of knowledge of the social that shows relations between various and differentiated sites of experience without subsuming or displacing them. Such a sociology develops from inquiry and not from theorizing; it aims at discoveries enabling us to locate ourselves in the complex relations with others arising from and determining our lives; its capacity to tell the truth is never contained in the text but arises in the map-reader's dialogic of finding and recognizing in the world what the text, itself a product of such inquiry, tells her she might look for. (Smith, 1999: 130)

Institutional ethnographer Susan Turner (1995, 2006, 2014) developed a mapping method that joined visual depictions of the texts and work conducted by institutions and through institutional action, with detailed discussions about how such actions and knowledge sequentially occur. Doll and Walby (2019: 155) highlighted that constructing maps can identify the 'processing interchanges', which Pence (2001: 204) has identified as situations in which a person acts upon a document before forwarding it to one or more others for the next 'organizational occasion for action'. Pence (2001: 204) claimed that the 'ideological work' of institutions is predominantly achieved through the construction of such interchanges and through highly specialised task allocation. Such tasks become naturalised as:

> Workers' tasks are shaped by certain prevailing features of the system, features so common to workers that they begin to see them as natural, as the way things are done and – in some odd way – as the only way they could be done, rather than as planned procedures and rules developed by individuals ensuring certain ideological ways of interpreting and acting on a case. (Pence, 2001: 204)

Doll and Walby (2019: 155) suggest that identifying processing interchanges may be used to challenge practices of criminalisation. For example, Nichols and Braimoh (2018) demonstrated how the conjoining of social housing with neighbourhood policing in Toronto, Canada, had

criminalising impacts on Young People of Colour. In section 7.5.3, I will discuss how sweeping changes to the ACT *Nature Conservation Act 1980* criminalised dissent.

Mapping can identify broader processes of marginalisation and exclusion. For example, George Smith's (1988: 172) study of gay bathhouses revealed how police used the *Criminal Code* to identify men engaging in 'indecent acts'. Walby (2005: 209) examined how closed-circuit television was used by surveillance staff to identify 'flawed customers' in a shopping mall. Through research into the continuous quality improvement of wound care nursing, Waters (2015: 145-147) noted how mapping can illuminate how the actualities of people's lives are sidelined or rendered invisible.

In Figure 1, I mapped the key documents associated with the management of kangaroos and human conflicts over kangaroo management in the ACT from the initial report (see ACT Government Parks and Conservation Service, 1994) to the *Nature Conservation (Eastern Grey Kangaroo) Controlled Native Species Management Plan 2017*. In section 1.2.3, I noted that the ACT Government made commitments to base kangaroo management on the 'best available scientific knowledge' and to 'open government', and to public participation more specifically (ACT Government, 2016; Frawley, 2009: 92; 2010: 75; Gallagher, 2011). 'Best science' exemplifies what Smith (2005b: 56, 58-59) referred to as a 'blobontology', a term she used to convey that a concept with indeterminate referents must be filled with meaning. By engaging with the actualities of the social relations associated with kangaroo management in the ACT, I trace how concepts such as 'best science', 'open government', and 'participation' have been given meaning by the ACT Government to organise social relations. Figure 3 maps the sequence of documents through which the development of the ACT Government's discourse of 'best science' and 'open government' may be traced in the ACAT hearings and beyond. While both discourses are evident in all government documents related to the issue under study, I predominantly follow 'best science' through the documents depicted in green in Figure 3 and 'open government' through those shaded blue. Due to their complexities, I will expand upon the processes that enacted the ACT Government's commitment to 'open government' in Chapter 7.

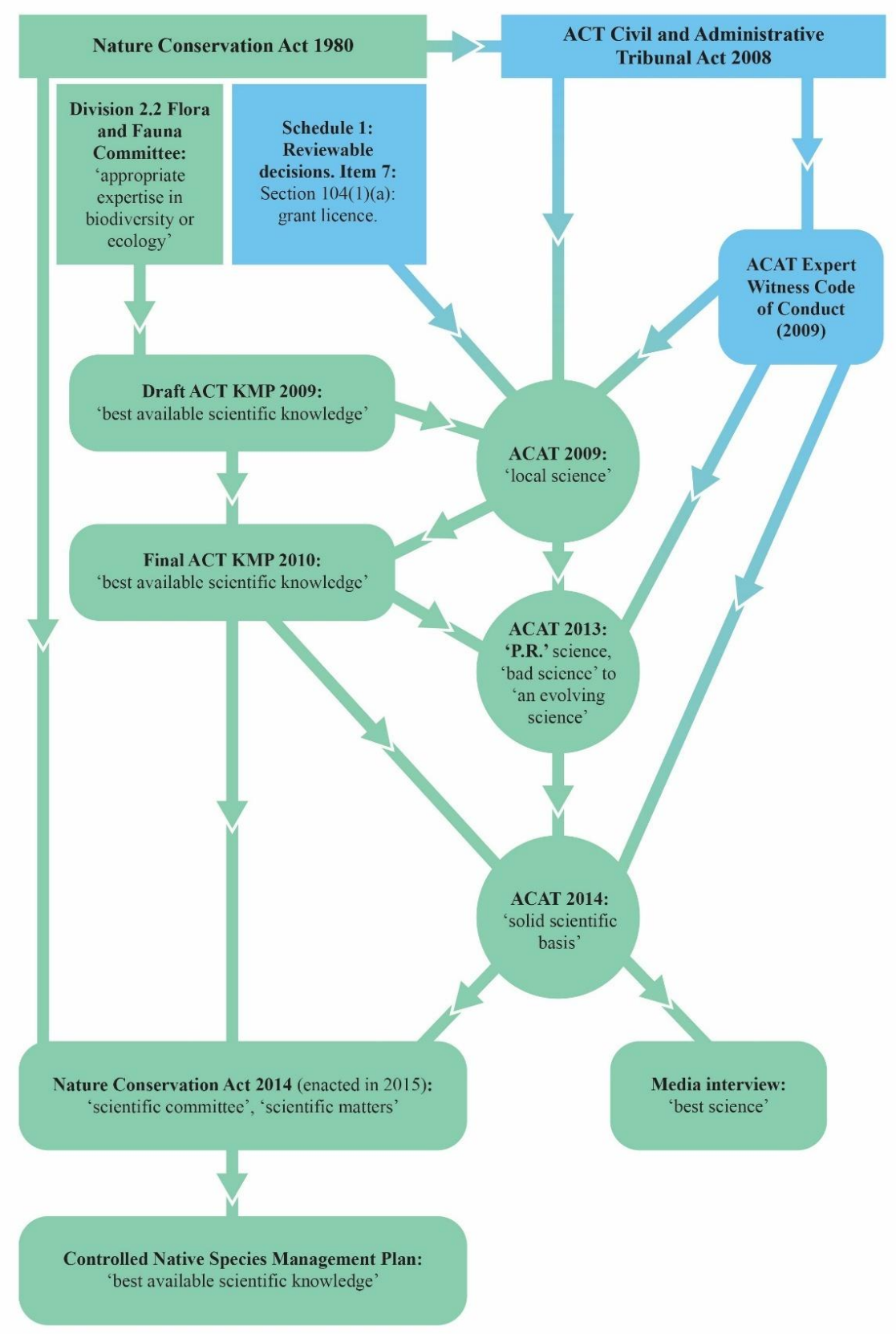


Figure 3: The development of 'best science' and 'open government' through the ACAT

'Best science' is depicted in green and 'open government' is represented in blue.

The *Nature Conservation Act 1980* and the *ACAT Act 2008* are both boss texts as they direct different processes associated with kangaroos and human conflicts over kangaroo management. The *Nature Conservation Act 1980* directly referenced the *ACAT Act 2008* and detailed the administrative decisions that the tribunal could review. As such, they are positioned at the top of the textual hierarchy in Figure 3.

Subsidiary documents are texts that come into being through and are organised by the texts higher up the textual hierarchy (unpublished work by Smith (2010) as cited by Bisaillon, 2012: 610). The *ACT Civil and Administrative Tribunal (Expert Witness Code of Conduct) Procedural Directions 2009* (hereafter referred to as the '*Code of Conduct*') and the *Reasons for Decision* documents are subsidiary documents that fall under the *ACAT Act 2008*. People presented at hearings as expert witnesses were required to adhere to a *Code of Conduct* provided to them. After the 2009 hearing closed, three ACAT presidents, Linda Crebbin, Bill Stefaniak and Peta Spender (2009), formalised and published the *Code of Conduct* as a procedural direction. Witnesses appearing at all hearings were required to swear or affirm that they had received the document and had prepared their statement in accordance with its provisions.

The official transcriptions and recordings of the proceedings are subsidiary documents to the *ACAT Act 2008* to the extent that, according to sections 59(1)(c) and 61(b), the Act requires specific information pertaining to each hearing to be recorded according to 'tribunal practices'. In addition, section 40(3), prohibits protected information from being recorded or divulged. The official recordings and transcriptions comprise the primary data that arise from the ACAT hearings. Many other documents were drawn into discussions throughout the hearings, including public and private research documents, government plans and policies, websites, and articles in the popular media. Where pertinent, the references within scientific and government documents were investigated within the ACAT hearings, thus creating a complex and interconnected web of key documents that are central to my analysis.

Institutional ethnographers Liz Stanley and Sue Wise (1997: 216) proposed the ability of those other than the researchers to retrieve data to be a key methodological element that ensures accountability. In the section that follows, I discuss the accessibility of the data upon

which I rely, which, as highlighted by Murray (2022: 48), allows readers to examine the knowledge claims I make, to challenge and disagree with them, and to potentially arrive at alternative conclusions.

3.4.2 The challenge of accessing public documents

The ACT Government makes an enormous amount of information available on its website. However, I have encountered numerous challenges in accessing relevant documents and finding details about their creation. For example, the ACT Government website infrequently states when the information was posted or updated. Another challenge is that, for the most part, when information or documents are superseded, the earlier versions are no longer publicly available. One exception is the Draft ACT KMP, three hard copies of which are available in three libraries in the ACT. One additional copy is available in the ACT Legislative Assembly Library, which is inaccessible to the public. Another exception is the 'Report on Belconnen Naval Transmission Station (BNTS) Site as part of the Investigations into ACT Lowlands Grasslands' by Dr Maxine Cooper (2008), Commissioner for Sustainability and the Environment, which is available in four publicly accessible libraries in the ACT, New South Wales and Victoria. The public versions of some reports commissioned by the ACT Government are truncated versions of the original documents (as with Cogger et al., 2007; Peachey et al., 2007). In those instances, my analysis has been limited to the publicly available version of the reports.

Some documents are available in libraries in the ACT and NSW for on-site viewing only. This has been challenging as the documents are sizeable, and I needed to capture the information they contained accurately and in detail for analytical purposes. Another barrier to accessibility is that some government documents are only available at libraries that are not open to the public, such as the ACT Legislative Assembly Library and the Commonwealth Scientific and Industrial Research Organisation Black Mountain Library. In most cases, I eventually acquired a loan or a copy of the material through my university's library or through persistently contacting the relevant librarians directly. This process, however, would be more difficult for members of the public.

The consultants' ecological assessment reports for the Department of Defence's sites at the BNTS and the MTA were not publicly accessible. The relevant reports were emailed directly to ACT Government senior ecologist Dr Donald Fletcher, but were not made available to the applicant in the 2009 hearing. This has been an important omission given that the data contained therein formed the basis for the licences to kill kangaroos at the two highly contested sites. This has not limited my analysis, however, as I am more interested in how such reports were mobilised than in their contents. These challenges, however, pale in significance when compared to accessing the transcripts of the tribunal hearings.

3.4.3 The problematic nature of producing and acquiring transcripts

Transcripts have been important documents in the ACAT hearings, being drawn upon in subsequent hearings by legal counsel and guiding the tribunal's decisions. The official recordings that preceded them form a significant portion of the data upon which I rely. In this subsection, I will discuss the process of creating the official transcripts of the ACAT hearings, the methods for acquiring them, the limitations of relying on them, and how I addressed these limitations.

3.4.3.1 Producing and accessing the official transcriptions

Similar to other Australian states (see Cunliffe, 2013b: 28), the ACAT hearings are routinely recorded, but only transcribed if an application to do so has been approved and a fee paid (ACT Civil and Administrative Tribunal, n.d.-c). Over time, the ACAT developed a policy to consider applications for free audio recordings or transcripts if the associated fees would cause hardship (see ACT Civil and Administrative Tribunal, 2019, n.d.-b, n.d.-c). The task of recording and transcribing the proceedings of the ACAT has been tendered to private companies. In the 2009 and 2013 hearings, Merrill Corporation undertook these services, and Spark & Cannon conducted them in the 2014 hearing. In the 2009 and 2013 hearings, the staff from Merrill Corporation produced separate recordings for each stage of the hearing on each

individual day. As such, my citations of sections of the recordings from these years include the speaker, the date, the number of the recording on the day if the case took place, and the time span over which the quote was spoken, as with '(Donoghue, 3/6/2009, Recording 1, 1:13:33-1:13:53)'. In the 2014 hearing, Spark & Cannon captured each day in one recording. When citing the segments of the 2014 recordings I have transcribed, references appear without the recording number, as with '(Jarvis, 3/6/2014, 6:29:41-6:30:35)'.

In 2015, Spark & Cannon was acquired by Epiq, which currently holds the contract for these services in the ACT. Transcription staff transform the recordings into 'full verbatim' transcripts (Epiq Global, n.d.; Skyring, 2024), a claim I will challenge in the following section. While court reporting manuals may provide a better understanding of transcription and editing conventions and practices (see Cunliffe, 2013b: 27), contracted staff tasked with transcribing the ACAT hearings do so by 'adhering to multiple style and format conventions' (Skyring, 2024).

Public access to the transcripts of the public ACAT hearings is restricted by a requirement that the person requesting the document submit their reasons for wanting access to the transcription company, which then forwards the request to the ACT Courts. If approved, a fee must be paid. When I requested a quote for the transcriptions of the three hearings in 2014, the amount was over $15,000 AUD. Ten years later, the quote to transcribe the original recordings was almost double that amount ($28,085 AUD, as per Towns, 2024). Since personally recording the proceedings is prohibited and the hearings had long been completed, I purchased the official recordings of all three hearings (43 audio files in total) for $1,085 AUD. Due to the contract being successively awarded to different companies, the recordings and transcripts are no longer available (Towns, 2024).

Upon request, the ACT Government provided me with a copy of the 2009 *Reasons for Decision* documents at no charge. Through previous research, I attended all but the first day of the 2014 hearing, during which I made notes comprising over 73,500 words. When the hearing was not in progress, participants allowed me to read three sections of the official transcript comprising 280 pages from the 2013 hearing, which was discussed in the 2014 hearing (see

ACAT, 2013a, 2013b; 2013c). In the section that follows, I will discuss the problematic nature of the transcription process and how institutional ethnographers have approached it.

3.4.3.2 Transcription processes illuminate ruling relations

Much attention has been paid to what the transcriptions purport to represent. Scholars have described the process of transcribing as a form of 'translation' (ten Have, 1999: 94; Walker, 1986: 416) and as being 'interpretive' or 'representational' (Davidson & Moore, 2010: 2, 6). Many position the transcription process as being problematic, political and impacting the quality and trustworthiness of the data drawn upon (as with Ayaß, 2015: 524 ; Bird, 2005; Bucholtz, 2000; Lapadat, 2000; Sarat, 1999; Walker, 1985; 1986: 409, 416). For each specific transcription method, a prior decision is made that is interpretive (what to transcribe) and representational (how to transcribe) (Bucholtz, 2000: 1439), and such decisions are inherently embedded in ruling relations.

Focusing more specifically on the transcription process in legal settings, I draw upon the work of Anne Graffam Walker (1990) who was engaged as a court reporter for eight years before becoming a sociolinguist. Her research into court reporting demonstrated that word-for-word documentation in the form of a transcript of the events is not possible, despite being presumed in the legal statutes (see Walker, 1985). She noted some discrepancies that inevitably occur in providing a written account of what has been spoken, some of which arise from the cultural and professional milieu of the work setting (Walker, 1990: 203). She acknowledged 'obvious' discrepancies in transcripts, such as 'a misidentified speaker, a garbled stretch of speech, something missing, something added' (Walker, 1990: 203). In section 3.4.3.3, I will determine the degree to which such concerns occurred in the data upon which I draw.

Davidson and Moore's (2010) analysis of Australian doctoral theses reflected that the transcription process was minimally addressed, despite the apparent fact that the theoretical underpinnings of the research projects had shaped and reflected the way transcriptions were conducted. Turning my attention to the way the transcription process has been approached in IE

reflects a similar propensity. For instance, when describing the process by which IE researchers transcribed their recordings, many institutional ethnographers have simply noted that the transcription had been done, that they had 'transcribed verbatim' (Breimo & Baciu, 2016: 118; Eastwood, 2021: 210; Johnson & Bagatell, 2020: 649; McLarnon, 2021: 89-90; Nichols & Braimoh, 2018) or 'in full' (Hastings, 2022: 185). Exceptions include research by McCoy (1999), Walby (2013) and Murray (2019). Murray (2019: 94) noted that, regardless of whether it is acknowledged, the researcher's epistemological approach informs the data they collect, what and how they choose to transcribe, their methods of reading, how they use and analyse data, and their overall thesis.

Smith (2002: 31) put forward that the structure of social relations is indicated in the way people talk about their work. Transcripts of their speech, therefore, reveal 'particular moments of participation in social relations that hook their local experience to the work of others elsewhere, known, and unknown' (Smith, 2002: 31). Similarly, Deveau (2009: 15) flagged that 'using the actual words of the informant is important due to IE's analytic attention to language and how ruling relations work in a particular setting'. However, others reported amending the original transcript for various reasons (see Kearney et al., 2018: 293), while some did not explain how this was achieved (see Nichols & Braimoh, 2018: 160). In their work on mothering as discourse, Griffith and Smith (1987: 91-92) sought to assume a less visible presence in their transcribed interviews, but did not explain if that involved removing their presence from the transcriptions.

IE researchers, therefore, apply a particular lens to the transcriptions they draw upon and do not require transcriptions to be as acutely detailed as is required in conversation analysis. This is because conversation analysts examine talk and related interactions to uncover and understand the practical reasoning and activities of real actors in their everyday settings (Manzo, 1997). I will now draw upon Walker's insights to investigate the quality of the official transcriptions of an ACAT hearing.

3.4.3.3 Comparing the ACAT's transcripts and recordings

My examinations of the official recordings and associated transcripts of ACAT hearings concur with institutional ethnographer Cunliffe's (2013b: 33) findings that 'history (even the legal history) enshrined in transcripts is partial and incomplete'. The proceedings of the 2009, 2013 and 2014 ACAT hearings were captured in 43 audio recordings. The preliminary proceedings of each of the hearings commenced with the ACAT presidential member pointing out that the microphones on the tables were not to amplify speakers' voices but were to record the proceedings, a process which took place in another area of the building (see Crebbin, 12/5/2009, Recording 2, 54:36-55:32). Despite their efforts, the recordings are indecipherable at many points, as I shall discuss below.

I compared three of these recordings with the associated official transcript, which I discuss in greater detail in Appendix 1. I chose two days (8 and 9 July 2013) on which there was a reasonably even split of contributions from the applicant and the respondent, as well as one day (10 July 2013) on which the ACAT panel members predominantly spoke as they delivered the reasons for the decisions they had made. In the 2009 and 2014 hearings, witnesses for the applicant and the respondent generally delivered their evidence on separate days, and evidence was heard presented by one witness at a time. In the 2013 hearing, consulting ecologist Raymond Mjadwesch was the only expert witness presented by the applicant, and ACT Government senior ecologist Dr Donald Fletcher was the only witness presented by the respondent. Throughout that hearing, the two witnesses delivered their evidence concurrently. As such, I chose the two days on which they delivered their evidence in the substantive hearing in 2013 to try to capture a roughly even number of contributions from the witnesses and legal counsel for both parties, with the ACAT members and legal counsel interjecting as they saw fit.

In comparing the recording with the transcript, I was not concerned with the inconsequential, small errors and omissions that may be expected and were evident in the transcript. While it is apparent that the transcript had been 'cleaned up' (see Walker, 1990: 204), those small changes did not impact the content of the messages delivered, which is the main focus of my thesis. Given this, I focus more on the discrepancies that are of consequence.

The sampled transcript contained examples of Walker's discrepancies of 'something added', 'something missing' and 'a misidentified speaker'. The attribution of statements to the wrong witness has been observed in other institutional ethnographies, as with Cunliffe (2007: 85). Key information omitted from the transcript included points where ACAT members interjected briefly to indicate their support for or opposition to what was being said, as well as background noises and conversations. Quite a few of the statements reported as being 'inaudible' in the transcript can be clearly heard on the recording, including locations, people's names, and ecological terms like 'antechinus', 'quadrat', 'threatened', 'exclosures', 'recruitment', and 'drive count'. In some instances, the poor quality of the transcription rendered the text nonsensical. Refer to Appendix 1 for a more detailed discussion about this.

The transcripts do not contain timestamps and do not convey pauses, including the time it took for statements to be delivered or the time between statements. They also do not reflect how people spoke over each other, but transcribe their speech in whole blocks. This is one technique in court reporting designed to make the transcript more readable (see Walker, 1990: 226-227). However, doing so fails to indicate the pace and emotions associated with the discussions. This is particularly significant when there are power differentials between the speakers involved (see Walker, 1990: 233-234).

The transcripts do not convey paralinguistic features, such as volume (as with yelling) or clarity (as with mumbling or the speaker being far from a microphone). They also do not convey extralinguistic features such as signs of emotions like laughter. Walker's (1990: 221) research indicated that 89% of court reporters in the U.S. would not record indications of emotions such as laughter or tears, as they would be moving into the realm of interpretation rather than reporting. Judges objected to court reporters applying subjective judgements to the transcripts (Walker, 1990: 221).

Walker (1990: 218, 229) revealed the historical propensity of court reporters to be more attentive to editing the grammar and phraseology of judges, lawyers and professional expert witnesses. At the same time, few court reporters in her study reported doing so for lay witnesses. Walker (1990: 233-234) found speaker categorisation to be a predictor of the degree

to which their speech was transcribed verbatim, identifying such categories in the dichotomies of sworn/unsworn, educated/uneducated, expert/lay witness, ins (judges and lawyers)/outs (court reporters), employer (government department/law firm)/nonemployer (court reporters), liking/disliking the speaker, and sees the transcript/does not see the transcript. While some have found misrepresentations in transcripts to be aspects of standard practices rather than conscious acts (Bucholtz, 2000: 1452; Slembrouck, 1992: 107-108), Walker (1990) found a disproportionate focus on producing a verbatim account of the speech of those in positions of power. Cunliffe (2013b: 34) noted that the legislation guiding court reporting in British Columbia does not require a word-for-word, or verbatim, record, but one which is 'complete and accurate'.

Compared to the official recordings, the speech had been 'cleaned' (see Walker, 1990: 204) in the ACAT transcripts by deleting repeated words, false starts, garbled words, background discussions, withdrawn statements, and discussions at the end of the day that pertained to organising the following day's events. The ACAT transcripts identified Walker's (1990: 203) 'garbled words' as 'inaudible' or 'indistinct'. I was curious to see if there were any patterns in the 'inaudible' or 'indistinct' designations. I examined the three transcripts and conducted frequency distributions of these terms by individuals and groups, depending on whether they were aligned with the applicant or respondent, or were ACAT panel members. When the 'inaudible' or 'indistinct' designations were aggregated, the speakers for the applicant, the Australian Society for Kangaroos, were more likely to have their statements fall into these categories by a factor of eight (56%) when compared with those of the ACAT members (7%) and considerably higher than that of the speakers for the respondent (37%). Refer to Table 4 in Appendix 1 for further details. There may be numerous reasons for people's speech being categorised as 'inaudible' or 'indistinct', including the speaker mumbling, being soft-spoken or being positioned a distance away from a microphone. However, my ratios of speech deemed indistinguishable suggest further investigation may provide useful insights. The political implications of transcription processes have been discussed by other researchers, as when key information in a police transcript is rendered 'unintelligible', mistranscribed, or

misattributed (see Bucholtz, 2000: 1442-1443). I will now discuss the approach I adopted when transcribing.

3.4.3.4 My transcription process

Some scholars regard the act of transcription as part of the data analysis process and should, therefore, be conducted by the researcher (see Ayaß, 2015; Bird, 2005; Gee, 2005; Park & Zeanah, 2005; Psathas & Anderson, 1990). In the case of this research, I concur that the process of transcribing the official audio recordings of the proceedings required me to reflect on the transcription process and formed an important preliminary stage of the data analysis. To that end, I listened to the three hearings in their entirety several times, making notes each time and identifying the key passages. I played the recordings on different equipment, which greatly impacted the extent to which I could discern unclear sections. This enabled me to identify the sections which were most relevant to my research problematic.

As the amount of contextual information that could be captured in a transcript is 'infinitely expandable' (Cook, 1990: 1), I had to decide what to include in the transcript. Bucholtz (2000) identified two transcription styles that foregrounded written or spoken discourse differently. In 'naturalised' transcription, speech is 'literacized' to ensure it is represented in a way that conforms to conventions in written discourse (Bucholtz, 2000: 1439, 1461). 'Denaturalised' transcription maintains links to oral discourse (Bucholtz, 2000: 1439). As my interest is primarily in the content of the remarks of the participants in the ACAT hearing, it is appropriate that, for ease of reading, I have conducted naturalised transcription. I present this information in a manner more detailed than the official transcripts but less fine-grained than that found in conversation analysis, for the reasons I discussed in section 3.4.3.2.

Walker (1986: 313) demonstrated how the inclusion of indications of pauses in transcripts gave coherence to the conversations that took place. In contrast to my sample of the official transcripts of the ACAT hearings, I have noted and timed extended silences in my transcriptions. My sample of the official transcripts reflects that interruptions were omitted,

making the discussions appear on paper as orderly turn-taking. This frequently belied the chaos of the proceedings. I have been at pains to record the interruptions that indicate the pace of the proceedings, when discussions became heated, when discussions developed into what might be considered disrespectful, and how this was or was not responded to.

I have included the 'uh' statements where they suggest important points in a discussion, such as an awkward moment or when emphasising a point. I have noted utterances such as 'mm-hmm' and 'uh-huh' in my transcriptions. They convey points at which ACAT presidents were supportive and encouraging of the statements being made or when witnesses offered a more casual response. I have recorded 'hmm' statements as the ACAT panel members employed them to precede expressing scepticism about a comment. I have also noted the points at which emotion was expressed, as with [laughed] and [knocked loudly on the table] when the speaker was emphasising a point.

I captured sentence restarts and placeholders such as 'um' and 'er'. While I record the length of pauses between statements, I have not timed them within a statement. I have recorded non-linguistic sounds where I thought they were relevant, but I have not attempted to note every non-linguistic sound. I do, for example, note laughter, where particular noises drown out the speech, the sound of frantic paper flicking as participants attempted to keep up with references to different documents, and so forth. I have italicised words that were emphasised by the speaker. I have omitted in-breaths, out-breaths, audible sighs, paralinguistic features, dysfluencies, co-occurring nonspeech events, false starts, repetition, the actual pronunciation of words, or background information.

I avoided transcribing speech in non-standard orthography, which is the conventional system of spelling of a language. I provide an example of this in the discussion that follows. In their study of the social meanings associated with non-standard orthographies, Jaffe and Walton (2000: 583) concluded that readers of transcribed speech made assumptions about the speakers, stereotyping them into low-status categories. Similarly, in his study of American speech, Preston (1985: 328) found the use of non-standard spelling served to 'denigrate the speaker', making them 'appear boorish, uneducated, rustic, gangsterish, and so on', which Bucholtz

(2000: 1455) refers to as ‘unwarranted assumptions’. For example, the following passage of speech by Dr Douglas Jarvis, barrister for the ACT Government, exemplifies the approach I have taken in the chapters that follow:

> Go to page 37 of the Kangaroo Management Plan, Mr Mjadwesch. There is in Figure 3.2, under the heading of ‘Googong Foreshores’ is a graphical representation of the phenomenon to which I’ve been putting to you, and that shows that not only do kangaroos *do* have irruptions, contrary to what you’ve just told us, but their population collapsed due to starvation. That’s what happened because they ate away all the food. (Jarvis, 3/6/2014, 6:29:41-6:30:35)

As I discussed in section 3.4.3.2, this is sufficient detail and accuracy for the requirements of my institutional ethnography. ‘Hesitation markers’ such as ‘er’ and ‘uh’ have been viewed with suspicion, disfavour, a sign of incompetence or dominance (see Scherer, 1979; Scollen, 1985; Walker, 1986: 414). A denaturalised transcription of Jarvis’s speech may similarly give rise to Bucholtz’s ‘unwarranted assumptions’ regarding his coherence and professionalism and may distract from the substance of his message. The following is the denaturalised transcription of the above passage:

> (6:29:41-6:29:47) Jarvis: Go to page 37 of the Kangaroo Management Plan, Mr Mjadwesch.
> (6:29:47-6:29:56) [Silence, apart from the sound of a page flicking.]
> (6:29:56-6:30:35) Jarvis: There is a, um, in Figure 3.2 under the heading of ‘Googun’, ‘Googong Foreshores’ is a graphical representation of the phenomenon to which I’ve, why, which I’ve been putting to you and that shows that, um, by, not, not only do kangaroos *do* have irruptions, contrary to what you’ve just told us, but they, their population collapsed due to starvation. Uh, that’s what happened, uh, because they ate away all the food.

I encountered many challenges in the transcription process. In all fairness to the official

transcribers, some statements that were difficult to discern required a considerable amount of time to transcribe. As the ACT Government outsourced the transcription process, transcribing as accurately as I have done in these circumstances would be beyond what could be reasonably expected of commercial transcription services. The difficulties in clearly hearing the statements were due to soft speakers, multiple speakers talking concurrently, background noises such as coughing, items being moved near the microphones in the hearing room, and loud noises, including those made by dropped items. The ACAT presidents occasionally asked speakers who were positioned at a distance from the microphone to reposition their selves. In most instances, I could transcribe the initially indeterminate statements by listening to the audio recordings multiple times through different equipment.

When I listen to the audio recordings, I compare my transcription with the original recording to ensure clarity. Some researchers have reviewed the recordings during the data analysis period to remain connected with the 'living' aspect of the data (see Davidson & Moore, 2010: 6). When citing the transcript, I often listened to the recordings to ensure that my quotes reflected the recordings as accurately as possible, a practice recommended by Psathas and Anderson (1990: 76-77). In some instances, I reference the official transcript if it does not differ from the official recording, as some transcripts, such as the *Reasons for Decision* documents, are publicly available on request from the ACT Government. In addition, the written citation for such a document is clearer and simpler than an audio recording, as it simply requires a page number in place of the date, recording number, and time stamp.

3.5 Limitations of this research

In this section, I address the three main areas that limit this investigation, including drawing upon retrievable data (section 3.5.1), the absence of significant voices in the data I use (section 3.5.2), and my engagement with other areas of scholarship (section 3.5.3).

3.5.1 Reliance on retrievable data

In her own studies, Dorothy Smith (1978; 1990d) included the text that she analysed. Other institutional ethnographers have positioned this as an intentional move to ensure the accountability of the researcher, avoid replicating textual relations of ruling by enabling readers to use the primary texts to conduct their own analyses, draw their own conclusions and replicate the research if they choose to (see Murray, 2019: 67; Murray, 2022; Stanley, 2018: 81; Stanley & Wise, 1997). While most of the data upon which I rely is or has been publicly available, the ability of members of the public to access some of the relevant documents is extremely difficult or prohibitively expensive, as I discussed in section 3.4.3.1. Therefore, my data is not entirely retrievable.

3.5.2 Absent voices

Because I primarily draw on the voices of those who participated in the ACAT hearings and, to a lesser extent, on those who spoke publicly on issues related to kangaroo management, key voices have not been fully captured by my research. Caucasian middle- to retirement-aged, highly educated males are overwhelmingly overrepresented. The voices of Aboriginal people are completely absent from the hearings and from the associated interviews in the media. This is despite their strong presence at the protests opposing the killing of kangaroos at the BNTS (see Coe, 2008a; 2008b). To contextualise this issue, I will provide information about those who participated in the ACAT hearings. Refer to Appendices 2 and 3, which reflect the witnesses, ACAT staff and the legal representatives who appeared across each of the three hearings. Some participants appeared in more than one hearing, and a number appeared in both the preliminary proceedings and in the substantive hearing. Of eleven witnesses, one held a diploma in an unrelated field, and one possessed a bachelor's degree. Nine witnesses held a doctorate, most of whom had completed postdoctoral studies. Major General Elizabeth Cossan was the twelfth witness who appeared briefly in the 2009 hearing to discuss the costs to the Department of Defence should the operation be delayed. I have excluded her from this discussion, as her qualifications were not provided, and she did not discuss the scientific evidence that supported

the associated licence in question in the 2009 hearing.

As might be expected, the hearings functioned in an immensely hierarchical and gendered manner. The number of women involved throughout the three hearings varied greatly according to their role, with women comprising two of the eight ACAT panel members, eight out of the fifteen legal representatives, and one out of the eleven expert witnesses (excluding Cossan). From a qualitative perspective, the gendered nature of the proceedings is also stark. For example, ACAT Senior Member Louise Donoghue was frequently denied access to evidence by President Bill Stefaniak and Senior Member John Ashe. Dr Douglas Jarvis, barrister for the ACT Government, frequently did not supply enough photocopies of evidential documents to provide a copy to all the parties involved. Indeed, he routinely appeared with only one copy of the relevant document, which he intended to give to the ACAT panel. This happened so consistently that it appeared to be a tactic to put the applicant on the back foot, as the case proceeded while the court associate made copies of the relevant documents. On several occasions on the second day of the substantive hearing in 2009, Jarvis provided three copies. One was given to the applicant, and two were given to the panel of three ACAT members, which included Stefaniak, Ashe, and Donoghue. Stefaniak and Ashe consistently took the copies and denied Donoghue access until she finally announced, 'I'm feeling very unloved!' (see Donoghue, 3/6/2009, Recording 1, 1:13:33-1:13:53).

In addition, Martin Bennett, counsel for the applicant, wrongly assumed that Donoghue was the court associate supporting the proceedings and directed her to carry out duties such as disseminating copies of evidential documents amongst the relevant participants (see Bennett, 4/6/2009, Recording 2, 1:23:44-1:24:17). No one corrected this oversight. When Bennett was made aware of this, he apologised to Donoghue while she was out of the room: 'Madam Associate, who I want to formally apologise on the transcript, I've been calling Madam Usher and downgrading her status. She's not here.' (see Bennett, 4/6/2009, Recording 2, 3:13-3:23). He did not apologise to her personally after she returned to the room (see Bennett, 4/6/2009, Recording 2, 11:40-12:20). Thus, Bennett's apology functioned as an entry in the transcript, not as an apology to a person.

The dissenters also replicated such gendered differences. Dr Rosemary Austen was the only female witness presented who discussed the scientific evidence upon which the licences had been based. Austen and her husband, Professor Steve Garlick, chose to submit a joint witness statement. While they each submitted a witness statement, both statements were identical in content. Austen and Garlick were longstanding leaders in the macropod rehabilitation community (see Garlick, 2014a; Garlick & Austen, 2012, 2014a, 2014b, 2016). Austen held undergraduate qualifications in zoology and postgraduate and postdoctoral qualifications in biology (see Austen, 3/6/2014, 5:16:51-5:17:10). Garlic was a professor of spatial economics and applied ethics, and his undergraduate degree included a major in psychology (see Garlick, 3/6/2014, 1:51:25-1:58:00). Austen referred to herself as 'the scientist in the partnership' (see Austen, 3/6/2014, 5:16:41-5:16:45). Despite Austin appearing to be the stronger expert witness, Garlick was presented as the applicant's first witness. Marcus Filinger, wildlife rescuer and rehabilitator, testified second and Austen third. Austen's evidence was the briefest of all witnesses in all three hearings, lasting under 14 minutes (see Austen, 3/6/2014, 5:13:46-5:27:23).

A bias in the time allocated to present evidence was also apparent in the split between the ACT Government's witnesses and those presented by the applicants. For example, in the substantive hearing in 2009, Fletcher presented evidence for 7 hours and 58 minutes over three days, while the dissenting witnesses appeared for a total of 2 hours and 27 minutes. This included Dr Mark Drummond, a statistician and lecturer at the Canberra Institute of Technical and Further Education, for 52 minutes; Ramp for 42 minutes; and Ben-Ami for 53 minutes immediately prior to counsel delivering their submissions, which led to the closure of the hearing. We can see that this appears to breach the 'fair hearing rule' I discussed in section 2.4.3. When presenting the rule, the Chief Minister, Treasury and Economic Development Directorate (2020: 12), identified as a part of natural justice the requirement that 'the affected person is given a reasonable opportunity to "speak or respond" and also that the decision-maker genuinely considers the affected person's submission in making the decision'.

While I acknowledge the comparative homogeneity of the voices I examine, this was

unavoidable, given the witnesses who appeared in the hearings. While considerable research has focused on specific social groups in wildlife management generally, minimal research with a similar focus has been conducted regarding human conflicts over wildlife management. Notable exceptions focus on the perceptions of Australian Aboriginal cultural groups in relation to feral banteng (*Bos javanicus*) (deKoninck, 2005) and involvement in the commercial kangaroo culling industry (Thomsen & Davies, 2007). Further research is required to investigate human conflicts over wildlife management, and kangaroo management more specifically, targeting the breadth of demographic characteristics, particularly among First Nations people.

3.5.3 Engagement with other areas of scholarship

As I outlined in section 1.2.1, my work is grounded in environmental science, sociology, and applied social research, which I employ to better understand human conflicts over wildlife management. I approached this research as an institutional ethnography of one such conflict, tracing how it was resolved through administrative reviews. However, only a small portion of the conflicts over kangaroo management in the ACT occurred within the ACAT. I could have equally explored how the protesters were managed or how the community attitudes surveys were conducted.

After observing the 2014 ACAT hearing, the fieldwork for my previous research involved immersion in the clashes where the boundaries of the workspaces of the shooters and others conducting the culls and those of the activists were brought together. I then analysed the first three community attitudes surveys (see Micromex Research, 2008, 2012, 2015), which I found to be very problematic. For example, they employed questionable sampling methods (see Micromex Research, 2008: 1-2; 2012: 3-4; 2015: 2-3) and included biased and leading questions (see Micromex Research, 2008: 6-14, 18. 20; 2012: 9-15, 18; 2015: 5-17, 20-21). Questions were removed, and comparisons were made across the years despite changes in the wording of questions (see Micromex Research, 2012: 9-11, 14, 15; 2015: 8, 11). Response options favoured the government's position, and changes in the wording, positioning of response options and the response options provided furthered this practice (see Micromex

Research, 2008: Appendix C; 2012: 9-15, 18; 2015: 5, 7-21). Inappropriate consolidation of responses enabled the reporting of results that were favourable to the ACT Government (see Micromex Research, 2012: 6, 7, 18, 19) and, in some cases, the findings were misrepresented (see Micromex Research, 2008: 3-4, 6, 7, 20, pp. 1-4 of Appendix A, p.1 of Appendix C ; 2012: 7, 19) or inadequately contextualised (see Micromex Research, 2012: 6, 7, 10, 12, 14, 16; 2015: 21). No attempt was made to demonstrate the validity and reliability of the indicators.

While there were many sites I could have chosen to focus on for my research, the ACAT was the one that captured in great detail how associated decisions were made, not only in documents but also in recorded conversations. As such, I have not concentrated on the legal aspects of such reviews, nor have I grounded my research in socio-legal studies, critical legal studies or institutional ethnographies of law. My interest lies in how the hearings were administratively managed to address the conflicts.

In this chapter, I have discussed IE and contextualised how my research has been guided by it. I have outlined many transcription challenges and explained why and how I transcribed the official recordings myself. Sarat, a political scientist who has written about the politics of legal transcriptions, interrogated what is contained in transcripts as much as what is absent from them:

> The cannot-be-said is itself both a function of law's own rules of evidence and of the mechanisms of repression and denial that pervade culture at any given moment. The absent is always present just beyond the margin of the transcript calling on its readers to inquire about what should or could have been recorded, but was not. (Sarat, 1999: 359)

A key matter raised in the ACAT hearings was the identification of the problem that the management interventions aimed to address. The ACT Government claimed the sites earmarked for killing kangaroos were ecologically degraded, and all the applicants agreed. The parties then debated the cause of the degradation so potential solutions could be canvassed, and it was on that point that the parties involved in the hearings expressed vastly different understandings. In

the following chapter, I explore the scope of consideration of the causes of the ecological degradation apparent at each site in which the killing of kangaroos had been scheduled. Following Sarat, I examine the causes that were foregrounded, those that were excluded, and the processes that enabled these decisions.

Chapter 4: Determining the causes of ecological damage

Chapter contents

4.1 Introduction: Ecological destruction by humans, kangaroos or both?

Since 2007, the Australian Capital Territory (ACT) Government has stated that ecological damage was apparent at several sites, including the Belconnen Naval Transmitting Station (BNTS) and the Majura Training Area (MTA), both owned by the Commonwealth Government Department of Defence, as well as at several nature reserves which form part of the Canberra Nature Park. Government staff attributed this to kangaroo grazing and presented shooting them in sizeable numbers on an ongoing basis as the solution (Cooper, 2008). This was reiterated when Cooper (2009b) released her 'Report on ACT Lowland Native Grassland Investigation by Dr Maxine Cooper, Commissioner for Sustainability and the Environment, 12 March 2009' (hereafter referred to as 'Cooper's report'). The Draft ACT Kangaroo Management Plan (ACT KMP) was released for public comment in 2009 and conveyed the ACT Government's commitment to base kangaroo management on the 'best available scientific knowledge' (Frawley, 2009: 92).

Cooper's report was heavily drawn upon in the ACT Civil and Administrative Tribunal (ACAT) hearings. The ACAT panel members detailed in their *Reasons for Decision* documents why they, too, identified kangaroo grazing as the cause of the ecological degradation that was apparent at the MTA and in nature reserves that formed part of the Canberra Nature Park. As a result, they upheld the decisions made by the ACT Conservator of Flora and Fauna (hereafter referred to as the 'Conservator') to issue the licences to kill 7,000 kangaroos at the MTA in 2009. Subsequent ACAT panels also upheld similar decisions in the 2013 and 2014 hearings.

The ACT Government's commitment to ground its environmental decision making in sound scientific knowledge is foundational to these events. Figure 4 illustrates the boss texts (the *Nature Conservation Act 1980* and the *ACAT Act 2008*), which guided the ACAT panel members in determining the cause of ecological damage at the sites that were the subject of the hearings. At the time, this was reflected in Division 2.2 of the *Nature Conservation Act 1980,* which established a Flora and Fauna Committee comprised of members with 'appropriate

expertise in biodiversity or ecology' who advised the Minister. The commissioner also functions, in part, as an advisor to the Minister for the Environment (ACT Government Office of the Commissioner for Sustainability and the Environment, 2023). The Draft ACT KMP made a more explicit commitment to base kangaroo management on the 'best available scientific knowledge' (see Frawley, 2009: 92). The work of Cooper, the ACAT panel members and Dr Donald Fletcher, ACT Government senior ecologist, fell within the scope of these requirements.

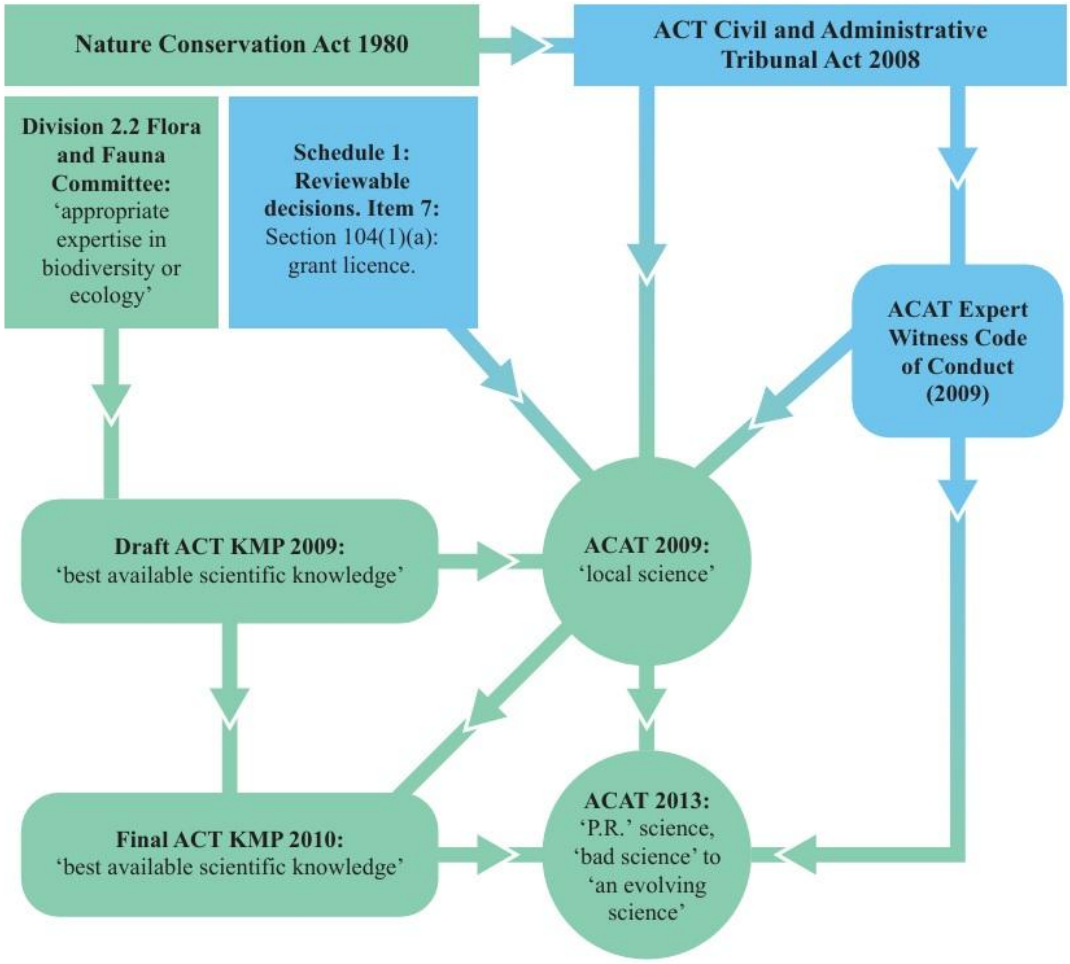


Figure 4: Determining the cause of ecological damage through 'best science' and 'open government'

'Best science' is depicted in green and 'open government' is represented in blue.

In this chapter, I examine the processes Cooper and the ACAT panel members employed in the 2009 and 2013 hearings to reconcile conflicting information and determine the cause of ecological degradation. I begin by providing background information on the data I rely on in section 4.2. In section 4.3, I explain my analytical focus on processes of exclusion, which, from an institutional ethnography (IE) perspective, includes Dorothy Smith's (1978) 'cutting-out' process, as well as Kameo and Whalen's (2015) 'negotiation erasure'. I also draw upon 'bibliopolitics' as approached by Montcher (2017) and others.

In section 4.4, I trace how Cooper assessed the threatening processes of the ACT's grassland. This enabled her to transform earlier documents that did not identify kangaroo grazing as a threat to support her conclusion that kangaroo grazing was the primary threatening process leading to ecological degradation, and to recommend that killing kangaroos was urgently required. I continue along this vein in section 4.5, where I examine the processes the 2009 ACAT panel members employed to construct human actions at the MTA as being ecologically benign. This enabled them to determine that the ecological degradation apparent at the MTA resulted from kangaroo grazing, not human actions. In section 4.6, I illustrate how the 2013 ACAT panel reached a similar conclusion regarding the degradation of nature reserves in the ACT. This initially involved cutting out the impacts of urban development from consideration and later cutting out the impact of human actions altogether as being 'beyond the scope' of the ACAT panel members.

I close the chapter in section 4.7, where I discuss how the work of Commissioner Cooper and the ACAT panel members bolstered the ruling relations through complex processes that redirected attention away from the ACT Government's own documents, which foregrounded human activities as posing the greatest threats to vulnerable species and ecological communities. Instead, they drew attention to kangaroos, thereby employing a 'politics of distraction' (Harvey, 1990: 61) away from ecologically damaging economic interests, particularly urban, agricultural and infrastructure development, which are profitable to the ACT Government and other powerful interests.

4.2 Background to the data: Conservation Strategies, Cooper's report and transcripts

In the 1990s, there was a shift from conservation programs focused on single species to those managed at the ecosystem level. This was enacted in 2002 by the ACT Government through its efforts to protect vulnerable ecological communities (Dunford et al., 2004: 1) and was achieved through the creation of action plans, such as Dunford et al.'s (2004) *Woodlands for Wildlife: ACT Lowland Woodland Conservation Strategy. Action Plan No. 27* (hereafter referred to as the '*Woodland Strategy*') and Dunford et al.'s (2005) *A Vision Splendid of the Grassy Plains Extended: ACT Lowland Native Grassland Conservation Strategy. Action Plan No. 28* (hereafter referred to as the '*Grassland Strategy*'). Figure 5 maps the key documents involved in determining the cause of ecological destruction at the sites in question in the 2009 and 2013 ACAT hearings. The darkened arrows indicate the course of my discussion in this chapter. During this period, key government documents foregrounded human actions as not only causing the degraded and precarious states of the ACT's threatened ecological communities but as continuing to detrimentally impact them:

> Grasslands, Grassland-Woodland Mosaic and Box-Gum Woodlands can be regarded as the most important from a conservation planning point of view because of their extremely restricted extent following development and agricultural land use, and the fact that they are most likely to be impacted upon by development and rural management. *Fallding (2002: 15) A Planning Framework for Natural Ecosystems of the ACT and NSW Southern Tablelands.*

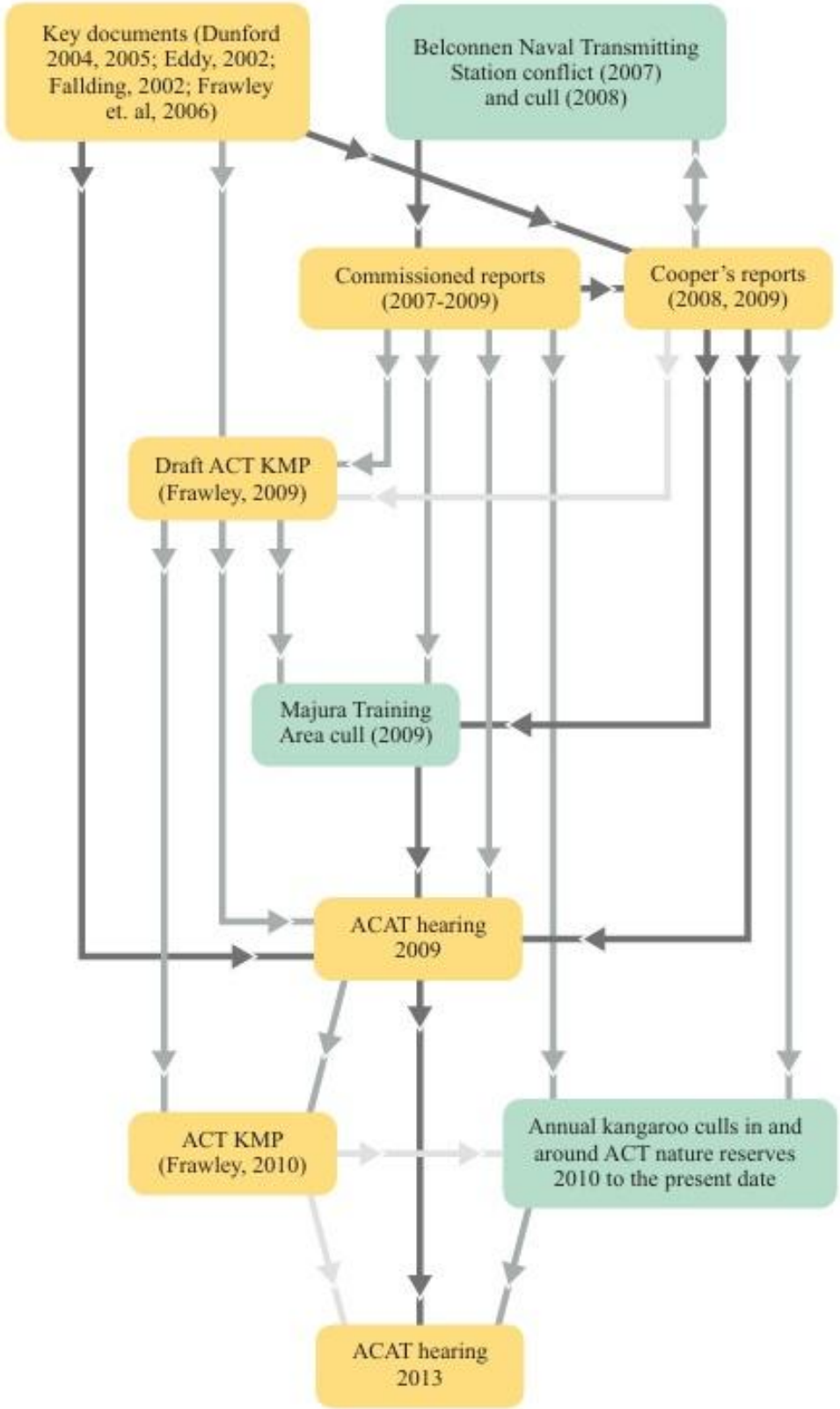


Figure 5: Key texts drawn upon to determine the cause of ecological damage

> Of the 10,865 ha of Yellow Box-Red Gum grassy woodland, about 7,035 ha (65%) are protected by virtue of their location within land use categories that do not permit clearing for urban and similar activities. *Environment ACT (2005: 1) Yellow Box-Red Gum Grassy Woodland: An endangered ecological community.*

> Loss of grassland habitat and the fragmentation and degradation of the remaining areas has had a severe impact on plants and animals that are dependent on grasslands. … Remaining areas of lowland native grassland in the ACT have survived largely by chance, following the earlier period of pastoral use of ACT lands and the later development of Canberra. Urban Canberra was built over much of the entirely treeless grassland identified by Pryor (1938). The distribution of the remnants is highly fragmented and further fragmentation, especially of the larger areas, still constitutes a major threat to the ecological community. *Dunford et al. (2005: iii, 55) ACT Lowland Native Grassland Conservation Strategy.*

> Clearance [of natural temperate grassland] has occurred as a result of urban, rural and infrastructure development. The conservation value of remaining areas has been reduced by changes to soils and drainage patterns, by plant introductions, and inappropriate defoliation practices. These activities, in particular, continue to pose threats to remnant areas. *Frawley et al. (2006: iv) National Recovery Plan for Natural Temperate Grassland of the Southern Tablelands (NSW and ACT): An endangered ecological community.*

As is evident in the excerpts above, these important documents highlighted the key threatening processes to the grassland and woodland as being habitat destruction and fragmentation due to infrastructure, urban and agricultural development, with the latter predominantly including cattle, sheep and food crops around that time (see Australian Bureau of Statistics, 2009).

Dunford et al. (2004: 16-17) listed the ongoing threats to the ACT's lowland woodland as being urban and infrastructure development; grazing by sheep, cattle and horses; firewood and other timber cutting; weed invasions; changed and inappropriate fire regimes; and introduced

pests and changes in native species abundance. They also mentioned dieback, which commonly refers to the decline of a stand of trees or their sudden death due to damaging factors such as drought or waterlogging (Jurskis, 2005). Dieback in the ACT, however, predominantly resulted from pasture improvement and fertiliser application for grazing (Dunford et al., 2004: 17). Dunford et al. (2004) did not mention kangaroos in reference to the ACT's lowland woodland.

Regarding the ACT's natural temperate grassland, Dunford et al. (2005: 17-21) listed the key changes and threats as being pastoral and agricultural development, urban and infrastructure development, weed invasion, changed and inappropriate fire regimes, and other forms of disturbance, which included grazing by feral animals, physical disturbance, the use of fertilisers and other soil ameliorants, inappropriate mowing and slashing practices, herbicide use, the collection of grass seed and the salinisation of soils. Kangaroos were minimally referenced in these documents but were acknowledged as being an 'integral part' of the ACT's threatened ecological communities, which evolved under their grazing (Frawley et al., 2006: 10).

These documents also provided details about specific sites. For example, Dunford et al. (2005: 66, 68) noted that the viability of the potential grassland nature reserve at Lawson, abutting the BNTS, would depend on managing the resident population of kangaroos, which they saw as hinging on the development of fertility control. At the MTA, however, Dunford et al. (2005: 39-40) positioned kangaroo grazing as benefitting key threatened species living therein, as I shall discuss in section 4.4.1.

While development and the associated habitat loss and fragmentation are listed as the primary ecological threat in government documents, it created a challenge to the ACT Government in terms of its commitment to 'sustainable development' (see ACT Government Territory and Municipal Services Directorate, 2011). The close relationship the ACT Government has with urban developers is reflected in the Housing Industry Association's involvement in the production of key environmental management documents in the region, including Rehwinkel's (1997) 'Grassy ecosystems of the South Eastern Highlands', Robertson and Cooper's (2000) 'Recovery Plan for the Grassland Earless Dragon (*Tympanocryptis pinguicolla*)', and Fallding's (2002) 'A Planning Framework for Natural Ecosystems of the

ACT and NSW Southern Tablelands'. The ACT Government receives revenue from urban development through profit-sharing joint ventures and land developed on its behalf by the Land Development Agency (LDA) (ACT Government Territory and Municipal Services Directorate, 2011: 181; Gul, 2014). In one year alone (2012/2013) in the period under study, the LDA reported an income of $322 million AUD and a profit of $95 million AUD (Gul, 2014).

In May 2007, the announcement of the plan to kill kangaroos at the BNTS attracted intense opposition and international attention (see Bazley, 2008; Squires, 2008b). In November 2007, Jon Stanhope, the then ACT Minister for the Environment, Water and Climate Change, directed Cooper to investigate the state of the ACT's lowland native grassland, commencing with a study that focused solely on the BNTS site. This was published in the following February (see Cooper, 2008). Following her recommendations, approximately 480 kangaroos were killed at the BNTS in June 2008 and at an unspecified date later that year to avoid further protests (ABC News, 2008; Fletcher, 09/07/2013, Recording 2, 1:16:29-1:16:45).

Cooper continued with her broader study of the ACT's lowland temperate grassland and engaged an expert panel to assist her (see Braid et al., 2009). She also engaged one of the experts on the panel, Commonwealth Scientific and Industrial Research Organisation (CSIRO) ecologist Dr Kenneth Hodgkinson, to conduct a field assessment (hereafter referred to as 'Hodgkinson's report') of 49 grassland areas in the ACT, excluding the BNTS site. Hodgkinson and Cooper drew upon the *Grassland Strategy* to compile their respective reports (see Cooper, 2009b; Hodgkinson, 2009). The 'MA01' site forms a comparatively small, albeit ecologically significant, portion of the MTA. Hodgkinson (2009: 6, 7, 53) claimed the MA01 site at the MTA was not at a 'critical threshold', which he defined as a point beyond which landscape function and the survival and reproduction of native plants and animals would be compromised. As I shall explain in section 4.4.2, Cooper (2009b: vii, 50) employed a complex process that enabled her to state that Hodgkinson had concluded that the MTA *had* reached a critical threshold due to kangaroo grazing. This allowed her to recommend the immediate killing of kangaroos at the site. In the weeks following the publication of Cooper's report, Animal Liberation NSW applied to the ACAT for a review of the decision made by the Conservator to

issue the licence required to kill kangaroos at the MTA. All parties drew upon the *Grassland Strategy* and Hodgkinson's and Cooper's reports throughout the proceedings.

During the hearing, Fletcher claimed that grazing by a rapidly increasing kangaroo population had brought the site to the brink of ecological collapse (see Fletcher, 3/6/2009, Recording 2, 5:07-16:19). On the other hand, dissenting statistician Dr Mark Drummond (4/6/2009, Recording 2, 1:23:14-1:27:52) testified that the evidence suggested there was a statistically significant population growth up until April 2007, after which there was 'a stable or possibly declining population'. Dr Dror Ben-Ami, consulting ecologist, and Dr Daniel Ramp, a conservation biologist who was at the time a research fellow at the University of New South Wales, pointed predominantly to human causes of the degradation (as cited in Fletcher, 3/6/2009, Recording 3, 46:20-49:49; Ramp, 05/06/2009, Recording 1, 39:09-40:51). The ACAT panel members determined that no deleterious impacts were attributable to humans at the MTA and upheld the decision to grant the relevant licence.

In this chapter, I follow the assessment of the cause of ecological damage through a series of eight documents, including the *Woodland Strategy* (Dunford et al., 2004), the *Grassland Strategy* (Dunford et al., 2005), Hodgkinson's (2009) report, Cooper's (2009b) report, Fletcher's (2009, 2013) witness statements, and the 2009 and 2013 *Reasons for Decision* documents (Stefaniak et al., 2013a; Stefaniak et al., 2009), as indicated in Figure 5. While I do not have copies of Fletcher's witness statements, they were discussed in detail throughout the hearings. The *Reasons for Decision* documents represent the moment at which all the strivings of the parties involved in the hearings enter what Dorothy Smith (1990b: 74) referred to as 'textual time'. As I discussed in section 3.2.1, this refers to the way the text stabilises the discussions that were had throughout the hearing. The final text does not accurately reflect the process that preceded its creation, such as the discussions that took place during the hearings. It can make statements using different terms and is a representation of the actuality it addresses. I will demonstrate that the work of staff from a range of ACT and Commonwealth Government departments reinforced the dominant discourse that kangaroo grazing is an ecological threat or the cause of ecological damage.

4.3 Analytical focus: Exclusion, erasure and bibliopolitical constructions

IE provides analytical tools that are useful in understanding how key government documents determined the sources of ecological degradation in the ACT's lowland native grassland and woodland. These include contrast structures, rulemaking, and 'cutting-out' processes. Also drawing upon Kameo and Whalen's (2015) 'negotiation erasure' and 'bibliopolitics' as developed by Montcher (2017, 2023) enables me to demonstrate how knowledge that ran counter to the ACT Government's preferred approach to kangaroo management was incorporated into government reports in ways that ultimately affirmed the government's preferred approach.

In her paper, 'K is mentally ill: The anatomy of a factual account', Smith (1978) reanalysed an interview conducted by one of her students as part of a class assignment. The interview explored how a woman, along with her friends, progressively deemed another woman, 'K', as having developed a mental illness. Smith illuminated 'contrast structures' that were developed to enable K's friends to make 'rules' that, in turn, allowed them to perform a 'cutting-out procedure' that identified K as being mentally unwell (Smith, 1993b: 27-28). Smith (1993b: 27) defined 'contrast structures' as being situations 'where a description of… behavior is preceded by a statement which supplies the instructions for how to see that behavior as anomalous'. Contrast structures may be used to identify a social rule that provides instructions as to how to select the 'appropriate' characteristics, behaviours, and so on (Smith, 1993b: 26).

Smith (1993b: 18) identified the student interviewer as the 'teller of the tale', which she defined as being 'the "I" of the account who is represented as telling the story of what happened'. Such a person can define rules or situations and describe behaviours. Following the rules, instructions are given that direct courses of action as appropriate responses. How the teller of the tale uses such privileges is central to the cutting-out procedure. Smith (1993b: 26) demonstrated this through the interviewer, who positioned herself as defining the condition of mental illness and connecting K's behaviour back to that definition to conclude that K did

indeed have a mental illness. Smith explained that:

> 'Cutting out' is done by constructing relationships between rules or definitions of situations and descriptions of K's behavior such that the former do not properly provide for the latter. The behavior is then exhibited as anomalous. Reading back from the anomaly gives the effect that the rule or situation which obtains is not recognized by K *as it is*. (Smith, 1978: 47, emphasis in original)

Kameo and Whalen are ethnomethodologists who drew upon Smith's work when developing their analytical concept of 'negotiation erasure'. While not identifying as institutional ethnographers, their work shares some commonalities with IE in that they study the 'embodied activities of reading and writing in real time' to better understand 'how documents actually "make things work" in organizations' (Kameo & Whalen, 2015: 209). They employed the term 'negotiation erasure' to describe a process in which organisations remove the descriptions and negotiations that were part of the process of creating a document (Kameo & Whalen, 2015: 226). Examining what was included and excluded in the final document helps to uncover whether the final product became more 'organisationally acceptable'. This explains the persistence of such documents and their resistance to organisational change.

Kameo and Whalen (2015) developed the concept of 'negotiation erasure' by analysing the incident report forms produced when people called police and fire communications centres to seek help. They revealed how complex conversations regarding descriptions of people's appearances were translated into an organisational form of shorthand. Similarly, Whelan (2021) contrasted a draft workload model, which was produced as part of a university Enterprise Bargaining Agreement, replete with tracked changes, with the final workload model. In doing so, he noted the 'institutional forgetting about why things are the way they are and how they came to be this way, a fundamental feature of the operation of social power' (Whelan, 2021: 342). Viewing ACT Government documents through the lens of 'negotiation erasure' enables me to demonstrate where and how information was transformed and why this was done. As I

shall discuss in this chapter, negotiation erasure is but one process by which to achieve bibliopolitical ends.

I discussed 'bibliopolitics', as developed by Montcher (2017: 206, 207) and others, in section 3.3.3. In this chapter, I will demonstrate how bibliopolitical practices spanned different arms of the ACT Government, including Dr Maxine Cooper (2009b), ACT Commissioner for Sustainability and the Environment, in the construction of her grassland report, and Stefaniak et al. (2009), who formed the 2009 ACAT panel, in deciding the cause of the ecological degradation apparent at the MTA.

In section 4.4, I position Cooper as the teller of the tale who created rules that enabled her to establish kangaroo grazing as being ecologically destructive and to identify the circumstances in which dissenters would be excluded. I then locate the ACAT presidents as the tellers of the tale in sections 4.5 and 4.6 of the 2009 and 2013 hearings, respectively. I trace how Stefaniak and his colleagues developed rules and processes that enabled them to remove from consideration the ecologically deleterious impacts of human actions and maintain faith in the ACT Government's evidence.

4.4 Cooper's 2009 report as a reframing tool

In section 4.2, I highlighted that key government texts foregrounded human actions as historical and current threats to the ACT's vulnerable ecological communities. I also noted that they provided details about specific sites, some of which would later be explored in the ACAT hearings. In this section, I will examine the work Commissioner Cooper did to align the findings of two reports with the ACT Government's kangaroo management plans at the individual grassland sites. In section 4.4.1, I will discuss how Cooper processed the *Grassland Strategy* to enable her to determine that kangaroo grazing was an ecological threat in the ACT. In section 4.4.2, I concentrate on how Cooper transformed Hodgkinson's findings to assert that kangaroo grazing had brought the MTA to an ecologically 'critical threshold'. In section 4.4.3, I explore how Cooper concluded that killing kangaroos in specific sites, including the MTA, was urgently

required. I will also illuminate how she precluded dissenters' meaningful engagement in commenting on the Draft ACT KMP by fast-tracking the process.

4.4.1 Correcting the 'failure' of the Woodland Strategy

In the *Grassland Strategy*, Dunford et al. covered the pertinent areas of lowland native grassland conservation, including details of associated flora and fauna, planning and management, and the conservation strategy. Focusing specifically on the MTA, the *Grassland Strategy* mentioned that kangaroo grazing appeared to be beneficial in ensuring appropriate habitat for threatened grassland earless dragons (*Tympanocryptis pinguicolla*) and striped legless lizards (*Delma impar*), which are depicted in Photographs 13 and 14, respectively:

> Land management practices that appear to be compatible with maintaining the habitat of the species [grassland earless dragons] include grazing by stock at low intensity (such as occurs in the Jerrabomberra Valley), grazing by kangaroos (Majura Training Area) and regular mowing to a height of 10 cm (Canberra Airport). (Dunford et al., 2005: 39)

> Grazing by stock at low intensity (such as occurs in the Jerrabomberra Valley) or kangaroos (Majura Training Area) appears to be compatible with maintaining the habitat of the species [striped legless lizards]. (Dunford et al., 2005: 40)

Photograph 13: A Canberra grassland earless dragon

(Source: FFelxii (n.d.), reproduced under Creative Commons licence BY-SA 4.0.)

Photograph 14: A striped legless lizard

(Source: Clancy (n.d.), reproduced under Creative Commons licence BY-NC 4.0.)

While extensively referencing the *Woodland* and *Grassland Strategies* (Action Plans 27 and 28, respectively), Cooper raised an important concern with Dunford et al.'s (2005) approach in the *Grassland Strategy*, which she refers to as 'Action Plan No. 28':

1. Action Plan No. 28 describes the issues related to using these practices to achieve
2. conservation outcomes in detail in Sections 3.7 and 2.1.7. However, Action Plan No. 28
3. fails to address overgrazing by kangaroos as an issue as no such threat was perceived at
4. the time the strategy was produced in 2005. Consequently the issues related to kangaroo
5. grazing are dealt with in some detail in this report. (Cooper, 2009b: 44)

The 'practices' Cooper referred to in line 1 included fire, slashing and mowing, and grazing. In lines 2 to 4, Cooper established a rule that kangaroo grazing was an 'issue' to be addressed and that the *Grassland Strategy* failed to do that. In lines 4 and 5, Cooper replaced the 'failed' sections of the *Grassland Strategy* with the information she provided in her report. Cooper appears to have assumed that it was not a conscious act, but a 'failure' that Dunford et al. (2005) did not position kangaroo grazing as an ecologically threatening process, but they, instead, noted the beneficial impacts of kangaroo grazing on maintaining the habitat of endangered species, as mentioned above. We can see a negotiation erasure process taking place as Cooper's choice of words enabled her to selectively draw upon *the Grassland Strategy* and not include or address the sections that did not comply with her rule.

As I stated in section 2.3.1, the Office of the Commissioner of Sustainability and the Environment functions as an independent statutory body in the ACT. To identify an aspect of an earlier report from another government department as having 'failed' may appear strong language for a commissioner to mobilise. That, along with the acknowledged contradiction of Hodgkinson's findings (see Ben-Ami, 13/5/2009, Recording 2, 1:34:14-2:11:59), opens the possibility for a second stage of negotiation erasure, as Cooper's 2009 report was not cited in the subsequent key government documents associated with kangaroo grazing (as with ACT Government Environment Planning and Sustainable Development Directorate, 2017; Frawley,

2010). Through her report, these combined acts allowed Cooper to transform the information presented in the *Grassland Strategy* into something more 'organisationally acceptable' (Kameo & Whalen, 2015: 226) as it resonated with the ACT Government's preferred approach to kangaroo management.

Cooper (2009b: 10) engaged Hodgkinson to conduct a field assessment of 49 grassland areas in the ACT. Hodgkinson's report was central to Cooper's recommendations. In the following section, I will discuss Hodgkinson's findings and how Cooper drew upon them to inform her recommendations.

4.4.2 Hodgkinson's findings and the bibliopolitical construction of a critical threshold

To compile his commissioned report, Hodgkinson (2009: 6) reviewed key documents, which included the *Grassland Strategy*, inspected 49 sites in the ACT, and identified the causes of deterioration due to grazing, weed invasion, mowing, fire, and physical disturbances, such as compacted or moved earth. He mentioned that two sites, Mulanggari and Crace, had been 'isolated by roads and urban development' but did not foreground agricultural and urban development as causing ecological degradation, as the authors of the *Grassland Strategy* had done. The following is Hodgkinson's only mention of the MTA or MA01 as it appears in his original report:

Majura Training Area (MA01)

Majura Valley: National Land

General view along 'kangaroo-proof' fence towards Black mountain [sic] Tower (image on 11 June 2008).

General view (image on 11 June 2008).

Site report: This large iconic site of 126.6 ha (113.7 ha of Natural Temperate Grassland, 5.8 ha of Native Pasture and 7.1 ha of Exotic Pasture) contains populations of five threatened plant, reptile and insect species (Button Wrinklewort, Grassland Earless Dragon, Golden Sun Moth, Perunga Grasshopper and Striped Legless Lizard). The site has been placed in the Conservation Category of 1 and as such the site is of very high ecological significance. If the site were fragmented or reduced in size it is likely species would become locally extinct, and the ecological function of other nearby Natural Temperate Grassland would be significantly weakened. Weeds (Thistles, Serrated Tussock) are well controlled. The site is not grazed; kangaroos are kept out by a high electric fence, and this is appropriate. No critical thresholds are being approached. Inspected 2 June 2008.

Management arrangements: A Memorandum of Understanding was noted and no Management Plan exists. (Hodgkinson, 2009: 53, bolding in original)

Most pertinently, Hodgkinson noted that 'No critical thresholds are being approached' in the portion of the MTA he observed. This put Cooper in an awkward situation as the conclusion of the report she had commissioned ran counter to the imperatives of the ACT Government, which positioned killing kangaroos as necessary to avert ecological damage. In her report, Cooper (2009b: vi, 50) deemed kangaroos to be a 'highly significant threat' to the ACT's lowland native grassland and cited Hodgkinson as determining that the MTA had reached a critical threshold. While the main body of Cooper's report was 80 pages long, it contained almost 200 pages of appendices, and it was in two such appendices that the data transformation was conducted.

In her full report, Cooper included Hodkinson's report as Appendix 8 and a summary of Hodgkinson's report blended with discussions by unidentified ACT Government staff members in Appendix 4. Cooper (2009b: 39-59) synthesised both appendices to create section 4.1 'Threatening processes currently impacting grassland sites' in her report. Examining these three sections of Cooper's report enables us to walk through the process that enabled the transformation of Hodgkinson's conclusion on 2 June 2008 that 'No critical thresholds are being approached' into Cooper's citation on 14 March 2009 of his findings that the MTA 'had reached a critical threshold'.

The main body of Cooper's report contained a table depicting the processes that threatened the ACT's lowland native grassland sites and acknowledged Hodgkinson's report as the source of the information presented (Cooper, 2009b: 39, 41-43). However, the table stated that the MTA was 'at a critical threshold' (Cooper, 2009b: 41). Cooper cited Hodgkinson when defining a 'critical threshold' as being:

> … a point at which one or more threats will cause irreversible damage to a site, beyond which native plant and animal survival and reproduction is compromised (Ken Hodgkinson, report to the Commissioner for Sustainability and Environment). Sites identified as being in a critical condition or approaching a critical threshold require immediate action. (Cooper, 2009b: 43)

While Hodgkinson (2009: 59) noted that 'Kangaroo grazing is now threatening survival of some grassland sites', he listed eight sites, none of which were the MA01. They included Ginninderra Experimental Station (BE01), Dunlop (BE02), Jarramlee (BE03), Caswell Drive (BE10), the CSIRO Headquarters in Campbell (CC01), Crace Nature Reserve (GU03), Malcolm Vale (MA04) and Majura West (MA06). Malcolm Vale is a former rural leasehold area which was incorporated into the MTA on 1 July 2007 (see Berger, 4/6/2009, Recording 1, 0:00-2:40), a year before Hodgkinson's (2009: 56) observations at the site on 11 June 2008. By contrast, Cooper went on to provide the following statement regarding Hodgkinson's assessment of the MA01 site within the MTA:

> 1. Dr Hodgkinson visually assessed each site for grazing and in so doing considered
> 2. the species of herbivores present and the level of current grazing as indicated by the
> 3. height of grasses, grass seed reproduction in the last growing season, inter-tussock
> 4. spaces, the appearance of soil surface and presence of current erosion. The
> 5. prevailing drought was taken into account. Based on his observations, he
> 6. determined that the sites that had reached a critical threshold in terms of grazing
> 7. pressure from kangaroos were:
> 8. • Majura Training Area (MA01) … (Cooper, 2009b: 52)

The key statement in this section occurs in lines 5 to 8, where Cooper claimed Hodgkinson concluded the MTA (MA01) had reached a critical threshold. Appendix 4 of Cooper's report provided a 20-page summary of the threatening processes to the grassland and recommended actions. It presented the crucial bridge between the conclusions Hodgkinson submitted in his report in Appendix 8 and those Cooper cited him as having drawn in the main body of her report. We are told in Appendix 4 that 'In the report, *Table 5: Site assessment for threatening processes and condition for lowland native grasslands sites in the ACT* is based on the information in this appendix' (Cooper, 2009a, emphasis in original) and not directly on

Hodgkinson's report. In Appendix 4, Cooper stated:

1. This appendix is a summary of each of the 49 lowland native grassland sites in the
2. ACT. Comments with respect to 'Current Threatening Process' and 'Actions' are based
3. on information Dr Ken Hodgkinson provided in his independent assessment of sites,
4. *discussions with officers of Australian Government agencies, and also with those*
5. *officers from the ACT Department of Territory and Municipal Services* who were
6. involved in a roundtable discussion held on 10 October 2008. (Cooper, 2009a, emphasis added)

Lines 1 to 3 affirm that Cooper drew upon Hodgkinson's report to draw her conclusions. However, in lines 3 to 6, the blending of the different sources of information makes it impossible to determine which parts of the information could be attributed to which people. Lines 4 to 6 present the possibility that Hodgkinson may not have been present at the roundtable discussion with the larger group of speakers involved in Cooper's information-gathering process. Cooper did not clarify what she meant in line 4 by 'discussions with officers of Australian Government agencies', which could mean anything. In the section that followed, Cooper discussed sites in the Majura Valley, commencing with the MA01 section of the MTA:

> **Comments:** National Land. This site contains populations of Button Wrinklewort, Grassland Earless Dragon, Golden Sun Moth, Perunga Grasshopper and Striped Legless Lizard. A fence was erected in 2008 to exclude kangaroos and reduce the extreme pressure of their grazing on the grassland; *however, this has transferred the pressure to the surrounding endangered Yellow Box-Red Gum Grassy Woodland, which will be to the detriment of this ecosystem*. The site is one of only a few that has a large contiguous link between the natural grassland and woodland upslope. *The site has not yet recovered from the extreme grazing pressure from kangaroos.* (Cooper, 2009b: Appendix 4, bolding in original, italics added)

After the above section of text, Cooper expressed concern for the impacts of a potential new road that might affect the site and noted that the ACT Government and the Commonwealth Government had signed a memorandum of understanding regarding the site. She went on to highlight:

> **Current Threatening Processes:** Parts of this site were at a critical (C) threshold *due to overgrazing by kangaroos*. A kangaroo management fence was erected and the *site is recovering*. Minor ongoing management of weeds is needed.
> **Action:** Allow for *recovery of grassland vegetation* following kangaroo removal. Reduce kangaroo grazing pressure on unfenced Majura Training Area (containing Yellow Box-Red Gum Grassy Woodland) and abutting areas. (Cooper, 2009b: Appendix 4, bolding in original, italics added)

The mechanism of negotiation erasure can be seen as Hodgkinson's original report in Appendix 8 was processed and blended by combining it with the voices of other unidentified ACT Government staff in Appendix 4. Doing so enabled Hodgkinson's conclusions about the MTA to be erased and the spoken words of unidentified ACT Government staff to be foregrounded to produce a result that endorsed killing kangaroos and obfuscated the fact that this conclusion had not been drawn from Hodgkinson's report. While in the main body of her report, Cooper attributed the conclusion that the MTA was at a 'critical threshold' to Hodgkinson, she buried in Appendix 4 her acknowledgement that the conclusion was based on a blending of many unidentified voices. Doing so was more than a simple mechanism of erasure. Returning to Montcher's (2017: 207) positioning of 'bibliopolitics' as an 'interpersonal system of political communication', we can see that this constitutes a bibliopolitical citational chain. Transforming Hodgkinson's conclusion about the MTA and presenting it as the opposite of what he said enabled Cooper to endorse the ACT Government's approach to kangaroo management, particularly with reference to the MTA.

In other studies that have examined negotiation erasure, the descriptions and negotiations removed in the negotiation erasure process would not have been accessible to the reader had it not been for the privileged access the researchers had to the documents in question (see Kameo & Whalen, 2015; Whelan, 2021). I reiterate that Hodkinson's report was appended to Cooper's broader report, which remains available for download on the ACT Government's website. The negotiation erasure process would be readily apparent to any reader willing to wade through Hodgkinson's 63-page report in Appendix 8, the 20-page summary in Appendix 4, and how Cooper incorporated the contents of the aforementioned documents into the 21-page section of the main report in which she discussed the ACT's lowland native grassland's threatening processes (see Cooper, 2009b: 39-59). As few would do so, the process of negotiation erasure remains hidden in plain sight. Thus, in tracing the process of transforming Hodgkinson's conclusion that '[n]o critical thresholds are being approached' at the MTA (MA01) to citing him as having concluded the site 'had reached a critical threshold in terms of grazing pressure from kangaroos', Cooper transformed Hodgkinson's findings into something more organisationally acceptable to the ACT Government's preferred approach to kangaroo management.

4.4.3 Establishing rules of sociopolitical and biophysical exclusion

In the 'Executive summary and recommendations' section of her report, Cooper (2009b: vi-vii) noted her 'Urgent recommendations' which commenced with Recommendation 21. She opened this recommendation by emphasising the need to '[i]mprove the ecological condition of sites that are in a critical condition or approaching this state, by reducing current threatening processes of weed invasion, inappropriate mowing and overgrazing by stock, rabbits and kangaroos as a matter of urgency'. In discussing her findings, which informed that recommendation, Cooper stated:

1. There is an urgent need for land management actions to be undertaken to protect the
2. 60% of the Territory's lowland native grassland sites that are currently in a critical
3. condition or approaching this state. The threatening processes that have caused the
4. demise of the grassland sites include weeds, inappropriate mowing regimes,
5. overgrazing by stock, Eastern Grey Kangaroos and rabbits. The prolonged drought
6. has exacerbated the effect of these processes.
7. The over abundance of kangaroos is a recent and highly significant threat that has
8. changed the condition of many of the lowland native grassland sites, and likely to
9. adversely affect other sites in the future. It is estimated that sustainable kangaroo
10. density is approximately one kangaroo per hectare. The most humane methods
11. should be used to reduce kangaroo numbers to achieve this density. This is likely to
12. be shooting. From an animal welfare perspective the most appropriate time to cull is
13. between March and July to avoid the time of year when a high proportion of
14. females are supporting 8- to 12-month-old juveniles. … (Cooper, 2009b: vi-vii)

Cooper commenced in lines 1 to 3 by issuing a call to action by noting the precarious state of the grassland and the urgent need for protection. Lines 3 to 6 note six 'threatening processes' that led to the 'demise' of the grassland. As well as kangaroo grazing, such processes included four linked to humans: weeds, inappropriate mowing regimes, overgrazing by stock, and rabbits, the latter of which were brought to Australia on the First Fleet (NSW Government Office of Environment and Heritage, 2015: 1). The 'prolonged drought' may have had both human and nonhuman causes. Despite dedicating a chapter to 'Future land use and development', she did not include agricultural or urban development as threatening processes.

When transitioning from line 6, Cooper (2009b: xiv) quickly and without explanation left behind her aforementioned '[t]wo of the most threatening processes' (weeds and inappropriate mowing regimes) and redirected the reader's attention to focus solely on the 'highly significant threat' posed by kangaroos (line 7). In lines 7 to 9, Cooper stated that kangaroos had already 'changed the condition' of the grassland and were 'likely' to extend their

destructive efforts. This extended the previous rule I discussed in section 4.4.1, in which Cooper (2009b: 44) established that kangaroo grazing was 'an issue' before extending this to assert that sites including the MTA (MA01) 'had reached a critical threshold in terms of grazing pressure from kangaroos' (Cooper, 2009b: 50). Cooper distinguished kangaroos from other threatening processes, thereby cutting them out from such processes and constructing an urgency that required them to be, to some extent, 'cut out' of the local ecological communities.

That Cooper posed the risk of kangaroo grazing as being 'recent' in line 7 is central to the relationship of her report to the ones that preceded it, and justified why her report is starkly different to the *Grassland Strategy*. Hodgkinson (2009: 53) inspected the MTA site on 2 and 11 June 2008 and released his report in January 2009. Cooper's report was released on 12 March 2009, and she did not indicate that the 'recently' identified risks of kangaroo grazing were discovered in the intervening months between the two reports. The sentence in lines 7 to 9 also provides instructions on how to read the rest of the report. Lines 9 to 14 state as conclusive facts the idea that an ideal kangaroo population density existed, and it could be humanely achieved by shooting them during scheduled months. Given such 'facts', Cooper then focused on those who opposed killing kangaroos:

14. … Sectors
15. of the community are likely to find culling at anytime unacceptable. Their views are
16. respected and their submissions to this investigation have been carefully
17. considered; however, there is at present no practical alternative for removing large
18. numbers of kangaroos. Given the limited time for undertaking a cull, the ACT and
19. Australian Government departments, who are the relevant land managers, were
20. informed several months ago that there would be a recommendation in this report
21. regarding the need to remove kangaroos from some sites as a matter of urgency.
22. Addressing the over population of kangaroos needs to be given a very high priority.

(Cooper, 2009b: vii)

Cooper shifted her attention to those who 'are likely to find culling at anytime [sic] unacceptable' in line 15. In lines 15 to 17, she highlighted that the views of those who oppose killing kangaroos were 'respected' and she had 'carefully considered' their submissions to her investigation. This set in train the construction of a rule that people who unreasonably oppose killing kangaroos would be excluded. I will pick up on how this second rule was enacted in the section below, where I discuss lines 23 to 28.

In lines 17 to 18, Cooper reiterated the urgent need for killing ('removing') sizeable numbers of kangaroos. In line 18, we are told that the 'limited time for undertaking a cull' was a given. As I discussed in section 2.4.4.2, the ACT Government constructed a deadline of 31 July by which the killing of kangaroos must be completed each year. Frawley (2010: 79) asserted it did so in the interest of animal welfare, an assertion that was and remains contested by dissenting ecologists (see, for example, Mjadwesch, 4/6/2014, 1:19:59-1:24:28).

Arguably, this passage's most important section occurs in the following sentence. In lines 18 to 21, Cooper announced that the documentational architecture was already in place to commence killing kangaroos at several sites throughout the ACT 'several months' before publishing her report. Cooper had instructed government departments to prepare for the implementation of her impending recommendations. Given that there was only a matter of weeks separating the publication of Hodgkinson's and Cooper's reports, Cooper did not explain the grounds upon which she made that decision.

The week after Cooper published her report, the Draft ACT KMP was released for public comment, with submissions closing on 11 May 2009 (Stanhope, 2009). During the 2009 ACAT hearing, Fletcher noted that the Draft ACT KMP was released for public comment 'not because there's any legislative requirement to so … but simply because it seemed an appropriate thing to do to enable public comment on the policies' (see Fletcher, 02/06/2009, Recording 3: 58:30-59:12). The forewarning for Cooper's impending advice 'several months' prior to March 2009, therefore, indicates that the ACT Government created a perception of facilitating public participation, one facet of the ACT Government's commitment to 'open government', while simultaneously rendering it moot for the sections of the Plan on killing

kangaroos, as preparations to that effect had already commenced. Such behind-the-scenes negotiations, therefore, present another form of negotiation erasure. The licence to kill kangaroos at the MTA was authorised four weeks after Cooper's report was published, and shooting commenced in nature reserves throughout the ACT later that year (see ACT Government Environment, Planning and Sustainable Development Directorate, 2017: 44).

Line 20 highlighted that the relevant government departments needed to follow her recommendations 'as a matter of urgency'. Line 22 again emphasised the need for Cooper's recommendations 'to be given a very high priority'. By this stage of the passage, there had been multiple repetitions of the 'urgent' need for action (line 1), 'critical condition' (lines 2 to 3), 'limited time' (line 18) to address the undesirable situation, including the need to 'protect the … grassland' (lines 1 to 2), 'threatening processes' (line 3), the 'demise of the grassland' (line 4), the 'exacerbated' effect (line 6), the 'highly significant threat' (line 7), and 'likely to adversely affect other sites in the future' (lines 8 to 9). The final two sentences reinforced that Cooper considered the need to kill kangaroos a foregone necessity, irrespective of what the results of the public review of the Draft ACT KMP revealed:

> 23. A Kangaroo Management Plan for the ACT is currently in preparation and will be
> 24. the subject of consultation. While this is the case, removal of kangaroos should not
> 25. be delayed, pending adoption of this plan. Existing policies and procedures should
> 26. be used to guide needed field actions. The Kangaroo Management Plan should,
> 27. however, be progressed as quickly as possible to guide field and other actions in
> 28. 2010 and beyond. (Cooper, 2009b: vii)

That Cooper advised the 'removal of kangaroos should not be delayed' (lines 23 to 24) reiterates the points I made above. Cooper was quite unclear in lines 23 to 24 as to whether she was stating that the licences had been approved or should commence before the final version of the ACT KMP was published. Reiterating the timeline of events that occurred in 2009, Cooper's

report was released on 12 March, the Conservator issued the licence to kill kangaroos at the MTA on 9 April, shooting at the MTA commenced on 5 May, public comments on the Draft ACT KMP closed on 11 May, and the ACAT hearing took place from 12 May to 22 June.

In lines 25 to 26, Cooper urged that '[e]xisting policies and procedures should be used to guide needed field actions', but key policies and procedures would be introduced through the ACT KMP. In lines 26 to 28, Cooper noted the importance of the ACT KMP as it would 'guide field and other actions in 2010 and beyond'. However, the sentence that preceded this precluded delaying actions until the ACT KMP had been reviewed through public consultation. As I shall discuss in Chapter 6, the Draft ACT KMP was closely examined throughout the 2009 ACAT hearing.

After explaining the findings that informed Recommendation 21, Cooper outlined the details of that recommendation, commencing with three sites owned by the Commonwealth Department of Defence (MA01, MA04 and MA06), which included the MTA (MA01), as depicted in Map 1:

29. **Recommendation 21:** Improve the ecological condition of sites that are in a critical
30. condition or approaching this state, by reducing current threatening processes of
31. weed invasion, inappropriate mowing and overgrazing by stock, rabbits and
32. kangaroos as a matter of urgency, specifically:
33. **In Majura Valley:**
34. • Grazing pressure should be reduced by:
35. – Reducing the number of kangaroos on 'Malcolm Vale' (MA04) and
36. Majura West (MA06). There is also a need to continue to manage
37. kangaroos on the Majura Training Area (MA01) while not detrimentally
38. affecting adjacent native woodland.
39. – Strategically managing (and in the short-term temporarily removing) stock
40. and controlling rabbits on Majura West (MA06).
41. • Weed management controls should be enhanced on Majura Training Area

42. (MA01) and ‘Malcolm Vale’ (MA04). (Cooper, 2009b: vii, bolding in original)

Cooper then made recommendations regarding other sites. We can see in the passage above that the negotiation erasure of Hodgkinson’s finding was complete. Lines 29 to 30 and 33 to 37 concluded that the MTA (MA01) was in a critical condition. While Cooper noted in line 41 the need to ‘enhance’ weed management at the MTA (MA01), it appears as a lower priority than reducing kangaroo grazing pressure. Lines 39 to 40 raised an important point that many sites in the ACT, in which kangaroos are killed, are simultaneously agisted with cows or sheep. This practice, which continues to the present date (see Gordon et al., 2021), is depicted in Photographs 15 and 16 below in signage at the entrance of Jerrabomberra West and Kama Nature Reserves. While kangaroos were to be killed, line 39 reassured us that livestock would only be ‘temporarily remov[ed]’ in the ‘short term’. The ability to easily control the movements of ‘livestock’ enabled the ACT Government to position them as being the preferred grazers over kangaroos to reduce vegetation and, therefore, fire risk (see Fletcher, 9/7/2013, Recording 1, 1:06:36-1:09:17; Frawley, 2010: 35, 50, 104, 108).

Photograph 15: A sheep grazing sign at the entrance of Jerrabomberra West Nature Reserve

This photograph was taken while the 2014 kangaroo cull was in progress. (Source: K. Varvaro, 29 June 2014.)

Photograph 16: Kangaroo culling and livestock grazing signs at Kama Nature Reserve

(Source: K. Varvaro, 16 June 2014.)

In section 6.6, I will revisit how the ACT Government staff have contrasted kangaroos with sheep and cows, presenting the former as a threat to the latter.

From the foregoing discussion, I have illustrated how Cooper (2009b: 44) brought the *Grassland Strategy* into line with the position she adopted in her report by asserting that it 'fail[ed] to address overgrazing by kangaroos as an issue'. Cooper (2009b: 50) also applied a complex procedure that transformed Hodgkinson's (2009: 53) assessment that '[n]o critical thresholds [were] being approached' at the MTA (MA01) site to conclude that the site was 'at a critical threshold'. This resonated with the ACT Government's approach to kangaroo management and justified Cooper's urgent recommendation to kill kangaroos at the MTA to manage the 'grazing pressure' they exerted on the site. In doing so, Cooper (2009b: vii) disadvantaged those who opposed the killing of the kangaroos by recommending that the operations commence before the closure of the public consultation period for the Draft ACT KMP. Cooper's transformation of the words of the texts presenting information that opposed the ACT Government's stance (the *Grassland Strategy* and Hodgkinson's report) and silencing the voices of the dissenting public exemplifies Kameo and Whalen's (2015) 'negotiation erasure'. In the section that follows, I discuss how the process of negotiation erasure would be repeated by the ACAT panel, this time in reference to the conclusions made by Dunford et al. (2005) in the *Grassland Strategy*.

4.5 The 2009 ACAT hearing: The causes of ecological damage at the MTA

The 2009 ACAT hearing commenced within weeks of Cooper's report release. At some point during the hearing, all parties acknowledged that human actions had significantly impacted the ecological state of the ACT in general and the MTA more specifically. The ACAT panel members concluded that the military training activities had no negative ecological impact on the MTA, that the *Grassland* and *Woodland Strategies* substantiated claims that kangaroo grazing

threatened vulnerable species at the site, and that the ACT Government was exempted from providing 'satisfactory' evidence that that was the case. In this section, I examine how the ACAT panel members developed two rules that led them to arrive at such determinations.

4.5.1 Establishing the rule that kangaroo grazing is an issue of concern

In the 2009 *Reasons for Decision* document, the ACAT panel members spoke in one unified voice in the written report. As Smith's (1993b) 'teller of the tale', their position enabled them to create the rules, observe the evidence presented, and compare the evidence to the rules they made. Throughout the hearing, Martin Bennett, the counsel for Animal Liberation NSW, and the witnesses he presented claimed that many human actions had detrimentally impacted the MTA. In a section of the *Reasons for Decision* document entitled 'The Land, the Subject of the Licence (MTA)', the ACAT panel members noted that:

> 292. 26. The Department of Defence carries on military training activities on the
> 293. MTA. It was suggested on several occasions in cross-examination and
> 294. submission generally by Mr Bennett that the military activity was heavy, and
> 295. implicit in those questions and those comments by him was that the state of the
> 296. Land was due in some significant measure to the military activities carried on at
> 297. the MTA, rather than overgrazing by kangaroos.

The MTA is a heavily booked training area for the Royal Military College (Duntroon) and the Australian Defence Force Academy, and accommodates training programs from across Australia and internationally (Cossan, 14/05/2009, Recording 1, 38:18-43:40). In line 292, the ACAT panel members acknowledged such training. In lines 292 to 297, Stefaniak reflected on Bennett's concerns that the training exercises at the site were 'heavy'. Having served in the Australian Army, Stefaniak was very familiar with the site (see Stefaniak, 2/6/2009, Recording 1, 1:48-4:22). In the second sentence, Stefaniak et al. provided instructions for how to assess

Bennett's assertions. The use of 'suggested' (line 293) and 'implicit in [his] questions' (line 294) hints at Berger suggesting an inaccurate assertion that the ACAT panel members would go on to correct. In lines 298 to 303, Stefaniak et al. then cited Berger, the counsel for the Department of Defence, in his role as '*amicus curiae'*, or 'friend of the court' (see section 2.4.4.1), who provided an account of the types of activities that took place in the MTA and the layout of the different training areas:

> 298. 27. Mr Berger in his role as amicus assisting the Tribunal was asked on several
> 299. occasions to take instructions from the Defence Department in relation to the
> 300. nature and extent of those military training activities. He did so, informing the
> 301. Tribunal that light infantry exercises took place, in addition to shooting on a
> 302. designated rifle range and grenade exercises on a designated concrete 30-metre
> 303. by 30-metre range.
> 304. 28. The rifle range was bordered by an embankment which served to confine
> 305. the activity and prevent damage to surrounding areas. As to vehicle type, access
> 306. and activity to and on the Land, the Tribunal was informed that it was restricted
> 307. to four-wheel drive vehicles which were restricted to designated roads. In other
> 308. words, there was no off-road vehicular activity. The Tribunal does not accept
> 309. the suggestion that the military training exercises carried out by the Department
> 310. of Defence on the MTA has had any significant detrimental environmental
> 311. impact on the Land. (Stefaniak et al., 2009: 6)

In lines 301 to 308, the ACAT panel members listed interventions such as a 'designated rifle range' (line 302), the construction of a designated grenade range (lines 302 to 303), an 'embankment' to 'confine the activity and prevent further damage' (lines 304 to 305), and restricting vehicular traffic to 'designated roads' (lines 305 to 308), which were positioned as protecting 'the Land' from exploding grenades, rifle shots and other forms of infantry training.

Under the banner of 'the Tribunal', listing the interventions enabled the ACAT panel members to create a rule that efforts to contain environmental destruction neutralised such damage. This, in turn, allowed them to perform a cutting-out procedure of the impacts in lines 308 to 311. By simply acknowledging the aforementioned interventions made at the site, the ACAT panel absolved anyone from needing to provide evidence of the current or historical impacts of human actions at the MTA. Later in the *Reasons for Decision* document, they shifted their attention to the evidence that supported Fletcher's assertion that kangaroo grazing deleteriously impacted vulnerable species. I now turn to the second rule developed by the ACAT panel members.

4.5.2 Establishing a rule of faith in the government's evidence

In the 2009 *Reasons for Decision* document, the ACAT panel members claimed Fletcher's witness report cited the *Woodland Strategy* (Dunford et al., 2004) and the *Grassland Strategy* (Dunford et al., 2005) as providing evidence of the deleterious impacts of kangaroo grazing on grassland earless dragons and striped legless lizards:

> 677. 62. Drawing on the *ACT Grassland Strategy (2005)* and the *ACT Woodland*
> 678. *Strategy (2004)*, Dr Fletcher identified 10 animal and 3 plant species that have
> 679. been declared threatened in the ACT and identified as present at the MTA. Two
> 680. in particular are stated to be at particular risk from overgrazing by kangaroos:
> 681. **Grassland Earless Dragon**
> 682. *The species and its habitat appear to be maintained under stock and/or*
> 683. *kangaroo grazing at low intensities. Heavy grazing pressure by stock,*
> 684. *kangaroos, and/or rabbits reduces and/or degrades this habitat. Kangaroo*
> 685. *grazing pressure (exacerbated by drought conditions), with resultant of*
> 686. *tussock grassland structure, has impacted on the dragon population.*
> 687. **Striped Legless Lizard**
> 688. *The species and its habitat appear to be maintained under stock and/or*
> 689. *kangaroo grazing at low intensities. Grass tussock structure, important for*

690. *this species, is lost under heavy grazing pressure by stock, kangaroos and/or*
691. *rabbits.* (Stefaniak et al., 2009: 15, bolding and italics in original)

In lines 677 and 678, we are told that Fletcher drew on the *Grassland* and *Woodland Strategies*. Therefore, it seems safe to assume that the information discussed in the *Reasons for Decision* documents may be found in those reports. Lines 679 to 691 clearly position kangaroo grazing as threatening grassland earless dragons and striped legless lizards. However, in the *Woodland Strategy*, Dunford et al. (2004: 55, 62, 99) do not mention grassland earless dragons or striped legless lizards except to note that the grassland adjacent to the lowland woodlands provides habitat for them and to discuss the ACT Government's actions to create grassland nature reserves for striped legless lizards. In the *Grassland Strategy*, the messages Dunford et al. (2005) convey starkly contrast with what is reflected above in the *Reasons for Decision* document. Regarding grassland earless dragons, the *Grassland Strategy* notes:

> In common with other threatened grassland animal species, the main threats to the Grassland Earless Dragon are the continued loss and fragmentation of its grassland habitat due to agricultural, urban and industrial development and degradation of habitat through changed grazing intensity, pasture improvement, weed invasion, changed fire regimes and impacts of stock. Other threats include the impacts of predators and direct human disturbance. (Dunford et al., 2005: 39)

For striped legless lizards, the *Grassland Strategy* repeats the above statement but clarifies the mention of predators by adding 'such as cats, foxes and birds of prey' (see Dunford et al., 2005: 39). They go on to highlight the threats posed by urban and infrastructure development in the ACT:

> Some areas of habitat for two populations of the Striped Legless Lizard in the ACT are subject to development proposals. In the Majura Valley proposals include new road and

> railway routes and in the Jerrabomberra Valley areas of habitat are part of a study to identify potential future land uses, including nature conservation. (Dunford et al., 2005: 40)

As Fletcher's witness statement is not publicly available, I am unable to trace the origin of the incorrect reference to the *Grassland* and *Woodland Strategies*. However, all parties involved in the proceedings had access to both Strategies as they were submitted as part of the ACT Government's evidence and were discussed throughout the hearing (see Jarvis, 2/6/2009, Recording 2, 22:00-23:00). They were also freely available on the ACT Government's website. That such a pivotal decision was made based on a stark misrepresentation of information readily accessible to all participants renders it a bibliopolitical accomplishment.

In section 4.4, I traced how Cooper processed the *Grassland Strategy* and Hodgkinson's report to produce a conclusion of the ecological threats posed by kangaroo grazing that was not present in the original documents. The ACAT panel members completed a similar, albeit more brief, process by following a flawed citational chain from the *Grassland* and *Woodland Strategies* to Fletcher's witness report, which they brought into their own *Reasons for Decision* document to arrive at the same conclusion that kangaroo grazing deleteriously impacted vulnerable species.

The final three sections of the *Reasons for Decision* document included 'Discussion of the evidence', 'An Assessment of the Expert Evidence' and 'Conclusions'. In the first section, Stefaniak et al. accepted the photographs presented as evidence by Fletcher:

> 111. The Respondent has provided a considerable amount of evidence demonstrating that overgrazing by kangaroos is causing severe damage to the grassland and the woodland. First, there is the photographic evidence that demonstrates convincingly that excessive removal of vegetation in different parts of the MTA has been caused by kangaroos. The photos of the differences between the grass cover inside and outside the fenced area and inside and outside the cages are persuasive evidence that the loss of

> vegetation has been cause [sic] by kangaroos and not by other causes such as drought. The Tribunal accepts that drought may be a contributing factor but does not accept that it has been the principal factor. Among other things, this loss of vegetation has caused the development of bare patches of ground, damage to tussock grasses, soil erosion and destruction of habitat for threatened species such as the Grassland Earless Dragon. We accept that the photos are not representative of the MTA as a whole, but they do demonstrate the existence of substantial damage caused by kangaroos to significant areas of the MTA. (Stefaniak et al., 2009: 25-26)

The ACAT panel members found Fletcher's photographs 'convincing' even though, with many of them, Fletcher did not know who took them, nor could he identify the location from which they were taken, the date or the time of day they were taken. He acknowledged that they were not representative of the site as a whole:

> Crebbin: Was the photograph on the left taken in 1990 at the same time of year?
> Fletcher: We think so.
> Crebbin: Were you present when that photograph on the left was taken?
> Fletcher: I wasn't present when that photo was taken, no. I was present during the weeks that this photo was taken, the one on the middle but not the one on the left. I do remember the conditions, though, and that's a fair depiction of them… (12/5/2009, Recording 2, 19:07-1:21:03**)**

> Jarvis: Can you tell us when left-hand picture on 13A was taken?
> Fletcher: Unfortunately, I can't give you an exact date. It's a picture on a slide in our slide collection. From who took it and that it is from a 35mm slide not a digital image, we know it was taken a long time ago. But we don't know the exact date and I'm simply asserting that there are several of us who remember the conditions looking like that. (3/6/2009, Recording 2, 24:49-25:20)

Jarvis: Dr Fletcher, how have you in these four photographs on pages 46 and 47, have you chosen sites that are particularly extremely affected or are these representative? Fletcher: I don't claim that these photos are representative at all. What happened here was that we were shown around the range by Defence personnel and asked to go to a couple of particular places and we went to those. But, by and large, most of the visit was simply where we were taken and there's no sense at all from my point of view that there's any kind of stratified survey design or random sample or anything like that. (3/6/2009, Recording 2, 56:05-56:48)

In a section entitled 'Discussion of the Evidence' in the *Reasons for Decision* document, the ACAT panel members outlined their stance on the applicant's assertions that the ecological degradation at the MTA resulted from human actions:

1166. 113. For its part, the Applicant has sought to undermine the Respondent's
1167. evidence and to argue that any damage at the MTA is not caused by kangaroos.
1168. Among the alternative possible explanations offered by the Applicant for the
1169. degraded habitat and impacts on threatened species at the MTA are drought;
1170. military activities; the effects of grazing by sheep and cattle; herbicides and
1171. predation by other animals. The Tribunal accepts that drought has probably
1172. been a contributing factor to some of the reduction of vegetation at the MTA in
1173. recent years. As to the other alternative explanations advanced by the
1174. Applicant, the Tribunal considers that no satisfactory evidence was put forward
1175. to back up these claims, nor was any satisfactory evidence advanced to refute
1176. the Respondent's case that kangaroos are the principal cause of the damage. We
1177. note in this regard the submission by Dr Jarvis that, even if some areas of the
1178. MTA are degraded for reasons other than overgrazing by kangaroos, the
1179. Conservator (and now this Tribunal) has an obligation to protect them and not

1180. to allow kangaroos to be added to the list of damaging influences. (Stefaniak et al., 2009: 26)

As with lines 293 to 297 examined in section 4.5.1 above, Stefaniak et al. reiterated their previous instructions on how to read the passage in line 1166. They positioned the applicant as engaging in a negative, potentially damaging approach, having 'sought to undermine the Respondent's evidence'. The ACAT panel members then embarked on a discussion to set the record straight by contrasting the evidence supporting kangaroo grazing as the key threatening process with 'alternative possible explanations' that they listed in lines 1168 to 1171. During the hearing, it was acknowledged and remained undisputed that all these activities had occurred at the MTA. The ACAT panel accepted drought as a contributing factor in lines 1171 to 1173, as had been done in other government documents.

The ACAT panel then presented a curious juxtaposition of the rules they applied to Fletcher's evidence compared with that presented by the dissenting scientists. In doing so, they applied low standards for assessing the ACT Government's evidence by finding photographs of questionable quality 'compelling' (Stefaniak et al., 2009: 20), as I will discuss in section 6.5. They simultaneously required the dissenting scientists to satisfy complex criteria that were impossible to meet. This included providing evidence that they deemed 'satisfactory' that refuted evidence that ecological damage resulted from kangaroo grazing (lines 1174 to 1176) and supported 'other alternative explanations' (line 1173). The key sentence occurs in lines 1176 to 1180, where the ACAT panel members acknowledged that, even if they were presented with evidence that ecological damage resulted from 'reasons other than overgrazing by kangaroos', they were 'obligated' to approve the licence to kill kangaroos so as not to prevent them from being 'added to the list of damaging influences'. The ACAT panel members effectively 'stripped off' (Kameo & Whalen, 2015: 226) the need for evidence of deleterious impacts of human actions at the site to support a more organisationally acceptable decision and ensured the persistence of the dominant approach to kangaroo management. The processes

developed by the ACAT panel members in the 2009 hearing would be repeated and extended in 2013.

4.6 The 2013 ACAT hearing: Cutting out human impacts in nature reserves

In the substantive ACAT hearing in 2013, the Australian Society for Kangaroos challenged the Conservator's decision to issue licences to kill kangaroos at seven nature reserves across the ACT, which I listed in section 2.4.4.2. The *Reasons for Decision* documents from the 2009 and 2014 hearings indicate that the ACAT panel members spoke in a unified voice. The 2013 *Reasons for Decision* statement was unusual because it comprised separate statements delivered by all three ACAT panel members, all of which delivered starkly different messages. Stefaniak presided over the substantive hearing and was joined by Senior Members Alan Anforth and Adrian Davey.

I will commence my discussion in section 4.6.1 by illustrating how Fletcher positioned the ecological impacts of urban development in the ACT as different from those elsewhere. In section 4.6.2, I examine how Stefaniak excluded the ecological impacts of human actions from consideration during the tribunal hearing. Before doing so, I explain the pattern of urban development in the ACT, as this was discussed throughout the 2013 ACAT hearing.

The ACT is a planned city in which development is guided by the original vision of Walter Burley Griffin and Marion Mahony Griffin in 1912 (ACT Environment, Planning and Sustainable Development Directorate, 2021: 7). Known as the 'bush capital' and the 'city in the landscape', the ACT developed as a mosaic of patches of bush and urban development (ACT Environment, Planning and Sustainable Development Directorate, 2021: 7). In recent years, such large patches of undeveloped land have enabled the creation of entirely new suburbs, as depicted below with the suburb of Crace in Photograph 17, taken in 2010, and Photograph 18, taken five years later.

Photograph 17: The suburb of Crace, Australian Capital Territory, January 2010

(Source: Nearmap in Kelly (2015), reproduced under open licence (see Copyright Agency, 2024).)

Photograph 18: The suburb of Crace, Australian Capital Territory, May 2015

(Source: Nearmap in Kelly (2015), reproduced under open licence (see Copyright Agency, 2024).)

This development pattern has produced Australia's fastest-growing suburbs, with rapid growth being regarded by the ACT Government as part of what makes the ACT a 'thriving and dynamic city' (ACT Government Territory and Municipal Services Directorate, 2008: 14; Kelly, 2015, 2017).

4.6.1 Constructing ecological impacts in the ACT as being different to elsewhere

On the first day of the substantive hearing in 2009, ACAT Senior Member Anforth, Fletcher and Mjadwesch discussed the ecological impacts of human actions in the ACT. Anforth explored the possibility of the ACT's rapid expansion naturally causing an increase in kangaroo population densities:

> **Anforth:** It would be the case, though, wouldn't it, if you have a constant density per hectare in the ACT, just assume you maintain that density for carrying capacity for kangaroos for so many per hectare for each of the various reserves or whatever in the ACT. A fixed density. As you take out of the equation more and more of the land, like [the suburb of] Crace and other developments, the [rubbish] tip and the rest of it, if you then just progressively reduce your grasslands with a fixed density, you're necessarily saying the kangaroo population has to diminish because the total numbers is your density times your area and so from a conservation perspective as long as you fix a constant density and you say, well, urban development's a separate issue and that'll be controlled by separate factors, you're pretty much signing the death warrant for your kangaroo population, aren't you?
>
> **Mjadwesch:** In the face of unfettered development, then, yes. (8/7/2013, Recording 3, 1:56:24-1:57:25)

The following day, Anforth questioned the need for such development, flagging the impact it has on flora, fauna and ecological communities:

Anforth: I actually understood him [Mjadwesch] to be saying, well, why are we there in the first place? I mean, why are we put to the problem of having to deal with the multivariable functions? Why have we compressed our, why have we put the kangaroos in competition with the lizards? Why did we put bulldozers through green sites and take out the grasslands in the first place? Why did we do Crace? Why did we do the tip, etcetera? Because each time that development of this kind occurs, which isn't a necessary form of development, when it occurs, you take out more grassland, you put these animals in competition with each other such that you might end up with a five-variable function.

Fletcher: No. I disagree very strongly.

Anforth: But that's your argument, isn't it, Mr Mjadwesch?

Mjadwesch: Uh, yeah, and it is more complex than that… (09/07/2013, Recording 1, 38:20-39:05)

Fletcher explained why he 'strongly disagreed' with Anforth:

1. Human population's expanding, and Canberra's very much the same and,
2. yes, more area is being taken up under urban development. Once that happens,
3. there's very little left of the natural diversity that's there before. It's wrong to think
4. of that [urban development] as taking the organisms and plants and things that were
5. there before the urban development and pushing them out, even with kangaroos.
6. Most of Canberra's urban development's been green fields development. So, it's
7. been an outwards expansion of the city into, in most cases, on farming land and
8. those are areas where there is very low kangaroo density and what kangaroos are
9. there probably got dispersed… The kangaroos that are in the reserves, the
10. populations there have arisen mainly by organic growth within the reserve. (9/7/2013, Recording 1, 42:53-44:41)

In lines 1 to 3, Fletcher acknowledged the deleterious impacts of urban development. He then created a contrast structure in lines 3 to 9 that positioned the impact of urban development in the ACT as being different to other places. This enabled him to make a rule that development in the ACT does not have deleterious ecological impacts. In lines 6 to 9, Fletcher seemed to suggest that the 'expansion of the city' onto surrounding farmland is ecologically benign. Elsewhere, he indicated that the MTA and all of the nature reserves in question in the 2013 hearing, which he fought to protect due to their ecological significance, were former grazing properties (see Fletcher, 4/6/2009, Recording 2, 32:22-33:09; 9/7/2013, Recording 1, 53:20-53:49). In lines 9 to 10, Fletcher reiterated that kangaroos were the problem due to their 'organic growth' within the nature reserves.

Fletcher then discussed that the ACT's earlier grazing era suppressed kangaroos by shooting them. He also explained how he saw the incidence of kangaroo–motor vehicle collisions as evidence of an increase in kangaroo numbers. He continued by oscillating between agreeing and disagreeing that urban development poses a threat to vulnerable species and ecological communities:

11. The urban development thing is not the conservation issue here, and it's not really a
12. kangaroo issue very much either. It's, the urban development is a conservation issue
13. for the threatened species and things like that. By and large, Canberra's urban
14. development is missing the threatened species, but there are some exceptions where
15. areas of those two threatened communities, lowland natural temperate grassland and
16. yellow box-red gum woodland, there are certainly examples where those have been
17. developed in modern times. Clearly, they were developed a lot back in the early
18. days of Canberra. But, I mean, in modern times, there are a few examples where
19. they have been developed, and there are others that will come, and it's, it's the role
20. of my unit to be engaged in a debate, for want of a better word, with the
21. development agency and the ACT Government about what's the right decision. But

22. one thing that we can't change is that expanding human population and expanding
23. Canberra, so the question always put to the people in our unit who have to deal with
24. this stuff is, well, it's develop this or it's develop this. It's a choice. It's not no
25. development. That's a bit of a red herring, I think, to most of our stuff. (9/7/2013, Recording 1, 45:50-47:06)

In this passage, Fletcher continued to contrast urban development in the ACT to that in other places. In lines 12 to 13, Fletcher reiterated that development was a problem elsewhere but asserted in lines 13 to 14 that 'by and large' it was not an issue for threatened species in the ACT. Given that the sites in question and their histories were well known to most attendees, Fletcher conceded that there were 'some exceptions' in the ACT in lines 13 to 19. In lines 21 to 25, Fletcher stated 'we', presumably he and his colleagues in his work unit, could do nothing about the expanding human population and the concomitant increases in urban development. In doing so, he neutralised the problem of deleterious human impacts, a sentiment that was echoed by Stefaniak et al., as I will discuss in the following section.

4.6.2 Cutting out the impacts of humans altogether

The 2013 *Reasons for Decision* came with no clearly identified sections, nor were the paragraphs numbered as had been done in the 2009 hearing. As such, I have numbered the lines in the original document for referential purposes. Unlike the 2009 and 2014 hearings, each ACAT panel member read a section, with President Bill Stefaniak delivering the opening and closing addresses. In his opening statement, Stefaniak et al. acknowledged the deleterious impact humans have on other species:

116. … It is a sad fact of life that human development often means species
117. are threatened or indeed made extinct and that is something which
118. unfortunately is perhaps beyond the ability of this Tribunal to influence in
119. any particular way except to say that clearly, with so many people on the

120. planet, 7 billion people, it becomes somewhat unsustainable and I would
121. certainly hope from the really, really big picture governments round the
122. world take some steps to address those sort of problems and indeed that
123. goes right down probably to local government and it needs a co-ordinated
124. approach. It's certainly far, far bigger than what we are just looking at
125. here. The duty of ACAT, of course, is to interpret the law, interpret such
126. things as the plans, and just make sure that when government decisions
127. are made and departmental decisions are made, and they are tested, that
128. that is done fairly and properly. (Stefaniak et al., 2013b: 5)

Stefaniak commenced in lines 116 to 117 in a similar way to Fletcher by acknowledging that deleterious human development deleteriously impacts species. Then, in lines 117 to 119, he positioned such considerations as being 'beyond the ability of this Tribunal to influence', thereby cutting them out from consideration in the hearing. Stefaniak pointed to 'so many people on the planet' who make it 'somewhat unsustainable' in lines 119 to 120. In doing so, he invoked a neo-Malthusian argument that is common in wildlife management, which blames ecological problems on high birth rates, particularly in Latin American, African and Indian countries (see, for example, Lunney, 2017: 12). Doing so suggests Stefaniak was cutting human involvement in the ecological destruction of local environments away from consideration and redirecting attention to the actions of people in faraway places. In lines 120 to 124, Stefaniak expressed a hope that governments 'take some steps to address those sort of problems and indeed that goes right down probably to local government'. Being an employee of the ACT Government, he shed no light on how that should happen or who should be responsible for the necessary 'steps' except to say in lines 124 to 128 that it was not his responsibility nor that of the other tribunal members, thereby cutting the ACAT out of any responsibility to be involved in finding solutions to environmental problems.

4.7 Analysis: 'Best science' and 'public participation' in the labyrinth of documents

In this chapter, I have illustrated how ruling relations associated with environmental management, and particularly kangaroo management, in the ACT are intimately intertwined with economic interests. In section 4.2, I provided government documents that highlighted human actions as being threatening to environmental processes, particularly urban, infrastructure and agricultural development. I have demonstrated how practices implemented by Commissioner Cooper and the ACAT panel members redirected attention away from such human activities to prioritise the killing of kangaroos as a solution to ecological degradation. I noted how the Housing Industry Association has been involved in drafting key environmental plans and frameworks in the region, as well as the ACT Government's profit-sharing joint ventures with developers (section 4.2). In Australia, other animals have been used to direct attention away from profitable but ecologically damaging practices associated with agriculture and habitat destruction, including 'feral' cats (see Legge et al., 2017; Probyn-Rapsey, 2016) and 'wild dogs'/dingoes (see Probyn-Rapsey, 2015, 2017, 2020; WoolProducers Australia, 2014).

While Cooper (2009b: vii) did not ignore the ecological impacts of development, she placed killing kangaroos, and those at the MTA in particular, at the top of her 'urgent recommendations'. Similarly, in the 2009 hearing, the ACAT panel members did not accept that the military training exercises carried out at the MTA caused 'any significant detrimental environmental impact'. A string of incorrect citations of the *Woodland* and *Grassland Strategies* and the application of uneven criteria to qualify evidence facilitated the construction of kangaroo grazing as having deleterious impacts on vulnerable species and ecological communities. In the 2013 ACAT hearing, Fletcher positioned urban development in the ACT as 'by and large… missing the threatened species' and the threatened ecological communities. The ACAT panel asserted that considering the human-generated environmental impacts was beyond the scope of the ACAT.

Multiple sizeable reports, field studies, and voluminous transcripts of the ACAT

hearings have supported the various decisions to kill kangaroos. The ACT Government has committed to using the 'best available scientific knowledge' to inform kangaroo management and to foster 'open government' in terms of transparency, public participation and collaboration. However, it is not until we examine the minutiae of these documents and proceedings that we can see how such commitments have been compromised.

I have illustrated how contrast structures were developed, which enabled rules to be formulated that, in turn, facilitated cutting-out procedures. A contrast structure was apparent when Commissioner Cooper positioned certain dissenters as unreasonable before acknowledging that she had long alerted government departments of her impending recommendation for killing kangaroos at several sites. This effected a cutting-out process that rendered moot all public submissions made during the period for the Draft ACT KMP, which ended after the shooting had commenced. Fletcher created a contrast structure that presented urban development in the ACT as not being ecologically damaging, unlike in other areas. This indicates the existence of a rule that must have been broken to create the 'deviant' category (Smith, 1993b: 11) of the ACT. That the ACT broke the rule that urban development is ecologically destructive enabled it to become an anomaly, thereby drawing attention away from the ACT's development processes and practices. However, this construction contradicted the ACT Government's own reports, as discussed in section 4.2.

Such contrast structures enabled the construction of other rules, as could be seen when Cooper established kangaroo grazing as an 'issue' to be urgently addressed by killing kangaroos. She also constructed a rule that people who opposed certain aspects of the ACT Government's approach to kangaroo management as unreasonable. The ACAT panel members created two key rules when determining the cause of ecological damage at the sites in question. The first rule determined that containing environmental destruction neutralised the damage at the MTA. The second rule established faith in the government's evidence. In the 2009 hearing, they found Fletcher's photographs of unknown origin 'compelling' and positioned the applicant's evidence as not 'satisfactory' while stating that even if they accepted the contrary

evidence, they would support killing kangaroos in case their grazing was found to have a deleterious impact in the future. In the 2013 hearing, they cited Fletcher's 2013 witness report, which, in turn, cited the Woodland Strategy as claiming that kangaroo grazing detrimentally impacted grassland earless dragons and striped legless lizards. The original document, which was available online, did not make such a claim.

These rules enabled various cutting-out procedures. Cooper distinguished kangaroos from other threatening processes, thereby separating them from such processes and constructing an urgency that required them to be 'cut out' of the local ecological communities to some extent. Similarly, the 2009 ACAT panel members cut out the impacts of military training at the MTA, thereby absolving anyone from needing to provide evidence of the current or historical impacts of human activities at the MTA. This was extended in the 2013 hearing to cut out the impacts of human actions from being considered at all within the ACAT.

We can see examples of Kameo and Whalen's 'negotiation erasure' in Cooper's transformation of Hodgkinson's conclusions, in her failure to provide details of the roundtable discussion at which the unidentified speakers reversed Hodgkinson's conclusions, and in the behind-the-scenes discussions that pre-empted the commencement of the shooting. We also saw in Cooper's and Hodgkinson's reports a backgrounding of the impacts of development and habitat destruction and fragmentation that was foregrounded in previous government documents. Cooper removed from consideration the sections of the *Grassland Strategy* that did not support her argument and positioned her report as addressing the areas in which it 'failed'. It's important to note that this contention within the ACT Government affords no opportunity for response, as might be the case had the differences been aired in another forum, such as an academic journal. Negotiation erasure is also apparent in the absence of the positive ecological impacts of kangaroo grazing in maintaining the habitat of endangered species in Cooper's report, as was reported in the *Grassland* and *Woodland Strategies*.

Montcher's bibliopolitical citational practices are evident in Cooper's report, the ACAT panel members' *Reasons for Decision* document, and the discussions in the hearings. This was most starkly apparent when information that was not present in the primary sources was cited.

This included Cooper's convoluted citational practices that transformed Hodgkinson's conclusions. It is also evident in the chain connecting the *Woodland* and *Grassland Strategies* to Fletcher's 2009 witness report and the subsequent *Reasons for Decision* document, where the ACAT panel members concluded that the deleterious impacts of kangaroo grazing had been substantiated. The lack of a connection between the *Woodland* and *Grassland Strategies* and Fletcher's claims was discussed in the 2009 hearing. Such discussions were erased by the ACAT panel members who established a documentational link between Fletcher's claims and the *Reason for Decision* document, thereby establishing as fact the deleterious impacts of kangaroo grazing.

There are many similarities between how Cooper, Fletcher and the ACAT panel members conducted their respective work and the results they achieved. They performed their day-to-day work in very different areas of the ACT Government, including the Office of the Commissioner for Sustainability and the Environment, Conservation Research, and the Department of Justice and Community Services, respectively. Unpicking the construction of the dominant discourse on the causes of ecological damage in the ACT has revealed that it was maintained by similar processes by people working independently of each other within the ACT Government. It has also illuminated the complex intertextual work required to maintain the ACT Government's preferred approach to kangaroo management.

In addition to my discussion about urban development, the foregoing discussion in this chapter provides evidence of several of Hood's seven elements of New Public Management (NPM) permeating the practices of ACT Government staff. There is evidence of Hood's (1995: 95-97) 'visible top hands-on management' in the way dissenters were effectively marginalised and excluded, both directly in Cooper's text and authorising the killing of kangaroos before the close of the public consultation period for the Draft ACT KMP (see section 4.4.3).

Hood (1995: 95-97) also identified contract-based service provision as an element of NPM. Over the period under study (2007-2017), many contracts were awarded to external consultants to conduct research, audits, reviews and surveys. These often occurred with limited

budgets and had to be completed in tight timeframes, with aspects of projects being compromised as a result (see Freudenberger, 1996: 1, 3-4, 6, 11; McIntyre et al., 2010: 331-332). In this chapter, this was evident in Hodgkinson's study, which was discussed by the broader panel of experts (see Braid et al., 2009: 2) and challenged by Ben-Ami (13/5/2009, Recording 2, 1:01:48-2:46:45) in the 2009 ACAT hearing. The practice of consultants constructing reports that provide information favourable to their clients is widespread and has been acknowledged by academics who also act as consultants. For example, in a symposium hosted by the Royal Zoological Society of New South Wales entitled 'Science under siege: zoology under threat', University of Sydney biologist, Dr Elizabeth Denny (2012: 128) stated, "I've been a consultant for 28 years, and the thing that everyone knows is that the truth is the perfect disguise. I no longer have any illusions about what consultants do except work for their client." For the most part, the consultants' reports listed in section 2.3.4 did that. Where they didn't, as with Hodgkinson's study, they was made to fit the ACT Government's preferred course of action.

Having narrowed down the causes of ecological change to kangaroo grazing, the ACAT panel members had to decide who was best placed to advise them on the decisions they needed to make in each of the hearings. Some precedents established in determining the cause of ecological damage also marginalised the dissenting witnesses and furthered Fletcher's rule that the ACT is distinctively different from elsewhere. This construction would be mobilised to disadvantage the dissenting witnesses. The ACAT panel members developed rules for determining the right witness in the 2009 hearing, which were extended in the subsequent hearings, as I will explore in the following chapter.

Chapter 5: Rules of the 'right' and 'wrong' witness

Chapter contents

5.1 Introduction: Five rules for qualifying expert witnesses in ACAT hearings

It is a truism to note that we live in a bureaucratic world where people make documents and text is privileged. This is obvious in a document-driven process like an ACT Civil and Administrative Tribunal (ACAT) hearing. In such a textual reality, institutions produce records that often reassure us about their probity and are self-legitimating. One of my starting assumptions in this chapter is that there are no universal, objective rules that direct processes such as those mobilised by the ACAT panel members to make decisions. Rules guiding such decisions are created in a specific social context and made to stick. Alternative possibilities exist where other rules could be made to stick. As I mentioned in section 2.4.2, expert witnesses were provided with the *ACT Civil and Administrative Tribunal (Expert Witness Code of Conduct) Procedural Directions 2009*, hereafter referred to as the *Code of Conduct*, to which they were required to adhere in their witness reports and when providing evidence within the hearings. The ACAT members identified key information indicating each witness's credibility, which they later explained in a *Reasons for Decision* document.

Smith (1978: 23) argued that texts can be examined to reveal the instructions they provide for their interpretation, which, in turn, is an essential step in 'authorising' their facticity. Liz Stanley (2018: 63) noted how readers of documents often treat the information provided as presenting 'the facts', then read from the document to such 'facts' as if that is how they occur in the realm of social life with which they are concerned. She highlighted this 'referential fallacy', which reflects an assumption that the reality is as presented in the text (Stanley, 2018: 63). The 'right' and 'wrong' witnesses can be found in individual characteristics discussed in the transcripts of the ACAT hearings and in the subsequent *Reasons for Decision* documents. Such documents reveal a 'cutting-out' procedure (Smith, 1978: 23) through which specific characteristics are presented as unfitting for a person put forward as an expert witness. Considering a range of each witness's personal attributes allowed the ACAT panel members to identify where such characteristics were anomalies to the social rules they developed to assist

them in identifying the ‘right witness’.

In this chapter, I explore how rules qualifying witnesses were created and endured in the ACAT hearings. By tracing this process, I demonstrate the cracks in a seemingly objective process in the tribunal system, the outcomes of which benefitted the ACT Government’s witnesses. Following on from Smith (1978: 27-28; 2005b: 138), my aim is not to identify the right witness or explore the actualities of the events discussed, but to explain how the ‘right witness’ was textually constituted in the *Reasons for Decision* document.

I begin this chapter by providing background information on the data in section 5.2. I highlight the connections between the *Code of Conduct*, the transcripts of the hearings and the *Reasons for Decision* document. In section 5.3, I discuss my analytical focus for the chapter. While I predominantly apply Smith’s rulemaking and ‘contrast structures’, I discussed these in the previous chapter. As such, I will focus on the processes the ACAT panel members employed to translate the actualities of the expert witnesses into the governing frame of the *Code of Conduct.* In the remainder of this chapter, I detail how the ACAT panel progressively developed five rules of the ‘right witness’ which favoured people who:

1. Worked with and researched eastern grey kangaroos,
2. Possessed a specific mix of qualifications,
3. Were impartial,
4. Were a ‘local’ in terms of education, employment and research, and
5. Engaged in a pre-trial expert conference.

In section 5.4, I will explain how, in the 2009 ACAT hearing, the ACAT panel members developed these rules to qualify witnesses. In section 5.5, I discuss how the rules of the right witness created in the 2009 hearing were extended in the 2013 hearing. I pay particular attention to rules two to four. In section 5.6, I focus on how rule three regarding impartiality was extended in the 2014 hearing. In all three hearings, these processes facilitated the ACAT panel members' decision that the ACT Government’s witnesses were the ‘right’ witnesses. At times, however, this involved selectively breaking the rules they established.

5.2 Background to the data: The *Code,* the transcripts and the *Reasons for Decision*

In section 3.4.1, I discussed how the *Nature Conservation Act 1980* outlined which government documents and processes could be subject to an administrative review and that the conduct of such a review was specified in the *ACAT Act 2008*. The *Code of Conduct* functioned under the *ACAT Act* and served to vet the appropriate witnesses upon whom the ACAT panel members would rely to inform their decisions. The process of determining the 'right' witness was captured in the official recordings of the proceedings, which were later transcribed. The ACAT panel members then formalised their decision making process in their *Reasons for Decision* document. Figure 6 depicts this intertextual hierarchy.

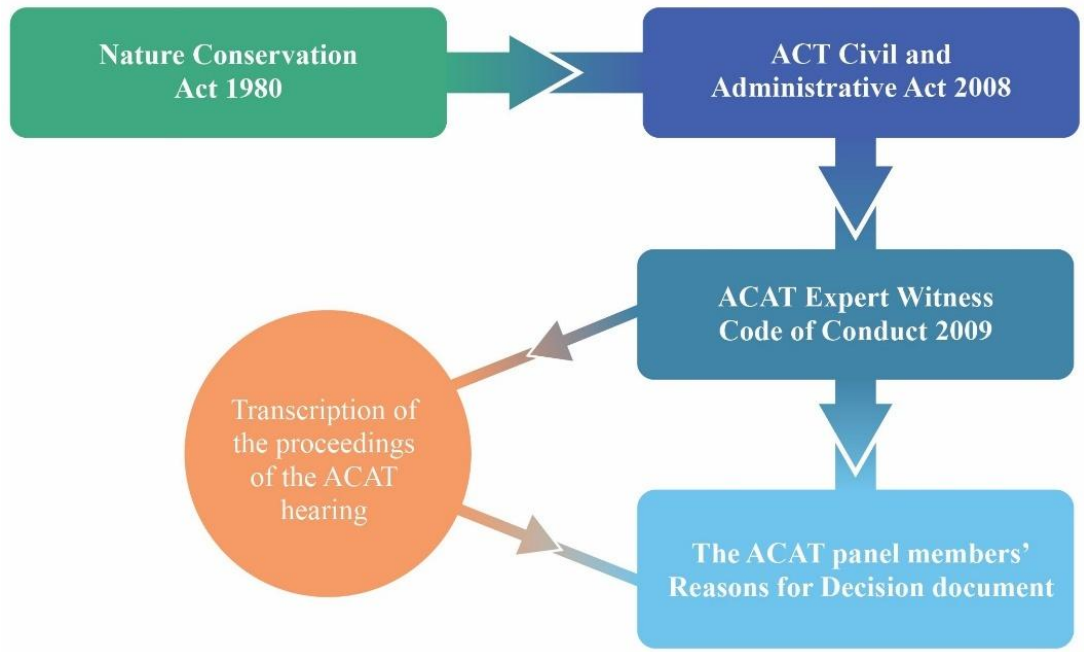


Figure 6: Key documents mobilised in the 2009 ACAT hearing

In this section, I will explain why it is important to vet expert witnesses before providing an overview of this process and the key sections of the *Code of Conduct* that the ACAT panel members mobilise when vetting witnesses.

Those tasked with assessing evidence and expert witness credibility produce inadequate

accounts of how witnesses and their evidence are qualified or disqualified (Ivković & Hans, 2003). The qualification of expert witnesses is particularly important to examine, given that almost a third (31%) of wrongful convictions occurring in Australia from 1922 to 2014 were due to incorrect or flawed expert testimonies (Dioso-Villa, 2015: 182, 188). Chin et al. (2020) critically analysed the procedures designed to ensure expert witness impartiality in Australian courts. They not only found such procedures inadequate but flagged that 'Many of the concerns about partisanship merged with fears that "junk science" was finding its way into courtrooms, presented by unscrupulous experts, willing to tailor their evidence to the needs of their instructing client' (Chin et al., 2020: 73). In Chapter 7, I will discuss the ACAT panel members' assessment of the science on which the ACT Government based its claims about the need to kill kangaroos. Risinger et al. (1989) discussed the long history of challenges with judicial regulation of expert opinion. Martire and Edmond (2017: 967) urged Australian legal institutions to be more attentive to 'scientifically-based criteria and insights, rather than the somewhat crude set of legal proxies developed by common law judges'. When determining the admissibility of expert evidence in Australian criminal proceedings, the proxies the courts considered included:

> … formal qualifications and/or training; the existence and longevity of a 'field'; historical use of a procedure; the practitioner's years of experience and involvement in previous investigations or prosecutions; recognition or certification by non-legal institutions; prior legal admission; the plausibility of the claim; demeanour and the resilience of the practitioner in response to cross-examination (on the *voir dire*, or during trial); whether the defendant has access to expert assistance; and, even the strength of the overall case. (Martire & Edmond, 2017: 984)

ACAT Presidents Linda Crebbin, Bill Stefaniak and Peta Spender (2009) published the *Code of Conduct*, which provides very generalised directions on the duties of expert witnesses, the form their reports must take, and their obligation to confer with other witnesses if directed to

do so by the ACAT panel. Through it, they appear to speak in one voice and with unanimity. A cursory reading of the *Code of Conduct* reveals a reassuring process designed to ensure that relevant and reliable individuals with appropriate knowledge and experience are vetted objectively and impartially. It appears to ensure that the evidence presented is plausible and provides the grounds for inclusion or disqualification. It also reflects a commitment to ensure that witnesses act impartially, providing evidence that serves the tribunal and not their own interests or those of other parties. The *Code of Conduct* is a two-page document consisting of eleven points. I have reproduced sections 1 to 5 and 10 below, which are most relevant to my discussion. Refer to Appendix 4 for a copy of the entire *Code of Conduct*.

Application of code

1. This code of conduct applies to any expert engaged to:
    (a) provide a report as to his or her opinion for use as evidence in proceedings or proposed proceedings; or
    (b) give opinion evidence in proceedings or proposed proceedings.

General duty to the Tribunal

2. An expert witness has an overriding duty to assist the Tribunal impartially on matters relevant to the expert's area of expertise.
3. An expert witness' paramount duty is to the Tribunal and not to the person retaining the expert.
4. An expert witness is not an advocate for a party.

The form of expert reports

5. A report by an expert witness must (in the body of the report or in an annexure) specify:
    (a) the person's qualifications as an expert;
    (b) the facts, matters and assumptions on which the opinions in the report are based (a letter of instructions may be annexed);
    (c) reasons for each opinion expressed;

(d) if applicable – that a particular question or issue falls outside his or her field of expertise;

(e) any literature or other materials utilised in support of the opinions; and

(f) any examinations, tests or other investigations on which he or she has relied and identify, and give details of the qualifications of, the person who carried them out.

[…]

Experts' conference

10. An expert witness must abide by any direction of the Tribunal to:

(a) confer with any other expert witness;

(b) endeavour to reach agreement on material matters for expert opinion; and

(c) provide the Tribunal with a joint report specifying matters agreed and matters not agreed and the reasons for any non-agreement. (Crebbin et al., 2009)

The ACAT panel members had to assess whether the complex and messy attributes of the people presented as expert witnesses fitted into the very generalised terms listed in the *Code of Conduct*. The *Reasons for Decision* documents form accountability circuits that link the ACAT panel members' decisions to the *Code of Conduct*. The ACAT panel members did not speak directly to the ACT Government's commitment to 'open government', particularly with regard to facilitating 'public participation' and ensuring 'transparency in process' (see Gallagher, 2011). However, the consideration the presidents gave to determining whether the applicant would be granted standing to proceed with the reviews, along with the information provided in their Reasons for Decision documents, reflected that the ACAT panel members were mindful of their need to remain accountable to such principles.

The data upon which I draw in this chapter have been gleaned from the official recordings of the ACAT hearings and the *Reasons for Decision* documents. Despite the

messages portrayed through tribunal documents, the development of the rules of the right witness was not achieved by following a prescriptive series of instructions but was an interactional accomplishment. IE pays particular attention to how things such as the determinants of the 'right witness' are created and made to endure. My work in this chapter challenges the seeming objectivity and stability of these documents by tracing how they functioned in practice.

5.3 Analytical focus: Contrast structures and rulemaking

In delineating the requirements for a person to qualify as an expert witness, the *Code of Conduct* simultaneously creates the deviant category of the 'wrong witness'. Dorothy Smith (1978: 11) noted that for someone to qualify as a member of such a group, a 'definite rule must have been broken or a norm deviated from'. Despite such rules and norms not being readily apparent, people are able to categorise a wrong witness with complete faith that such a conclusion is appropriate. Therefore, there must be rules for representing someone as the wrong witness, and those rules or procedures must have a normative element that enables people to be identified as the wrong witness. Ascribing someone to the 'wrong witness' category involves the subjective conceptual work of considering statements, observing events, and organising that information according to the individual's interpretation of the 'instructions' given to assess witnesses. In being aware of such instructions and the events surrounding each witness, a reader can construct whether a person is a right or wrong witness as a social fact. The *Reasons for Decision* document informed us of how the ACAT members developed such rules and norms.

My analytical focus centres around applying Smith's 'contrast structures' and rulemaking, which I defined in section 4.3. The documents I discussed in the previous section form a 'processing interchange' (Pence, 2001: 204), which I discussed in section 3.4.1. This can be seen in the work of Crebbin, Stefaniak and Spender (2009), who authored the *Code of Conduct*, which the witnesses used to assess whether they qualified as expert witnesses and to write their reports. To ensure the *Code of Conduct* was adhered to, the ACAT panel members were

obligated to translate the actualities of people's witness reports and testimonies to enable them to be read and interpreted according to the frame constructed in it (Griffith & Smith, 2014b: 14, 15). However, actualities across multiple settings never neatly translate into the standardised categories and contexts required by authoritative texts (Griffith & Smith, 2014b: 16). This is particularly the case with the loose terms found in the *Code of Conduct* document, such as 'qualified', 'impartial', and 'advocate'. Therefore, those providing the institutional service, as with ACAT panel members assessing witnesses, must engage in specialised work to write the actualities in ways that fit into the *Code of Conduct's* governing frame (Griffith & Smith, 2014b: 16). Disjunctures between actualities and the governing frames of boss texts are an 'obstinate presence' in institutional ethnographies (Griffith & Smith, 2014b: 18). The official recordings captured their process of translating the reports into the requirements outlined in the *Code of Conduct* and then into their *Reasons for Decision* documents.

As I discussed in section 5.1, the ACAT panel members developed five rules to qualify expert witnesses, ensuring they remained accountable to the Code of Conduct. The *Code of Conduct* identifies the two key criteria that define the right witness, which include being 'impartial' and 'not an advocate' (sections 2 to 4) and qualifying as an expert (section 5(a)). Sections 2 to 4 in the *Code of Conduct*, therefore, translate directly to what I refer to as rule three, which requires impartiality. Section 5(a) (specifying 'the person's qualifications as an expert') required further clarification, which the ACAT panel members provided by creating rules one, two, and four. While section 10 was not used to qualify witnesses, it was mobilised in the 2009 hearing to neutralise a dissenting witness by directing him to engage in an 'experts' conference', which has a historical context that requires explanation.

By 2003, the belief in a 'crisis associated with expert opinion evidence' led to reforms aimed at eliciting objective expert evidence and catalysed a shift away from the adversarial approach that characterised Australia's courtrooms (Edmond, 2003: 131; Millett, 2013: 635). Key aspects of such reforms included introducing codes of conduct, delineating expert witnesses' 'paramount duty to the court', pre-trial expert conferences, and the delivery of concurrent evidence (Chin et al., 2020: 69; Edmond, 2003: 131). The practice of delivering

concurrent expert evidence, colloquially referred to as 'hot tubbing', is believed to have been developed in Australia, where it has been most extensively used (Edmond, 2009: 161; Steven, 2013: 1). In the 2009 hearing, Dr Mark Drummond, a statistician and lecturer at the Canberra Institute of Technical and Further Education, was a witness presented by Animal Liberation NSW. Stefaniak directed Drummond and ACT Government senior ecologist Dr Donald Fletcher to engage in a 'hot tub' in the hope that they would arrive at agreed-upon upper and lower confidence intervals for the estimated number of kangaroos at the Majura Training Area (MTA) (Stefaniak, 5/6/2009, Recording 1, 0:00-3:43). As I shall discuss in section 5.4.5, Stefaniak used Drummond's participation in the exercise to erase his evidence to render it 'not contentious' (Stefaniak et al., 2009: 28).

In addition to the criteria outlined in the Code of Conduct, the ACAT panel members identified several other attributes that enabled a person to be deemed the right witness. The conversations about these attributes were captured in the recordings and subsequent transcriptions of the proceedings in each hearing. The ACAT panel members reflected upon the discussions that took place throughout each hearing to make their decision on each case and presented their reasoning in the *Reasons for Decision* document. The characteristics defining the right witness are of great interest to me as they are not and cannot be explained in such detail and specificity in the *Code of Conduct*. However, they were developed throughout the tribunal hearings and were accepted, advanced and extended by the ACAT panel members.

5.4 The 2009 hearing: Developing the rules used to qualify witnesses

In 2009, the ACAT panel members detailed in their *Reasons for Decision* document that they accepted all the witnesses as experts and provided their assessment of each witness. They also explained why they preferred Fletcher over the dissenting witnesses presented by Animal Liberation NSW, who included Dr Daniel Ramp, a conservation biologist and research fellow at the University of New South Wales; Dr Dror Ben-Ami, consulting ecologist; and Drummond. To explore how the ACAT panel members developed the rules of the right and wrong

witnesses, I have reproduced the form of the *Reasons for Decision* document as it appears in the official copy and added line numbers.

5.4.1 Rule one: Having worked with and researched eastern grey kangaroos

In the 2009 hearing, Ben-Ami was the only witness whose curriculum vitae was scrutinised in detail. This was an essential stage in determining that he was the wrong witness. While this was not applied to the other witnesses presented in the 2009 hearing, it established a process that would be used in subsequent hearings to position other witnesses as the wrong witnesses. Stefaniak et al. opened the *Reasons for Decision* document section entitled 'The Evidence' by providing a brief background on Drummond and Ramp before introducing Ben-Ami. At first glance, lines 581 to 584 seem innocuous:

> 581. 54. Dr Dror Ben-Ami is an ecological consultant and has a PhD in Zoology.
> 582. His Honours Year research project was on a topic relating to the Eastern Grey
> 583. Kangaroo in semi-arid north-western NSW. His PhD was on a topic relating to
> 584. the behavioural ecology of the Swamp Wallaby. (Stefaniak et al., 2009: 12-13)

Drawing on her research, Smith noted how actualities such as Ben-Ami's curriculum vitae could have been 'worked up' in many ways:

> Of course the actual events were much richer, much less orderly, simply much *more*, than those arranged into an interview of an hour or so. And indeed might have lent themselves to being worked up in different ways than that selected by the respondent. So that radical processes of selection have gone on; a lot is left out and what has been left in is ordered to provide a coherence for the reader which was not present in the events. Moreover, some events are brought into the foreground as elements of the picture whereas others that are also there are treated as part of the background or of the

machinery of the narrative. (Smith, 1978: 27-28, emphasis in original)

One could infer from lines 581 to 584 that Ben-Ami had conducted studies relevant to the topic at hand in the hearing. The ACAT panel members noted that it was at the Honours level that Ben-Ami studied eastern grey kangaroos and that he moved on to study another macropod, swamp wallabies, for his doctorate. We were not informed of the details of either of Ben-Ami's projects, but were told only that they were 'on a topic' in lines 582 and 583. As I will later discuss, it is not until we get to the 'Assessment of the Expert Evidence' section that we realise that these seemingly benign sentences, which note the species of interest and location of Ben-Ami's research, lay the foundation for his exclusion.

5.4.2 Rule two: Possessing a specific mix of qualifications

The remainder of the paragraph (lines 584 to 591) detailed the ACAT panel members' concerns with Ben-Ami. Lines 584 to 586 present a particularly damning situation for Ben-Ami, who purported to meet the requirements of the *Code of Conduct*, but his assertions were not reflected in his qualifications as they were presented in his curriculum vitae:

584 … The Tribunal expressed some concern in relation
585 to Dr Ben-Ami's qualifications to assist the Tribunal as those qualifications
586 appeared on his curriculum vitae. (Stefaniak et al., 2009: 13)

The ACAT panel members did not elaborate on the nature of their concerns, which is significant as Ben-Ami's curriculum vitae is a very consequential document. The ACAT panel members' acknowledgement of Ben-Ami's perceived shortcomings presented as a form of disclosure. The fact that they noted their concerns demonstrated that they could address its effect or manage it as something that could contaminate the evidence or their understanding of it. Such an acknowledgement functions as a disavowal in that Ben-Ami may be inappropriately qualified, but the fact that the panel members noted it meant they were prepared to address it.

This statement created an accountability circuit through which the ACAT panel members linked section 5(a) of the *Code of Conduct* (the person's qualifications as an expert) with Ben-Ami's curriculum vitae to acknowledge and address concerns that they found. By submitting his curriculum vitae and expert witness's report, Ben-Ami claimed to be an expert. However, when they examined it, the ACAT panel members found reasons to assert that he was not an expert. They then highlighted another concern they had with Ben-Ami.

5.4.3 Rule three: Being impartial

On the first day of the substantive hearing, the parties hotly debated the request made by Andrew Berger, the legal representative of the Department of Defence, to withdraw as a party joined to the proceedings and continue in the role of *amicus curiae*, as I explained in section 2.4.4.1. During these discussions, the issue of Fletcher acting in the dual role as both expert witness and advisor to the ACT Government's barrister was raised. Dr Douglas Jarvis, barrister for the ACT Government, explained the respondent's role:

> It is the case and has been a practice in the predecessor to this tribunal that the Respondent's role is a non-partisan one. That is, that the Respondent's function is to bring and present to the tribunal material relevant to the making of the correct and preferable decision by the tribunal and that is the function that the Respondent will seek to carry out in these proceedings. (Jarvis, 2/6/2009, Recoding 1: 45:03-45:38)

When later permitted to respond, Martin Bennett, representing the applicant, Animal Liberation NSW, raised the issue of Fletcher's partisan role by drawing on a previous case:

> Bennett: Justice Ashley considered that in paragraphs 26 onwards in TXU [TXU Energy Limited] commenting that the Administrative Appeals Act specifies the decision-maker should be a party to the decision or undertake a role in the review, although it appears the precise role to be taken will or may vary according to

circumstance and His Honour refers to New Broadcasting and Australian Broadcasting Tribunal, a report for which is (1987) 73 ALR 420 Viddler and the Secretary of State [inaudible] High School, to show varying ways that although the Administrative Appeal legislation would require the decision-maker be a party, that doesn't give them contradictor status. They're before the court to explain practice and procedure, power and function, not argue, as the only witness to be called for the Conservator [Fletcher] does argue, for the effective result. I heard Dr Jarvis say that the Conservator wants to take a view, a role of assisting the Tribunal in putting before it evidence and with respect, Dr Fletcher's witness statement goes well beyond that and becomes a partisan and polemic argument in favour of multiple killing of the kangaroos. We applaud the decision of the Conservator to take a non-partisan role in the proceedings. It's just that Dr Fletcher's statement doesn't live up to that ideal. At this stage, perhaps, it needs to be edited out.

[Bennett continued to argue in opposition to the request made by the Department of Defence to withdraw as a party joined to the proceedings and be granted *amicus curiae* status.]

[Stefaniak and Jarvis talked about the proposition made by the Department of Defence.]

Jarvis: Our witness, Dr Fletcher, has in his statement declared that he is aware of the *Expert Witness Code of Conduct* and has regarded himself as bound by it in the preparation of his statement. I realise Mr Bennett may not like what it says but the fact is that Dr Fletcher has prepared his statement in accordance with that Code.

Donoghue: I noticed that.

[Bennett, Jarvis, Berger and Stefaniak returned to talking about the proposition made by the Department of Defence before adjourning for a break. The issue of Fletcher's partisanship was not revisited.] (2/6/2009, Recording 1, 1:06:50-1:12:48)

In this section, I will contrast Fletcher's dual role as expert witness and advisor to the ACT Government's barrister with how the ACAT panel members assessed Ben-Ami's impartiality.

They raised this topic in lines 586 to 588 of the *Reasons for Decision* document:

> 586 … In addition, the Tribunal was concerned about Dr Ben-Ami's partiality,
> 587 bearing in mind a consultancy he had undertaken in the past on behalf of the
> 588 Applicant in relation to the commercial harvesting of EGKs [eastern grey kangaroos]. (Stefaniak et al., 2009: 13)

Again, having claimed to meet the criteria of sections 2 and 4 of the *Code of Conduct* regarding the impartiality required of an expert witness and not being an advocate for a party, Ben-Ami was positioned as potentially misrepresenting himself as an expert witness a second time. The ACAT panel members repeatedly mentioned that Ben-Ami was a consultant, a point I will revisit in section 5.6.

Section 4 of the *Code of Conduct* notes that '[a]n expert witness is not an advocate for a party'. In Australian law, an 'advocate' in this context refers to a person who asserts a personal belief in an attempt to convince others of the merits of a specific proposition (Mann, 2018). This suggests a dyad in which someone adopts the defendant's position and reflects the historically adversarial nature of such hearings. It is essential to clarify the meaning of the term 'party'. While the term is used throughout the guiding pieces of legislation, the *Nature Conservation Act 1980* and the *ACAT Act 2008* do not clarify its meaning. In Australian law, a 'party' is a person or group of people, such as a corporation, who form one side of a legal action, such as a court proceeding, or a legal transaction, such as a contract, and may include plaintiffs, appellants, respondents, defendants, and applicants (Federal Court of Australia, n.d.; Mann, 2018). That Ben-Ami 'completed a project commissioned by the applicant' seemed to flag a degree of impartiality in the eyes of the ACAT panel members. They did not just mention that the project they took issue with focused on eastern grey kangaroos but highlighted that it was on the 'commercial harvesting' of kangaroos. This created a distinct subset of research focused on eastern grey kangaroos, setting Ben-Ami apart from other kangaroo researchers whose research

focused on kangaroos outside the commercial system.

Lines 588 to 590 reflect that the ACAT panel members were so concerned about Ben-Ami that they needed clarification to determine whether Ben-Ami qualified as an expert witness:

> 588 … The
> 589 Tribunal raised its concerns with Mr Bennett and invited him to consider its
> 590 concerns and address them in examination in chief. Mr Bennett did so, and the
> 591 Tribunal's concerns were allayed in those respects. (Stefaniak et al., 2009: 13)

Interestingly, the ACAT panel members required a response to their concerns regarding Ben-Ami not from the witness but from Bennett, who represented Animal Liberation NSW. In effect, they devalued Ben-Ami sufficiently not to address him directly, but instead 'invited' Bennett to sort out the problem with Ben-Ami. This invitation suggests that the ACAT panel members had, at that point, considered Ben-Ami's credibility to be low. Lines 590 to 591 reassured us that the ACAT panel members accepted the explanations.

Despite its brevity, paragraph 54 (lines 581 to 591) mentioned the ACAT panel members' 'concerns' five times. While lines 590 to 591 reflect that the ACAT members accepted Bennett's explanations of Ben-Ami's perceived shortcomings, the repeated flagging of their 'concerns' suggests that such acceptance may have been overly generous and unwarranted. It indicated that the ACAT members were willing to hear his evidence but flagged that they could determine the weight they would afford it. Despite ultimately accepting Ben-Ami as a witness, the ACAT panel members' earlier 'concerns' cast a considerable and lingering shadow on Ben-Ami.

At first blush, paragraph 54 of the *Reasons for Decision* document appears to correspond to the impartiality that the ACAT panel members claimed they would adhere to in the *Code of Conduct*. The latter document promised to vet expert witnesses, and through

paragraph 54, the ACAT panel members were at pains to explain how they followed such requirements. In lines 584 to 591, Stefaniak, Donoghue and Ashe mobilised the 'privilege of the magisterial voice' which masters and subordinates the others (Smith, 2006b: 75-76). Doing so allowed them to air their queries regarding Ben-Ami's qualifications and independence despite being found in line 591 to have no substance. The fact that this process was included in the *Reasons for Decision* document served to hold Ben-Ami in a questionable state despite their concerns being 'allayed' in line 591. I will now contrast Ben-Ami's representation in paragraph 54 with Fletcher's.

5.4.4 Rule four: Being a local in terms of education, employment and research

Stefaniak, Donoghue and Ashe noted that Fletcher's research focused on eastern grey kangaroos (rule one) while foregrounding that not only was it conducted in the ACT region, but so too was his education and employment (rule four):

> 55. Dr Jarvis called Dr Donald Bryden Fletcher to give evidence on behalf of the Respondent. Dr Fletcher is a Senior Ecologist in Research and Planning in the ACT Government and has a PhD from The University of Canberra. His PhD was on a topic relating to population dynamics of Eastern Grey Kangaroos in temperate grasslands. His current duties relate specifically to kangaroo populations in the ACT. (Stefaniak et al., 2009: 13)

The ACAT panel members noted Fletcher's position within the ACT Government and that it was in 'Research and Planning', which amplified his 'magisterial voice' (Smith, 2006b: 75-76). In lines 593 to 597, they invested considerable effort in positioning and accentuating Fletcher as a local. He worked 'in the ACT Government', and his 'current duties' were 'in the ACT'. His doctorate was not only focused on the ACT ('in temperate grasslands') but was situated in a university that explicitly identified with the local area, the 'University of Canberra', thereby

invoking rule four. The benefit of having studied at a local university was not similarly extended to the applicant's witnesses. For example, while the ACAT panel members mentioned in another section that Drummond had 'a PhD from The University of Canberra', they didn't mention the topic and it didn't appear to give him the same traction as Fletcher (Stefaniak et al., 2009: 13). Mention was not made as to whether Fletcher's dual role of expert witness and government advisor to the ACT Government's legal counsel constituted being an 'advocate for a party' which would, therefore, appear to contravene section 4 of the *Code of Conduct*. This would not be addressed until the 2013 hearing, as I shall explain in section 5.5.2.

While the ACAT members simply explained Ben-Ami's studies as being based on 'a topic', they provided details of Fletcher's research in lines 594 to 596. Lines 595 to 597 present a key construction that valued work that explicitly focused on eastern grey kangaroos (rule one) and the specific location of the ACT (rule four). No concerns were raised regarding Fletcher, and the ACAT members presented him as being the preferred witness. I will now consider in greater depth how the ACAT members processed Ben-Ami and Fletcher as the wrong and right witnesses, respectively.

In lines 1256 to 1267, the ACAT members outlined the reasons for their decision. This passage reveals the importance of the sentences in paragraph 55 that reiterated that Fletcher was a local. The ACAT panel members noted that this was the key characteristic that not only differentiated Fletcher from the other witnesses, but which rendered him valuable. They expanded upon the points they made in paragraph 55, in which they noted that Fletcher had worked and studied in the ACT and was familiar with the ACT's kangaroos and grassland. They added two further differentiating characteristics: familiarity with local species and ecological communities and having visited the MTA.

1256 .... However, where the evidence of the other experts (Drs Fletcher, Ramp
1257 and Ben-Ami) conflicts, the Tribunal prefers the evidence of Dr Fletcher.
1258 124. That is so because, unlike Dr Ramp and perhaps more particularly, Dr
1259 Ben-Ami, Dr Fletcher has spent virtually the whole of his professional career in

1260 the local field and a University environment in the Australian Capital Territory. … (Stefaniak et al., 2009: 28)

Lines 1258 to 1260 noted that neither Ramp nor Ben-Ami had been employed in the ACT and had not studied at a university based in the ACT. The ACAT panel members did not clarify why they believed this to be the case more so for Ben-Ami. This created a rule that working in the local area was preferred, and the longer the duration, the more desirable this attribute became. Line 1260 introduced a rule that witnesses who had studied at the tertiary level in the ACT were more valued:

1260 … Unlike Drs Ramp
1261 and Ben-Ami, Dr Fletcher is intimately familiar with the populations of EGKs
1262 in the temperate grasslands of the Australian Capital Territory. … (Stefaniak et al., 2009: 28)

That Drummond worked in the ACT and completed his doctorate at the same university as Fletcher (see Stefaniak et al., 2009: 13) appeared to afford him no similar advantage, so the rule only applied to ecologists. The statement made an important distinction that eastern grey kangaroos ('EGKs') in the ACT are somehow different to others elsewhere and require in-person knowledge and contact to be fully comprehended.

Ramp had demonstrated he was 'intimately familiar with the populations of EGKs' (line 1261) in locations outside of the ACT, as was Ben-Ami, albeit to a lesser degree (see 05/06/2009, Recording 1, 11:20-51:20). This was acknowledged in the Draft ACT KMP, where Frawley extensively cited Ramp's research on eastern grey kangaroos. Requiring that knowledge be acquired within the ACT differentiated Fletcher from Ramp and Ben-Ami. Thus, a rule was created that prioritised those familiar with local kangaroos.

In lines 1262 to 1264, the ACAT panel members made a similar claim that flora and

other species of fauna in the ACT also required someone to work with and study them in person to claim sufficient knowledge about them. Such familiarity was made more explicit by tying it to a history of visitation.

> 1262 … In particular, he is intimately
> 1263 familiar with the unique and endangered ecological communities and the
> 1264 threatened species of flora and fauna in the Territory. … (Stefaniak et al., 2009: 28)

Lines 1264 to 1267 asserted that evidence was less valid if the knowledge holder had not visited the land in question on 'several recent' occasions.

> 1264 … Finally, unlike Drs Ramp and Ben-
> 1265 Ami, Dr Fletcher has visited the subject land on several recent occasions and
> 1266 is therefore, in the Tribunal's view, best equipped to assist the Tribunal as to its
> 1267 condition. (Stefaniak et al., 2009: 28)

Lines 1266 to 1267 clarified 'the Tribunal's view' as to who was 'best equipped to assist' the ACAT panel members, favouring familiarity with the sites in question. I will now return to the *Code of Conduct* to consider how the ACAT panel members applied its stipulations when writing their *Reasons for Decision* document.

5.4.5 Rule five: Engaging in a pre-trial conference

Due to limited space, I will not dwell on the assessment of Drummond, but I will note an important construction made through him. The ACAT members required Fletcher and Drummond to engage in a 'hot tub' (see section 5.2). They retreated together to a separate room where they arrived at an agreed-upon estimate of the number of kangaroos at the MTA. In a

section of the *Reasons for Decision* document entitled ‘An Assessment of the Expert Evidence’, the ACAT panel members indicated that of all the evidence Drummond presented, they only considered that single estimate. This rendered Drummond an acceptable witness:

> 123. Dr Drummond is a statistician who helpfully participated, together with Dr Fletcher, in an exercise as requested by the Tribunal to estimate the numbers of kangaroos present at the relevant time. In that respect, his evidence is not contentious. (Stefaniak et al., 2009: 28)

That Drummond was positioned as having ‘helpfully participated’ with Fletcher, concluding that ‘his evidence is not contentious’, was a decisive move by the ACAT members as it rendered all of Drummond’s other evidence invisible. When Drummond analysed the data Fletcher used to indicate a population explosion, he concluded it reflected ‘a stable or possibly declining population’ since April 2007. He found numerous errors in Fletcher’s analysis that the ACAT panel members accepted (Donoghue, 4/6//2009, Recording 3, 0:55-6:08; Drummond, 4/6/2009, Recording 2, 1:26:47-1:27:52). The ACAT panel members acknowledged these points in paragraphs 71 to 74 of the *Reasons for Decision* document. They also noted in paragraph 73 that Drummond’s evidence was constrained as the Department of Defence had provided the most recent data only to Fletcher, but they allowed it to be admitted as evidence despite Bennett’s claim that it prejudiced the applicant (3/6/2009, Recording 3, 1:17:59-1:19:54). Aligning Drummond with Fletcher marked an important point at which the ACAT members separated him from the other dissenting witnesses to say in lines 1258 to 1259 above that ‘where the evidence of the other experts (Drs Fletcher, Ramp and Ben-Ami) conflicts, the Tribunal prefers the evidence of Dr Fletcher’. Other institutional ethnographers have illuminated processes that enabled one textual account to subsume another. This was evident in Smith’s (1996) comparison of a witness’s account of a conflict between members of the public and police in the streets of Berkeley, California, with the official account. As reflected in the

foregoing discussion, '[s]ubsuming was a course of action' (Smith, 2005b: 116) the ACAT panel members achieved by what they chose to foreground and ignore.

This set a precedent by demonstrating that a dissenting witness could be effectively neutralised or co-opted into the ACT Government's project through such 'helpful participation'. It also created a tricky rule for dissenting witnesses. They could either be 'helpful' and have their contesting evidence ignored or refuse the ACAT members' direction to participate in such an activity, thereby contravening section 10 of the *Code of Conduct* that requires them to do so.

5.4.6 Creating rules to contrast dissenting witnesses to Fletcher

From a superficial reading of the 2009 *Reasons for Decision* document, I, and potentially other readers, can recognise the characteristics and behaviours of Ben-Ami and Ramp as warranting the conclusion that they were the wrong witnesses, while Fletcher was clearly the right witness. Acknowledging such 'facts' involves the complex conceptual work of gathering and organising observations according to the 'instructions' provided by terms such as the 'right' and 'wrong' witnesses (Smith, 1978: 26). That this can be quickly achieved reflects that the transmission of aligning the conceptual order with specific events has, for the most part, already been achieved (Smith, 1978: 26). The only thing I or any other reader needs to do is to align the account presented by the ACAT panel with the reading instructions and rules provided to arrive at the social fact of being the right or wrong witness (see Smith, 1978: 26).

We can see that the ACAT panel members 'worked up' (Smith, 1978: 27) the curricula vitae of Ben-Ami and Ramp in ways that facilitated concluding they were the wrong witnesses. This was achieved by creating rules that enabled the construction of contrast structures, comparing Fletcher to the other witness, with the latter being rejected for not matching his characteristics. However, such rules did not apply equally to Fletcher. For example, the ACAT panel members mobilised sections 2 to 4 of the *Code of Conduct* to conclude that Ben-Ami was partial due to the contracted work he had previously completed for the applicant. The ACAT panel members acknowledged that Fletcher was in a similar position, as he had longstanding and ongoing employment with the respondent. Instead of constituting grounds for exclusion, the

ACAT panel members considered it advantageous, as it provided Fletcher with local knowledge and experience, characteristics that Ben-Ami and Ramp lacked.

This draws attention to how the ACAT panel members interpreted section 5(a) to identify a person's 'qualifications as an expert'. While having lived and worked in the ACT and completed his doctorate at the same university as Fletcher, Drummond's local knowledge and experience afforded him no advantages when being qualified as an expert witness. Despite Ramp's research on eastern grey kangaroos being extensively referenced in the Draft ACT KMP, the ACAT panel members preferred Fletcher's research because Ramp's had not occurred within the ACT. Thus, we can see that a complex and interwoven set of rules of the wrong witness was constructed to position Fletcher as the right witness. I will now examine how this precedent influenced the hearing in 2013.

5.5 The 2013 hearing: Refining the rules used to qualify witnesses

In the 2013 ACAT hearing, Fletcher was again presented as the sole witness for the ACT Government. Consulting ecologist Raymond Mjadwesch was presented as the sole witness for the applicant, the Australian Society for Kangaroos, and he and Fletcher gave concurrent evidence. While the ACAT panel members drew upon rules one to four to determine the witness they preferred, in this section, I will focus on how they extended rules two to four to present Fletcher as the right witness again. The fifth rule regarding Drummond's 'helpful participation' in a 'hot tub' with Fletcher was irrelevant in the second hearing. While Fletcher and Mjadwesch engaged in a hot tub, there was little they agreed upon (Fletcher, 8/7/2013, Recording 1, 00:13-00:32).

The 2013 *Reasons for Decision* statement was unusual in that each member of the ACAT panel did not speak in one unified voice, but each addressed different areas. I limit my discussion to three sections. In section 5.5.1, I will discuss how Stefaniak mobilised rule two

(possessing a specific mix of qualifications) and rule four (being a local in terms of employment) to preference Fletcher.

The ACAT panel members refined rule three (being impartial) in greater detail than in the 2009 hearing and explained how neither witness qualified as an expert witness according to the *Code of Conduct*. In section 5.5.2, I will examine how ACAT Senior Member Allan Anforth highlighted but ultimately accepted Fletcher's lack of independence. In section 5.5.3, I will address how Senior Member Adrian Davey explained how Mjadwesch did not meet rule two (possessing the wrong mix of qualifications) or rule three (being impartial), as his referencing technique suggested he was an advocate. I will focus more on Davey's discussion as he detailed key characteristics that alluded to the rules used to identify the wrong witness. As they did not deliver their statements in neatly numbered paragraphs, as was done in the written *Reasons for Decision* document in 2009, I have numbered each line in the original transcription of the statement of the *Reasons for Decision*.

5.5.1 Stefaniak: Rules two and four

When delivering the *Reasons for Decision* on the final day of the 2013 ACAT hearing, Stefaniak spoke directly to Mjadwesch's qualifications and the locations at which he conducted his work:

> … He [Mjadwesch] clearly did not have similar
> academic qualifications to Dr Fletcher. He has not had a huge amount to
> do with kangaroos. For what it's worth, he's not from the ACT although I
> do notice that the Bathurst ecosystem isn't all that different. He isn't a
> wildlife bio-statistician and analysis person and he certainly doesn't have
> the same academic qualifications as Dr Fletcher, or indeed perhaps the
> same standing in terms of that community. He certainly I found was a
> good biologist for descriptive survey work and he made I think some
> excellent points, some of which were perhaps not backed up by the

157 necessary scientific information which would be needed, but nevertheless
158 I found to be very logical points. (Stefaniak et al., 2013a: 5-6)

Lines 148 to 149 and lines 151 to 154 extended rule two (possessing a specific mix of qualifications) by articulating an expectation that Mjadwesch matched Fletcher's qualifications. I will return to how rule two was applied in section 5.5.3. In lines 156 to 157, Stefaniak asserted that some of the points Mjadwesch made 'were perhaps not backed up by the necessary scientific information which would be needed'. In the following chapter, I will examine how the ACAT panel members identified the evidence they relied on to make their decisions.

In contrasting Mjadwesch to Fletcher, Stefaniak highlighted in lines 150 to 151 that 'he's not from the ACT'. In doing so, he upheld rule four despite admitting that the logic underpinning it was irrelevant, as the ecosystem in which Mjadwesch predominantly lived and worked was not 'all that different' to that of the ACT. Bathurst is in New South Wales, 200 kilometres (124 miles) north-northwest of Mulligan's Flat, the northernmost nature reserve in which a licence to kill kangaroos was issued in 2013.

5.5.2 Anforth: Rule three

A significant shift occurred in the transition from the 2009 ACAT hearing to the 2013 hearing. While Fletcher was presented as an expert witness who adhered to the *Code of Conduct* in the 2009 hearing, he was presented as *not* qualifying as an expert witness in the 2013 hearing. However, he was still permitted to provide evidence. On the first day of the substantive hearing, ACAT Senior Member Alan Anforth raised the issue of Fletcher's dual role as both expert witness and advisor to the ACT Government's barrister, Kristy Katavic:

> Anforth: I gathered that there was, from what you [Fletcher] said, a fairly substantial personal involvement in this decision. Now, I may be wrong, and you can correct this later if I misunderstood that, but the Expert Code of Conduct, of course, one of the requirements, amongst others, is independence, as you would be aware. It is, of course,

perfectly proper for a maker of a decision to come here to defend their decision, and there is no criticism of that, but it is the maker of the decision who is defending their decision which doesn't answer the definition of independence. I think we need to be clear about what your status or role is. It's been introduced initially as an independent expert. You can tell us afterwards if I've got that wrong.

Katavic: What I might say is that Dr Fletcher hasn't in any of his reports adopted the Expert Witness Code of Conduct and I'm certain the basis upon which he comes before the tribunal to give his evidence is knowing that capacity, really because he's employed by the ACT Government to do his job and secondly because much of the material that did inform the decision to issue the licences, of which Dr Fletcher certainly did not make, is based on the information that was provided by Dr Fletcher, so does that clarify the …?

Anforth: Ok, that's fine. That's perfectly proper, too. I would have thought that's the way. It would have been wrong to pretend it otherwise.

Katavic: No, it deliberately hasn't been done that way.

Stefaniak: You don't have to think about that at all, then. Well done. (8/7/2013, Recording 2, 1:32:40-1:33:40)

In the 2013 *Reasons for Decision* statement, Anforth's comments followed directly from Stefaniak's discussion in section 5.5.1. In lines 352 to 365, not reproduced below, Anforth noted that the tribunal was not bound by the ACT Kangaroo Management Plan and questioned whether the Conservator's ability to determine the substance of the licencing criteria was in alignment with the delegation of power given in the *Nature Conservation Act*. He felt his concerns did not need to be resolved in the tribunal. He then addressed Fletcher's dual role as an expert witness and advisor to the ACT Government's barrister. In discussing the 2009 hearing, I noted that rule three indicated partiality as grounds for exclusion. In lines 366 to 396, we see that this did not apply to Fletcher in the 2013 hearing either:

366 The third point I make is in respect of Dr Fletcher's evidence. [I] made the
367 point earlier that although Dr Fletcher's evidence was probative in content
368 it is important to realise that something follows from not formally being
369 an independent expert and the President has indicated there are two limbs
370 there, independent and expert. And the independent is important. (Stefaniak et al., 2013b: 11)

Anforth expanded on why independence is important before continuing:

388 And I mean no disrespect whatever of Dr Fletcher but as a principle it is
389 not good. The weight that is given to evidence must reflect, amongst
390 other things, the independence of the person and it is our suggestion that
391 in future matters that if the ACT is called upon to defend administrative
392 [review] applications of this kind it would be better served having an
393 independent expert who has standing at an academic national or international
394 level who brings fresh eyes to the issue. And I repeat there is no disrespect
395 imputed for Dr Fletcher's level of expertise. It is simply the question of the lack
396 of independence implicit in that recommendation.
397 They were the points I make. (Stefaniak et al., 2013b: 11)

In lines 368 to 370, Anforth acknowledged that Fletcher was not independent and that the ACAT panel members allowed him to provide evidence regardless. In lines 390 to 394, Anforth urged the ACT Government to present a truly independent witness should the matter be presented again to the ACAT in the future. Anforth's statement was immediately followed by that of Davey, with Stefaniak providing the segue between the two speakers in lines 398 to 401.

5.5.3 Davey: Rules two and four

5.5.3.1 Rule two: Possessing a specific mix of qualifications

Davey commenced his statement by establishing preliminary instructions for reading his address:

> 402 SENIOR MEMBER DAVEY: Okay, I just address a couple of issues in
> 403 relation to the witness for the applicant because at the outset of
> 404 proceedings the respondent raised an objection to the qualifications of the
> 405 witness as an expert witness but the Tribunal chose to proceed to hear the
> 406 evidence and to treat the matter as an issue as how much weight would be
> 407 put on that evidence… (Stefaniak et al., 2013b: 12-13)

The first key construction is that from 'the outset of proceedings' (lines 403 to 404) there were doubts about whether Mjadwesch's qualifications were sufficient to be accepted as an expert witness (rule two). Next, in choosing 'to proceed to hear the evidence' (lines 405 to 406), the ACAT members allowed Mjadwesch to prove himself. In flagging that they reserved the right to determine 'how much weight would be put on that evidence' (lines 406 to 407), Davey suggested that preferring Fletcher over Mjadwesch would be the inevitable conclusion.

In all three hearings, the ACT Government asserted that the main reason to kill kangaroos was to protect vulnerable species and ecological communities from the purported deleterious impacts of kangaroo grazing. Despite that, the key required qualifications were not in the management of threatened species or ecological communities but in those considered abundant:

> 407 … We would have to say that the Tribunal, in the end,
> 408 did not have before it evidence that establishes the expertise in the
> 409 disciplines of estimation of wildlife abundance and population dynamics.
> (Stefaniak et al., 2013b: 13)

While Davey did not mention Fletcher, as Stefaniak previously had, he highlighted Fletcher's areas of specialisation (line 409). Davey was the Head of School in which Fletcher conducted his doctoral studies, but did not supervise the project (Fletcher, 2006a: ii, iv; University of Canberra, 2001). Before his involvement in the substantive hearing, Davey flagged his potential conflict of interest as he 'would have worked with most, perhaps either supervising Ph.D. students or perhaps as a consultant' (12/06/2013, Recording 3, 3:49:40-3:51:21). However, Crebbin invoked the 'doctrine of necessity' to indicate that Davey should be included as an ACAT panel member as he was 'the only tribunal member with relevant qualifications and experience' (12/06/2013, Recording 3, 3:51:21-3:52:20). The 'doctrine of necessity' is an established legal defence that protects those who break the law to avoid a greater harm (Australian Law Reform Commission, 2014b). An example is emergency services professionals accessing private information about a person in danger (Australian Law Reform Commission, 2014a). Davey's academic background gave him a solid grounding in the 'norms of the discipline', which he saw as being an important point to consider when different ways of qualifying expert witnesses (lines 412 to 413):

> 410 The counsel for the applicant quite correctly argued that there are other
> 411 means of establishing credibility of an expert, they being experience, but
> 412 the issues really need to be addressed in the context of what are the norms
> 413 of the discipline in question. (Stefaniak et al., 2013b: 13)

At this point, Davey redoubled his 'magisterial voice' (Smith, 2006b: 75-76) by speaking both as a senior member of the ACAT and as a spokesperson for the academy. He went on to outline how Mjadwesch could qualify as an expert witness without holding a doctorate, but framed the requirements in highly academic terms:

> 414 So, the matter of absence of a higher degree, for instance, which is not
> 415 contested, was not even addressed in the context of what would be the

> 416 normal requirement, the minimum requirement, for someone to have
> 417 credibility in that field. In a reputable research institution anywhere in the
> 418 world for instance. Likewise on the other criteria, what would be the
> 419 normal measures of credibility in that field and they are typically
> 420 measured by a publication record and matters of peer review; quality
> 421 assessment appropriate to the relevant discipline and matters of national,
> 422 preferably international standing in the discipline and impact. … (Stefaniak et al., 2013b: 13)

'Credibility in [the] field' (line 417) could thus be attained by someone not holding a doctorate who managed to secure employment in a 'reputable research institution' (line 417) and a publication record of the highly academic standard, as Davey outlined in lines 420 to 422. Mjadwesch's curriculum vitae reflected that he had produced over 200 publications, the bulk of which were reports he compiled through his research consultancy. In the 2013 and 2014 hearings, he was criticised for having published only one paper in an academic journal, to which he replied, 'Publishing isn't particularly important for consultants. I work in management. Publishing is more an academic sort of pursuit than what I do' (3/6/2014, 1:35:17-1:37:17). Acknowledging that academic criteria were preferred to qualify as an expert witness, but defining alternatives in highly academic terms ensured the exclusion of all but those with highly academic accomplishments. Davey explained that expert witnesses must demonstrate that their academic publications 'have actually made a difference' (line 424) or have had an 'impact' (line 429). He did not explain how this might be demonstrated beyond being subjected to 'peer review' (lines 432):

> 422 … In other
> 423 words it is not just the number of research outputs someone might produce
> 424 it is evidence that they have actually made a difference.

> Now, we did not hear evidence about those. We did see that there is an impressive record of outputs and simply make the point that given what we did receive we are not in a position – a long list, no matter how excellent, does not, of itself, establish anything about either the quality or the impact of what is in that list. It might be there but it was not established for our purposes and so we could not put a great [deal] of reliance on it particularly when very little of that list had clearly been the subject of peer review which is one of the normal quality assurance mechanisms that definitely applies in this discipline. (Stefaniak et al., 2013b: 13)

After establishing that Mjadwesch did not have the qualifications to warrant being deemed an expert witness, Davey shifted his attention to the question of partiality.

5.5.3.2 Rule three: Being impartial

It is essential to provide the context from the transcribed conversations that took place during the hearing to understand the grounds for charging Mjadwesch as an advocate. As previously mentioned, Mjadwesch had submitted a publication list of over 200 entries, which was intensely scrutinised during the hearing. One reference was recorded in a manner inconsistent with the others. Some readers felt it appeared to be a report commissioned by the ACT Government, but it was an unsolicited report:

> Davey: There was also a question about the second item in the list [of Mjadwesch's publications] as to who was the client.
> Mjadwesch: Uh, the 'Kangaroos in the ACT: A population model'. That was just me trying to provide the Minister with some information of how kangaroos might be going in the ACT. So, that was based on my own experience with the ACT as well as with kangaroos more generally and the impact of land use on kangaroos. … I basically

modelled the whole ACT and generated a figure that suggests it's probably experienced a 75% decline since white settlement.

Davey: But it was *submitted to* as distinct from *commissioned by* the Minister.

Mjadwesch: It was just given straight to the Minister as an unsolicited submission.

Stefaniak: Any more questions?

Davey: No, that's probably sufficient.

Stefanak: Allan?

Anforth: How, when you've got in brackets here the reference to different people or organisations in your CV, how accurate is that? What does it purport to represent, the bracketed reference?

Mjadwesch: Generally, apart from the one to the Minister, they're paying clients, basically, and so the aim of that is to represent the breadth of service that I provide. (8/7/2013, Recording 1, 47:35-49:26, emphasis in the original recording)

It must be noted that Fletcher's publications were not scrutinised in any of the three hearings. At the time, Fletcher had published papers in the conference proceedings associated with organisations such as the Australian Veterinary Association (1994), the ACT National Parks Association (2006b), and the Royal Zoological Society of NSW (2007), but his research had not been published in peer-reviewed academic journals. Davey's account of the situation in the *Reasons for Decision* statement is suggestive of intentional deception on the part of Mjadwesch:

434 There is also an issue of independence because in seeking to establish the
435 depth of experience of the witness our attention was drawn to one recent
436 example which happened to be relevant to this particular case in which the
437 way it was represented in the CV was as if it had been a commission piece
438 of independent analysis but it became clear that, in fact, it had been an
439 unsolicited piece of advocacy. … (Stefaniak et al., 2013b: 12-13)

In the *Reasons for Decision* statement, Davey used the inconsistency in that reference to justify dismissing Mjadwesch's remaining references as potentially inaccurate:

> … And so that calls into question the independence of other items on the same list. So independence is also part of that measure of the quality assurance that might apply to whatever publication record an expert is supposedly putting forward. (Stefaniak et al., 2013b: 12-13)

That Davey positioned Mjadwesch as 'supposedly' putting forward his publication record (line 442) reiterated the suggestion of an intentional deception. Davey closed his address by rebuking Mjadwesch for challenging established scientists in the field of kangaroo management:

> The other aspect to it is that we did hear during testimony a number of criticisms of – somewhat speculatively – bias on the part of various scientists who have worked on kangaroo management issues. The tribunal cannot give much weight to those criticisms when they have been through international peer review quality assurance processes and the authors involved have most of those other attributes that would normally establish them as having credibility when the critic has not demonstrated that they themselves meet that quality assurance standard. The criticisms might nevertheless have something in them, but they cannot be given very much weight. (Stefaniak et al., 2013b: 12-13)

Davey pointed to 'international peer review quality assurance processes' (line 447) and 'other attributes' (line 448) as proof that 'various scientists who have worked on kangaroo management issues' (lines 444 to 445) had 'credibility' (line 449). In contrast, Davey asserted

that not ‘much weight’ (lines 446) could be given to Mjadwesch’s criticisms of other scientists because he had not demonstrated that he met ‘that quality assurance standard’ (lines 450). I will now consider the broader process of authorising the categorisations of ‘right’ and ‘wrong’ witnesses.

5.6 The 2014 hearing: Focusing on impartiality

The number of expert witnesses in the 2014 ACAT hearing expanded greatly compared to the previous two hearings. The ACT Government presented two witnesses alongside Fletcher: Professor Graeme Coulson, Honorary Principal Fellow with the Department of Zoology at the University of Melbourne, and Professor George Wilson, Adjunct Professor at the Fenner School of Environment and Society at the Australian National University. Both Coulson and Wilson ran their own consultancies and had long acted as contractors to the ACT Government on matters related to kangaroo management.

The applicant, Animal Liberation ACT, presented five witnesses who appeared in the following order: Professor Steve Garlick, macropod rescuer and rehabilitator and lecturer in economics and applied ethics; Marcus Fillinger, macropod rescuer, rehabilitator and translocator, and instructor in the delivery of tranquiliser darts to wildlife; Dr Rosemary Austen, macropod rescuer and rehabilitator and general practitioner with postgraduate qualifications in biology; and Ray Mjadwesch, consulting ecologist. The applicant also presented Dr William Taylor, then a current member of the external advisory board of the Bill and Melinda Gates Foundation C4 Rice Research Project and retired Commonwealth Scientific and Industrial Research Organisation plant scientist, member of the Biological Sciences Panel of the Australian Research Council, co-editor of the international academic journal *Plant Physiology*, and Associate Professor in plant genetics at the University of California at Berkeley. This information was detailed in the curricula vitae provided by the witnesses and verbally stated by them prior to giving evidence (see Austen 3/6/2014, 5:16:41-5:18:51; Fillinger, 3/6/2014, 3:13:25-3:14:26, 3:36:20-3:38:45; Garlick, 3/6/2014, 1:50:05-1:52:31; Mjadwesch, 3/6/2014,

5:28:22-5:31:20, 5:39:28-5:50:28; Taylor, 4/6/2014, 2:29:04-2:32:03).

In this section, I will focus on how the ACAT panel members extended rule three, which determined whether witnesses were impartial. I explore how they assessed the ACT Government's response to Anforth's advice in the 2013 hearing that it needed to produce independent witnesses instead of Fletcher. I go on to contrast how the ACAT panel applied their rule of impartiality to the ACT Government's witnesses and to those of the applicant. In doing so, I demonstrate how the ACAT panel members, again, ignored their rule in the former case and stringently applied it to the latter.

In section 5.5.2, I discussed how Anforth highlighted Fletcher's lack of independence and recommended that 'in future matters that if the ACT is called upon to defend administrative [review] applications of this kind it would be better served having an independent expert who has standing at an academic national or international level who brings fresh eyes to the issue'. Anforth went on to explain the importance of 'fresh eyes':

> Two people with relevant expertise can review the same data and review the same issues and come to different conclusions without either of them being unreasonable. It is a question of what weight they put on things. It is a question of how they construe certain of the evidence [sic]. That is the idea of fresh eyes. If you have the same person reviewing their own decision and giving evidence in respect of their own decision there are no fresh eyes. That whatever assumptions that person made in the first place when they came to their decision they are likely to perpetuate that same set of assumptions in their capacity as a witness. (see Stefaniak et al., 2013b: 11)

ACT Government staff seem to have interpreted the above statement to mean that if they engaged a consultant to review the kangaroo counts and 'sustainable density estimates', Fletcher could continue as a witness should future reviews arise. To that end, Fletcher was asked by an unidentified person within the ACT Government to list the people he recommended to conduct such a review, and David Forsyth was one of the consulting ecologists he

recommended (Fletcher, 5/6/2014, 2:43:20-2:44:35). The ACT Government awarded the contract to Forsyth, who teamed with consulting ecologist John Parkes, both of whom had professional backgrounds in the eradication of pest animals (see Taylor, 4/6/2014, 2:40:00-2:41:51; Tū Mai Taonga, n.d.). This continued the ACT Government's practice of drawing on external consultants whose work aligned with its preferred approach to kangaroo management, as I discussed in section 2.3.4. Together, Parkes and Forsyth (2014) published a report entitled 'Review of eastern grey kangaroo counts and derivation of sustainable density estimates in the Australian Capital Territory'. When critically analysing the document, plant scientist Dr William Taylor (2014: 4/6/2014, 2:36:49-2:37:17) highlighted the commonalities in the backgrounds of Parkes and Forsyth and the approach to kangaroo management adopted by the ACT Government, and stated:

> It's not surprising in science that there tend to be, I suppose you could call them clubs, or you could call them people who sing from the same song sheet or people who have very similar views of ways of looking at science. They tend to use the same lens to look at a particular field of science.

In addressing the 2014 ACAT panel, Dr Douglas Jarvis, barrister for the ACT Government, presented Parkes and Forsyth's review as an 'independent' review of the science that underpinned the justification for killing kangaroos in 2014, and as addressing Anforth's concerns:

> In response also to suggestions made by the tribunal in that case [the 2013 ACAT hearing] about external independent review, the decision maker, as you will see in her [the ACT Government Conservator of Flora and Fauna's] 'Statement of reasons' [for the decision to grant the licences], refers to documents available on computer which constitute the independent review. (20/5/2014, 9:03:25-9:04:29)

This went unremarked and unchallenged by Stefaniak, who presided over the substantive hearing in 2013 in which Anforth delivered his advice, and over the preliminary proceedings of the 2014 hearing during which Jarvis made the above statement. This implies that Stefaniak accepted the report as somehow nullifying Fletcher's lack of independence, enabling him to continue presenting, defending, and challenging evidence in the 2014 hearing.

As had been the case in the previous hearings, the applicant's witnesses' curricula vitae and publications were subject to intense scrutiny. This was particularly the case for Garlick, Fillinger and Mjadwesch (see 3/6/2014, 1:54:04-2:21:58, 3:36:20-3:45:30, 5:39:28-6:23:39). In contrast, while Coulson and Wilson failed to submit their curricula vitae, this was noted but ignored in the hearing, and their backgrounds were not similarly interrogated. On the third day of the substantive hearing, Coulson was called to provide evidence:

> Jarvis: Professor Coulson, would you briefly, do we have a CV from you in respect to any of the material you've prepared for this matter?
> Coulson: Not a CV. I've provided a list of publications and advisory committees and spoken presentations on kangaroos and wallabies in general.
> Jarvis: Right. So, let's just identify that material. (see 5/6/2014, 5:03:08-5:03:44)

On the fourth and final day of the substantive hearing, Wilson was called to provide evidence:

> Jarvis: You haven't given us a CV so –
> Wilson: I've given you a short summary.
> Jarvis: It would be convenient if you could just give us a brief outline of your professional background?
> Wilson: Okay, I have a master's degree in the use of tranquiliser guns on kangaroos; this was in 1983, I think. Uh, no, 1973 and then a Ph.D. from the University of Aberdeen on population ecology in red grouse. I've worked with both the Department of Environment here in Canberra, New South Wales National Parks and Wildlife

> Service, the Department of Agriculture. When I was in the Department of Agriculture at the end of my public service career, I ran the animal health and animal sciences part of that department, and, towards the end, I was for a year the Chief Veterinary Officer for Australia.
>
> Jarvis: Now, do you have any connection with the Office of the Conservator in the ACT or its staff?
>
> Wilson: Uh, I have done contract work for them in the past. (see 6/6/2014, 2:01:07-2:02:22)

Wilson went on to discuss how the ACT Government contracted him to conduct an audit of the kangaroos killed in 2012 and prepare an assessment of compliance with the National Code of Practice for the Humane Shooting of Kangaroos and Wallabies for Non-Commercial Purposes (see Natural Resource Management Ministerial Council, 2008b; Wilson, 6/6/2014, 2:02:22-2:03:27). He did not detail the many other contracts he had undertaken with the ACT Government, which included, but were not limited to, assessing the state of the BNTS and recommending that kangaroos be killed therein (see Cogger et al., 2007; McIntyre et al., 2008). Coulson was also part of the panel of experts who assessed the BNTS site from 2007 to 2008.

That Coulson and Wilson were not required to submit their curricula vitae is consequential, particularly given their longstanding roles in contracting with the ACT Government on various issues associated with kangaroo management. Their prior involvement with the ACT Government was discussed during the hearing, but this did not raise questions about their independence, as had been done with Ben-Ami in the 2009 hearing regarding the contracted work he had conducted for the applicant. The ACAT panel members, again, positioned Fletcher as the ideal witness and dismissed his conflict of interest:

> 40. He had been involved in most stages of the cull process. The applicant criticised this on the basis of conflict of interest and bias. Dr Fletcher is a well-qualified staff member of the nature conservation policy division of the Environment and Sustainable Development

> Directorate, for whom a principal function of his employment was oversight of kangaroos in the ACT. He thus has an extensive knowledge of their numbers, locations and conditions under which they live. In a relatively small jurisdiction such as the ACT, it is quite possible that one person would discharge all the duties that might be shared by a number of people in the States.
>
> 41. The Tribunal acknowledges that there is some potential for conflict of interest, but notes that Dr Fletcher was excluded from the actual decision to grant the licence for each area. He was involved in advising prior to that, and in preparation of the reasons for decision when they were requested. However, he is not the decision authority. It is the Conservator of Flora and Fauna who is obliged to consider and balance the several factors listed in the notified decision criteria. (Lunney et al., 2014: 6).

While acknowledging that Fletcher 'had been involved in most stages of the cull process', they rejected the applicant's assertion that this presented 'some potential for conflict of interest' as he was 'not the decision authority' (Lunney et al., 2014: 6).

5.7 Analysis: Witness qualification processes as ruling relations

As I mentioned in section 1.1.1, the ruling relations associated with environmental management in the ACT are closely tied to the economic interests of the ACT Government and other powerful organisations. Space did not permit me to explore the relationships between economic interests and the process of qualifying witnesses in the ACAT hearings. Unsurprisingly, the witnesses presented by the ACT Government were strong proponents of the ongoing killing of kangaroos in the ACT, commercial kangaroo culling, and relying upon market mechanisms to guide wildlife management (see Fletcher, 2006a; Read et al., 2021; Wilson et al., 2016), while the witnesses for the applicants were outspoken opponents of killing kangaroos in general, but

of the commercial culling industry more specifically (see Ben-Ami et al., 2019; Ben-Ami & Mjadwesch, 2017; Fillinger, 2015; Garlick, 2015; Ramp & Vernes, 2015; Taylor et al., 2013). Wilson, a witness for the ACT Government, dismissed biologists and zoologists who oppose allowing 'markets to operate for wildlife' as being 'animal rights lobbyists' (Wilson et al., 2016 regarding Miller et al., 2014). This practice has a long history within the academy and serves to align oppositional academics with activists who are increasingly criminalised, as I discussed in section 1.2.1. I will provide two examples of how this was evidenced by those aligned with the ACT Government.

In the 2009 hearing, Jarvis, the ACT Government's solicitor, angrily interrogated Ben-Ami, attempting to persuade him to admit that a project he had undertaken through his consultancy aimed to demonstrate kangaroo meat was unhygienic, thereby threatening exports (Jarvis, 5/6/2009, Recording 2, 1:09:33-1:17:11). The issue wasn't that the information was contestable, as import bans on kangaroo meat have persisted due to high levels of E. coli and Salmonella (Australian Institute of Food Safety, 2012; Tapp, 2014; Taylor, 2009; Walsh, 2012). The issue was determining whether Ben-Ami intended to harm the commercial kangaroo culling industry. Similarly, Roser, solicitor for the Department of Defence, strongly, albeit unsuccessfully, argued that the applicant should not be granted standing as they not only had no interest in the decision made by the ACT Government, but that they had no *economic* interest in the matter (Roser, 14/5/2009, Recording 1, 1:44:16-1:47:01). Roser also positioned the applicant as failing to have a sufficient interest in the ACT Government's decision to warrant being granted standing as the organisation did not receive funding from the Commonwealth or state governments, the attainment of which he positioned as evidence that it was a 'a responsible environmental organisation deserving of financial support' (Roser, 13/5/09, Recording 1, 1:10:38-1:16:33). Many community organisations, including Animal Liberation NSW, refuse government funding to maintain their independence (Animal Liberation NSW, n.d.; Institute of Community Directors Australia, 2025).

In the previous chapter, I demonstrated that writers of key government documents who constructed kangaroo grazing as causing ecological degradation worked in separate arms of the

ACT Government. In contrast, in this chapter, we can see that a small number of people were involved in assessing the 'right' witnesses. Crebbin (2009 and 2013) and Stefaniak (2014) presided alone over the preliminary proceedings. The ACAT panel members worked closely in groups of three during the substantive hearings, which included Stefaniak, Ashe and Donoghue (2009); Stefaniak, Anforth and Davey (2013); and Lunney, Conway and Davey (2014). While Anforth was the only one who took issue with Fletcher acting as an expert witness, Fletcher's evidence was relied upon to uphold the decision in 2013, and he was permitted to continue as a witness in the following hearing.

In addition to the small number of people involved, there was a considerable overlap in the number of individuals participating in multiple hearings, particularly Stefaniak, Crebbin, and Davey. Although Anforth challenged Fletcher's independence in acting as an expert witness, explaining the need for 'fresh eyes' to be brought to the issue, this was not similarly a priority with the composition of the ACAT panels. That Stefaniak was involved in all three hearings was challenged (see T. Ward, 20/5/2014, 7:15:26-7:25:42), but was dismissed on the grounds that the ACT is a small jurisdiction with a limited number of ACAT presidential members (see Stefaniak, 20/5/2014, 7:54:13-7:55:37). The overlap in those involved in the hearings may have assisted in the progressive development of the rules regarding the 'right' and 'wrong' witnesses.

In section 5.2, I discussed Martire and Edmond's (2017: 967) 'crude set of legal proxies' used in Australian courts to assess what they refer to as 'opinion evidence'. We see that the ACAT panel members drew upon some of the attributes they listed. This included 'formal qualifications and/or training', which can be compared with rule two regarding possessing a specific mix of qualifications. Martire and Edmond (2017: 967) also included 'the existence and longevity of a "field"'. This roughly corresponds with rules one (having worked with and researched eastern grey kangaroos) and four (being a local in terms of education, employment and research). It must be remembered, however, that the ACT Government positioned killing kangaroos as 'conservation culls' that were required to avert what was asserted to be deleterious impacts of kangaroo grazing on endangered species and ecological communities. As I discussed in section 2.4.4.1, Fletcher's skills and expertise were in the management of species considered

abundant (see Fletcher, 05/05/2014, 2:06:44-3:09:51), as were those of the consultants hired by the ACT Government. The government staff whose work focused on the endangered species of flora, fauna or ecological communities were never presented as witnesses, even when Fletcher struggled to present their data in the 2009 hearing (See 12/5/2009, Recording 2, 2:12:10-2:13:21). Therefore, while successive ACAT panels held up Fletcher's specific characteristics as exemplifying the right witness, it is reasonable to question the benefits an expert in threatened species and ecological communities might have brought to the hearings.

Smith's early consideration of deviance helps to make sense of the ACAT panel members' process of identifying the right witness. Smith (1978) detailed how rules have been created to identify deviant categories such as being 'mentally ill' or, in the case of this chapter, the 'wrong witness'. Durkheim (1960:102) saw the purpose of defining an act as 'deviant' as reinforcing a particular social order, with those making the determination of deviance being authorised to represent that social order. The ACAT panel members explained why Fletcher was the right witness in the *Reasons for Decision* statements. In doing so, they authorised the other narratives that contributed to the same conclusion. For example, the 2013 *Reasons for Decision* statement granted Stefaniak the privilege of defining the 'right witness', authorised Davey's criticisms of Mjadwesch, and maintained Fletcher's designation as the right witness despite Anforth's concerns regarding his lack of independence.

In her research into mental health, Smith (1993b: 21) noted the circularity of such an authorisation. That Ben-Ami and Mjadwesch were considered the 'wrong' witnesses was presented as a fact independently of the thoughts or beliefs of observers of the hearings or readers of the associated documents. The detailed descriptions of how their behaviours were deviant authorised the account of their deviance in the *Reasons for Decision* documents and affirmed the correctness of the determinations made against them. Stefaniak acted as the presidential member in the substantive hearings in 2009 and 2013 and was the dominant speaker throughout the transcripts. Positioned as the 'teller of the tale' (Smith, 1993b: 21), the authorisation of his judgements requires us, as readers of the *Reasons for Decision* documents, to accept the events as they unfolded in real time as being the same as those presented in such

documents.

In all three hearings, the ACAT members acknowledged the respondent's criticisms about the credibility of the three applicants' witnesses but allowed Ben-Ami and Mjadwesch to present their evidence. The ACAT members, however, reserved the right to determine the weight they deemed appropriate to the evidence presented. Their evidence was then incorporated into the *Reasons for Decision* document to confirm their deviance. In all the hearings, the ACAT panel members used the rules they devised to develop contrast structures that compared the witnesses presented by the three applicants to Fletcher, with the latter being positioned as the exemplary witness. In the 2014 hearing, the ACAT panel members extended this by aligning Coulson and Wilson with Fletcher as the right witnesses. Curiously, the rule of independence outlined in sections 2 to 4 of the *Code of Conduct* only applied to Ben-Ami and Mjadwesch and not to Fletcher, Coulson or Wilson.

Many consequences flowed from this. For example, Mjadwesch's behaviour could not be 'treated as a source of normative definition' (Smith, 1993b: 22) as could that of Davey. This enabled Mjadwesch's referencing to be constructed not as an oversight, but as an intentional deception of such gravity that he was dismissed as being an advocate. Another consequence is that those deemed to be deviant witnesses could not be the constructors of social facts. While both Ben-Ami and Mjadwesch demonstrated numerous flaws in Fletcher's evidence, many of which were acknowledged by the ACAT panel members and by Fletcher himself, it did not detract from the ACAT panel's endorsement of Fletcher's evidence.

Through the three hearings, we can see that the procedures for classifying witnesses as 'right' or 'wrong' became institutionalised. In all the hearings, all the witnesses presented by the three applicants or their evidence were rejected in favour of those presented by the ACT Government. None of the ACT Government's witnesses were rejected. While this is entirely possible during a series of hearings, the differences in the treatment of the parties became apparent by closely probing how the rules were applied. Rules one (having worked with and researched eastern grey kangaroos), two (possessing a specific mix of qualifications) and four (being a local in terms of education, employment and research) appear to have served to

eliminate those other than Fletcher and his colleagues, Coulson and Wilson. Rule four used Drummond's participation in a pre-trial conference to erase all his evidence other than the agreed-upon kangaroo population density estimate. Rendering his evidence 'not contentious' separated him from the applicant's other witnesses and effectively co-opted him as a witness who supported the ACT Government's position.

Rule three, requiring the witnesses to be impartial, is the only rule explicitly spelled out in the *Code of Conduct.* I traced how the ACAT panel members in the three hearings determined whether each witness honoured their 'overriding duty to assist the Tribunal impartially on matters relevant to the expert's area of expertise', as required by section 2 of the *Code of Conduct.* It is in this area that the differences in the treatment of the witnesses presented by the three applicants and those of the respondent were most stark. While the curricula vitae of Ben-Ami, Mjadwesch, Garlick and Fillinger were thoroughly examined, no one questioned that Coulson and Wilson did not provide theirs. While Ben-Ami was positioned as an advocate for having previously worked for the applicant, this did not rate a mention in the case of Coulson and Wilson. While Fletcher was consistently found not to qualify as an expert witness due to his lack of independence, he was allowed to continue in that role even after being advised against doing so by Anforth in the 2013 hearing.

Systems that process and evaluate an individual's behaviour or characteristics, such as the ones discussed above, enable them to be compared with the working definitions of categories like the 'wrong' or 'right' witness (Smith, 1978: 24). Smith (1978: 24) saw such institutionalised procedures as features of agencies of social control. Given that increased 'efficiencies' are central to New Public Management (NPM) (Hood, 1991, 1995), discussed in section 3.2.3.3, the rules the ACAT panel members developed to qualify expert witnesses achieved this end by ensuring the hearing flowed fairly smoothly and the ACT Government's preferred approach to kangaroo management was maintained. Stefaniak noted that while administrative reviews 'may be ultimately not successful', community groups 'go through the rigour of it because it can according to our Acts' (20/5/2014, 09:00:33-9:01:20). He went on to suggest legislative changes to foreclose the ability to apply for reviews of administrative

decisions such as issuing licences to kill kangaroos, as I shall discuss in Chapter 7. Thus, even though community groups were permitted to go through the 'rigour' of administrative reviews, the rules of the 'right' witness constructed by the ACAT panel members excluded them and facilitated a business-as-usual approach to kangaroo management in the ACT. Once the witnesses were approved, the ACAT panel members faced the daunting task of digesting an enormous volume of highly technical evidence to make their decisions, much of which was contradictory. In the following chapter, I trace how they achieved this.

Chapter 6: The development of 'best science' through a text–act–text sequence

Chapter contents

6.1 Introduction: Tracing 'best science' in government documents and processes

Kangaroos in the Australian Capital Territory (ACT) were historically killed as a form of 'damage mitigation', which aimed to address the 'belief' and 'claims' that kangaroo grazing had negative economic impacts on rural landholdings (ACT Government Parks and Conservation Service, 1994: 2, 4, 5). From 2007 onwards, the primary justification for killing kangaroos on public land in the ACT was to conserve threatened flora, fauna and ecological communities (ACT Government Territory and Municipal Services Directorate, 2012, 2015, 2016, 2017; Cooper, 2008, 2009b). 'Kangaroo control' programs became 'conservation culling' programs (ACT Government Territory and Municipal Services Directorate, 2013, 2014). While the term 'conservation culling' did not appear in the ACT Kangaroo Management Plan (ACT KMP) (see Frawley, 2010) or in the preceding ACT Government documents, it was used almost exclusively in subsequent documents. The ACT Government asserted the main conservation issue that killing kangaroos aimed to address was that their grazing '*will* pose a threat to ecosystem function' in grassland and woodland sites, and that killing them '*will* avert threats to endangered flora and fauna' (ACT Government Territory and Municipal Services Directorate, 2012, emphasis added). Such contentions were grounded in the ACT Government's commitment to base kangaroo management on the 'best available scientific knowledge' (Frawley, 2009: 92).

In this chapter, I investigate how the ACT Civil and Administrative Tribunal (ACAT) hearings affirmed and emboldened the ACT Government's commitment to underpin its kangaroo management plans with 'best science'. I focus on better understanding the 'intertextual work' (see Turner, 2014: 15) the ACT Government staff conducted to give shape to the 'best science'. I commence in section 6.2 by providing the background to the data I rely on. I discuss my analytical focus in section 6.3, which draws upon Smith's (2006b) 'act–text–act sequence' to uncover the development of the 'best available scientific knowledge' in one section of the draft and final versions of the ACT KMP. Figure 7 illustrates the boss texts, the Nature Conservation Act 1980 and the ACAT Act 2008, which guided ACAT panel members in

determining the evidence upon which they would rely to make their decisions.

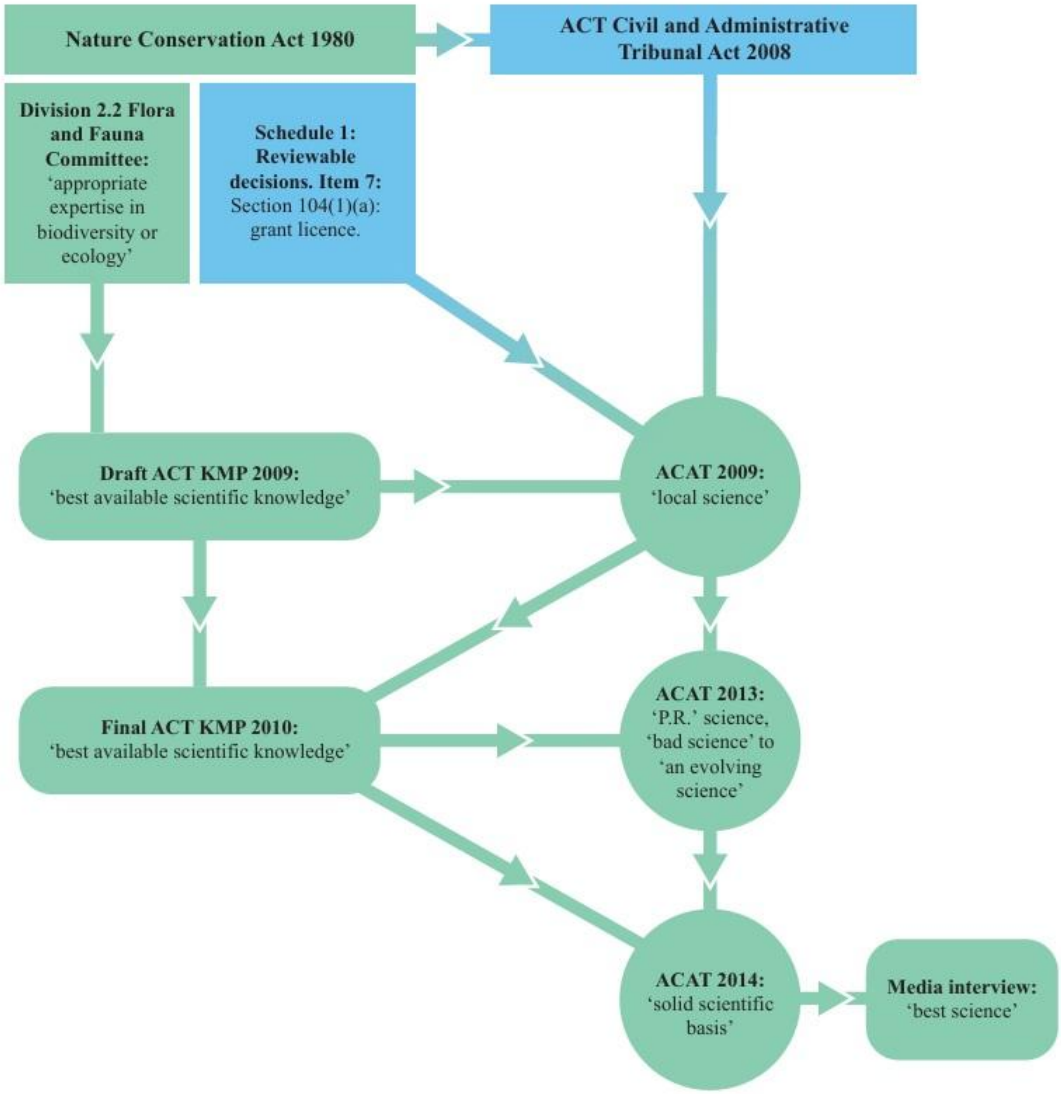


Figure 7: Determining the impacts of kangaroo grazing through 'best science' and 'open government'

'Best science' is depicted in green and 'open government' is represented in blue.

In section 6.4, I set the initial 'text' part of the sequence by considering how the impacts of kangaroo grazing on threatened species were presented in the Draft ACT KMP. In section 6.5, I position the 'act' part of the sequence as how participants in the 2009 ACAT hearing acted upon that section of the Draft ACT KMP. In section 6.6, I situate the final 'text' section of the sequence as the subsequent changes made to produce the relevant section in the final version

of the ACT KMP. The processes employed to manage contested information in the ACT KMP are evident in other government documents. I will demonstrate this in section 6.7, where I will explore the 'Questions and answers: 2013 Kangaroo control program' document (hereafter referred to as the 'Q and A' document), which provided reasons for issuing the licences to kill kangaroos in that year (see ACT Government Territory and Municipal Services Directorate, 2013), and the 'Calculation of the number of kangaroos to cull' document (hereafter referred to as the 'Number to cull' document), which explained the process used to arrive at the exact number of kangaroos the ACT Government asserted needed to be killed in 2013 (see ACT Government Environment and Planning Directorate, 2013).

Throughout this chapter, I will discuss how members of the public provided feedback on key documents associated with kangaroo management in the ACT. The ACT Government invited such feedback by releasing the Draft ACT KMP for public comment. It was also obliged to respond to the evidence of witnesses presented by community organisations in the ACAT hearings. That public comment was invited and that community groups could have government decisions reviewed in the ACAT may appear to be evidence of the ACT Government's (albeit constrained) approach to 'open government' and 'public participation' more specifically. I discussed 'best science' and 'open government' more fully in section 1.2.3. In my analysis in section 6.8, I draw together the complexities of how government documents were drafted, challenged and edited to demonstrate how the contrary evidence provided by the dissenting witnesses was used in ways that reinforced the ruling relations.

6.2 Background to the data: The ACT KMP and the ACAT transcripts

From the first day of the first ACAT hearing to an academic journal article some twelve years later, the consistent message has been that kangaroo grazing had deleterious impacts on threatened species and ecological communities, and killing kangaroos was the solution:

> At Majura, the goal is about the conservation of threatened ecological communities, namely the yellow box/red gum community and lowland temperate grassland and also the number of threatened species that are in that area. (ACT Government senior ecologist Dr Donald Fletcher, 12/05/2009, Recording 2, 1:03:02-1:03:20)

> Whilst the objective of kangaroo management to date has been to avoid biodiversity loss resulting from excessive pasture depletion (ACT Government 2010) [see Frawley (2010)], the detrimental impacts of excessive herbage mass on biodiversity have also been recognised within key conservation areas within Canberra Nature Park. (Gordon et al., 2021: 131, Fletcher as third author)

The primary documents upon which I rely include a section of the Draft ACT KMP which presented information on the impacts of kangaroo grazing on vulnerable species of flora and fauna, the same section after it was edited to become its final version in the ACT KMP, and the transcribed discussions which convey how such information was used in the 2009, 2013 and 2014 ACAT hearings, as is depicted in Figure 8. I then examine the 2013 'Q and A' document and the 2014 'Number to cull' document, which I will elaborate on below.

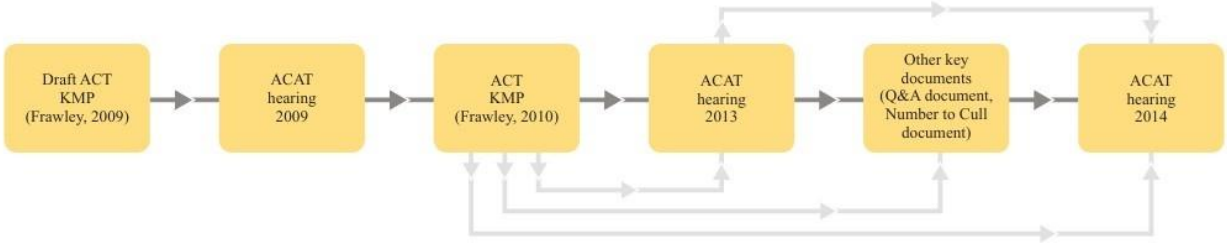


Figure 8: The key texts involved in determining the impacts of kangaroo grazing

To make sense of the comments made by Frawley (2009, 2010) in both versions of the ACT KMP, I examine texts he cited, including the ACT Government's 'Living with eastern grey kangaroos in the A.C.T. – Rural lands' (ACT Kangaroo Advisory Committee, 1996b), the 'Woodlands for Wildlife: ACT Lowland Woodland Conservation Strategy. Action Plan No. 27' (hereafter referred to as the '*Woodland Strategy*') (Dunford et al., 2004), 'A Vision Splendid of

the Grassy Plains Extended: ACT Lowland Native Grassland Conservation Strategy. Action Plan No. 28' (hereafter referred to as the '*Grassland Strategy*') (Dunford et al., 2005), and *Ribbons of Life: ACT Aquatic Species and Riparian Zone Conservation Strategy. Action Plan No. 29* (hereafter referred to as the '*Riparian Strategy'*) (Lintermans et al., 2007). He also cited a report commissioned by the World Wildlife Fund entitled 'Managing native grassland: a guide to management for conservation, production and landscape protection' (Eddy, 2002). In Chapter 4, I detailed a complex citational chain that Commissioner Cooper employed to support her recommendation to kill kangaroos at sites, including the MTA, as a matter of urgency. As I shall explain in section 6.5, ACT Government representatives created a similar citational labyrinth to support a licence issued to kill kangaroos at the MTA. To better understand this, I will discuss *Birds of the Australian Capital Territory – an Atlas* by Taylor and the Canberra Ornithologists Group (1992).

By examining discussions in the 2013 and 2014 hearings, I will illuminate how different categories of science were constructed to achieve different objectives. To do so, I will consider two documents, the 2013 'Q and A' document and the 2014 'Number to cull' document, which were published on the ACT Government's website immediately prior to the commencement of shooting kangaroos. The 2013 documents were challenged in the 2013 ACAT hearing. The changes made to those documents to produce the 2014 versions were discussed in the 2014 hearing. I will now discuss the methods I will employ to analyse these documents.

6.3 Analytical focus: Smith's 'act–text–act sequence'

The primary analytical tool I draw upon throughout this chapter is Smith's (2006b) 'act–text–act' sequence. Kameo and Whalen's (2015) 'negotiation erasure', discussed in section 4.3, is also useful in understanding omissions and changes made to the Draft ACT KMP, the 'Q and A' document, and the 'Number to cull' document. I will also demonstrate how convoluted citational practices and editing choices made by government staff furthered the ACT

Government's project and may be considered 'bibliopolitical' accomplishments (see Montcher, 2017, 2023), a concept I also discussed in section 4.3. As shall become apparent in the sections that follow, this was achieved by Dr Kevin Frawley (2009, 2010) in writing the draft and final versions of the ACT KMP, and when evidence in the ACAT hearings was being presented and discussed by Dr Donald Fletcher, senior ecologist from the ACT Government's Conservation Research section, and Dr Douglas Jarvis, the ACT Government's barrister.

Through the ACT KMP and the ACAT hearings, the staff of the ACT Government attempted to establish the 'facts' about kangaroos and their management, and in this chapter, I trace that process of producing 'facticity' (D. E. Smith, 1990d: 10, 211), a term I discussed in section 3.2. Smith (2006b: 86) developed an analytical technique called 'act–text–act sequences' to identify how a text is embedded in a sequence of actions and how it coordinates those actions. By examining such a sequence, Smith (2006b: 75) aimed to uncover how texts organise actions in the present and into the future in ways that are not readily apparent. She did not assume the text determines what follows or directs action. She asserted that texts develop the concepts and categories that locate actions as having resulted from a 'textually authorized procedure' (Smith, 2006b: 83). Smith and other institutional ethnographers have used 'text–act–text' and 'act–text–act' interchangeably (see Smith, 2005b: 178, 184; Smith & Griffith, 2022: 53). In acknowledging Smith's (2006b: 68) description of the act–text–act process as an 'ongoing sequence of action', Murray (2019: 237) acknowledged the possibility of 'an endless text–act–text process' through which ruling relations may be reinterpreted and rewritten.

When investigating act–text–act sequences, institutional ethnographers commonly explore the production of a text (act), the text itself, then the reader of the text and its implications in other circumstances (act) (Smith, 2006a: 67-68). For example, Smith (2006b: 68-72) recounted a study that was conducted by her student, Edouard Vo-Quang, which examined how a referring faculty member completed a form designed to appraise students applying to commence graduate studies, then how the completed form was used in very different, at times conflicting, ways by a graduate admissions officer. In contrast, my text–act–text sequence traces the development of the ACT KMP from its draft to final versions and

beyond. The ‘act’ stage of my text–act–text sequence does not trace how people activated the text but how people acted upon it. I commence with the draft of the ACT KMP (text), examine how it was mobilised in the 2009 ACAT hearing (act), and how the comments made about it in the hearing were used to edit it to form the final version of the ACT KMP (text). I then follow dissenting ecologist Raymond Mjadwesch’s lead in bringing into view other government documents. In doing so, I demonstrate that the processes involved in the transition from the draft to the final version of the ACT KMP are also apparent in the construction of the 2013 ‘Q and A’ document and in the transition from the 2013 to the 2014 ‘Number to cull’ document.

Tracing the changes made through the versions of one document where text is altered or removed is important to understanding a key element of how the relations of ruling have been maintained and reinforced through the governance of human conflicts over kangaroo management in the ACT. Similar work has been conducted by some IE researchers, including Eastwood’s (2014; 2021) work that traced the creation and modification of the United Nations’ forests and climate change policies. Deveau (2024) also examined a sequence of documents produced by the Progressive Conservative Party and the government of New Brunswick in Canada, which energised the introduction of shale gas mining in the province. Deveau (2024: 67) noted that while a number of submissions offered in response to the government’s discussion paper on the issue, only some were included in an ‘Updated Rules for Industry’ document. In this chapter, I instead commence with the draft version of the ACT KMP and follow the discussions that led to the changes made to form its final version.

Through my previous fieldwork and my examination of the associated documents, I have gained a deep understanding of much that is invisible in the key documents related to kangaroo management in the ACT. For example, the successive reports, plans, tribunal decisions, and other documents could be analysed as they moved to more refined understandings of kangaroos in the ACT and the ecological communities in which they live. However, these documents do not convey the work involved in creating them. Studying the texts alone does reveal transitions in terminology, such as the shift from references to killing kangaroos for ‘damage mitigation’ to ‘conservation culling’. However, the key documents do

not indicate how those involved influenced understandings and decisions. This is particularly the case when statements were withdrawn from government websites, reports, transcripts and other official documents, a process that exemplifies negotiation erasure.

By personally attending key events from 2014 and 2017 as part of previous research, I appreciated the complex web of documents and the relationships that had been developed to reinforce the projects of interested parties as they worked strategically to influence knowledge, decisions, and the documents they produced about kangaroos and their management in the ACT. Studying the three tribunal hearings through the official recording of the proceedings also revealed the broader translocal ruling relations that influenced this work. The tribunal hearings presented an opportunity to analyse the Draft ACT KMP that was released for public comment and discussed in various forums. Some contributions presented other possibilities that could have been included in the final document.

I do not have access to the notes, marginalia or 'track changes' that formed part of the development of the Draft ACT KMP to its final version, as has been the case in other studies that illuminate examples of negotiation erasure (as with Whelan, 2021). Instead, I rely upon the recorded conversations about the documents that occurred in the three ACAT hearings. ACT Government senior ecologist Dr Donald Fletcher, who gave evidence at all three hearings, also provided details about the construction of the Draft ACT KMP and its final version, as both were heavily based upon his doctoral thesis, and he 'contributed significantly to the preparation of the document' (see Fletcher, 2/6/2009, Recording 3, 1:00:41-1:00:51; Frawley, 2010: vii).

6.4 The Draft ACT Kangaroo Management Plan, 2009

At the commencement of the preliminary and substantive hearings, Fletcher foregrounded protecting vulnerable species and ecological communities as the key justification for the Conservator issuing the licence to kill kangaroos (see 12/5/2009, Recording 2, 1:17:57-2:08:47; 2/6/2009, Recording 3, 34:54-1:11:50). Dr Douglas Jarvis (2/6/2009, Recording 2, 10:55-39:37), barrister for the ACT Government, drew attention to the relevant legislation, the *ACT*

Nature Conservation Act 1980, which obligated the ACT Government and, by extension, the ACAT, to protect vulnerable species and ecological communities. Fletcher and Jarvis drew attention to the Draft ACT KMP, which they said indicated that kangaroo grazing detrimentally impacted threatened species of native flora and fauna (see Frawley, 2009: 43-47).

Chapter 3 of the Draft ACT KMP was entitled 'Kangaroo populations and impacts'. Section 3.6 focused on 'Conservation of grassy ecological communities and species', and subsection 3.6.3 explored 'Herbivores and grassland habitat'. This included a table which, amongst other things, reported on the impacts of kangaroo grazing on threatened species in the ACT. I have reproduced below a copy of the relevant section, which explores the impacts of kangaroo grazing on threatened species of flora and fauna in the ACT. The form and paragraphing are as they appeared in the original document. For ease of reference, I have added line numbers to the main body of the text, but not to the associated table.

1. **3.6.3 Herbivores and grassland habitat**
2. There are a number of factors to be considered in the conservation management of
3. native grasslands (Eddy 2002). Defoliation and fauna habitat management are the
4. main concerns for this kangaroo management plan. ACT grassy ecosystems evolved
5. under the influence of grazing herbivores, macropods in particular. The population
6. size of grazing animals is determined largely by the seasonal abundance of the
7. grassland food source. In turn, species composition and abundance of grassland
8. vegetation are affected by the population size of grazers (grazing intensity) and
9. seasonal conditions (rainfall and temperature). Thus, grazers and grasslands are linked
10. in a feedback loop driven by the weather. (Frawley, 2009: 43, bolding in original)

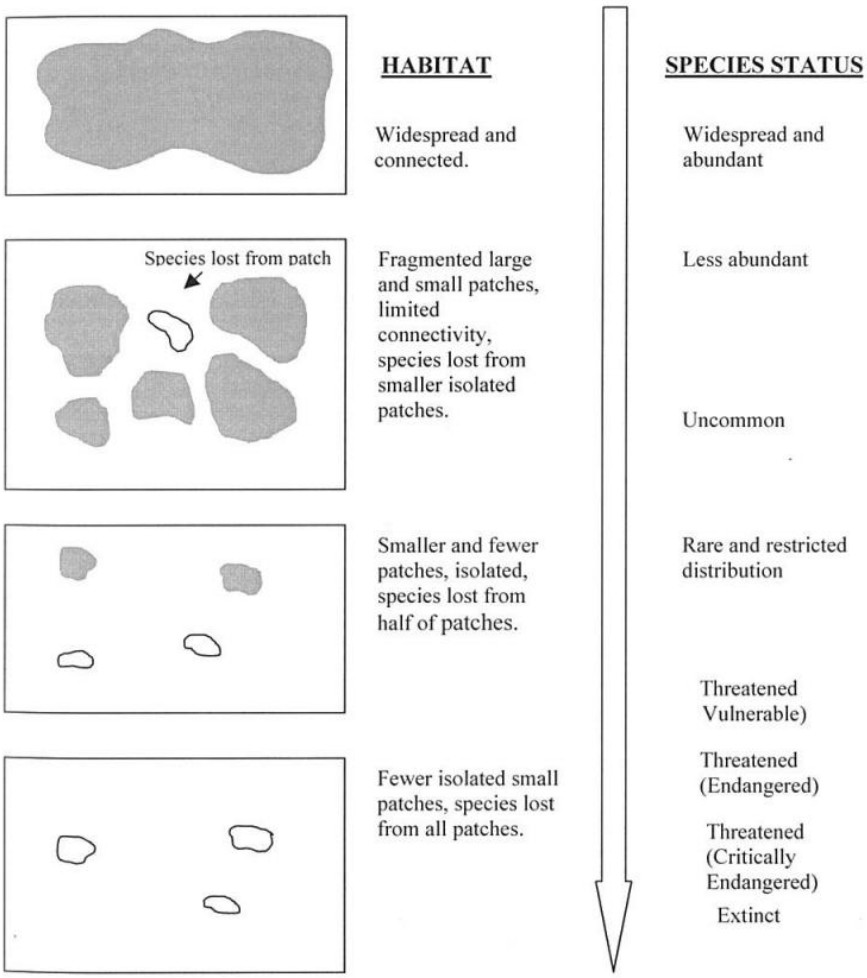
When introducing the 'factors to be considered in the conservation management of native grasslands' in lines 1 to 2, Frawley cited but did not discuss Eddy's (2002) aforementioned report on managing native grassland, which is publicly available online. The threats to

grasslands noted by Eddy (2002: 6-9) were grazing by livestock, grazing by feral animals, mowing and slashing, fire, weeds, soil disturbance, soil fertility change, altered drainage, traffic and trampling, tree planting, herbicide use, stockpiling and dumping, seed collection and introduction, and threats to native fauna. Eddy's (2002: 4) only mention of kangaroos was that they had been 'relegated to other parts of the landscape' due to habitat destruction. In lines 3 to 4, Frawley narrowed the focus of the ACT KMP to 'defoliation and fauna habitat management'. Regarding defoliation management, Eddy (2002: 11-13) considered mowing, burning, and grazing, the latter of which focused on livestock and feral animals and minimally mentioned native herbivores.

In lines 5 to 10, Frawley positioned 'grazing animals' as breeding according to food availability. This appears to reverse the position he took that postulated this was not the case for kangaroos in the ACT, as I discussed in section 2.4.4.2 (see Frawley, 2009: 27). Lines 5 to 10 appear to provide 'instructions' (Smith, 1993b: 11) on how the section was to be read, that is, that kangaroo grazing detrimentally impacts the population size of other 'grazers'.

In line 11, below, the title 'Figure 3.2 Diagram of the fragmentation process of species extinction' appeared in reference to an image that reflected an inverse relationship between the degree of habitat fragmentation and species abundance (see Frawley, 2009: 43). Frawley did not refer to this image in the text. I will discuss this later in the chapter when examining the changes made in the final copy of the ACT KMP.

11. Figure 3.2 Diagram of the fragmentation process of species extinction



(Frawley, 2009: 43, bolding and underlining in original)

Frawley went on to suggest the impacts of kangaroo grazing on 'many other grassland species':

12. The diet of eastern grey kangaroos is 99% grass (Jarman and Phillips 1989) and they
13. graze both the native and introduced species that occur in ACT lowland areas. This
14. general grass diet compares with the habitat requirements of many other grassland
15. species that are now rare and/or threatened, which are found only or mainly in native
16. grassland and are wholly dependent on this vegetation community and intact grass
17. tussock structure for their survival.... (Frawley, 2009: 44)

In lines 15 to 17, Frawley accentuated the urgency of caring for other species as they 'are now rare and/or threatened', 'are found only or mainly in native grassland' and 'are wholly dependent on this vegetation community and intact grass tussock structure for their survival'. Lines 13 to 15 state that kangaroos' preference for grass 'compares with the habitat requirements' of 'rare and/or threatened' species. It is unclear what Frawley meant when using the word 'compares' in line 14. It suggests dietary overlaps and possibly competition between species for food and shelter. Other sections of the Draft ACT KMP illuminate why Frawley might have chosen his words in that way. As this is an important point to appreciate, I will discuss it in detail before continuing with this passage.

In a section entitled 'Competition, damage mitigation and dry sheep equivalent (DSE)', Frawley (2009: 51-52) made three key points. Firstly, he acknowledged that rural land management in the ACT was based on 'the assumed competition' between kangaroos and other species, particularly sheep (Frawley, 2009: 51). Secondly, Frawley (2009: 51-52) cited research that indicated that such competition 'seldom occurs' between sheep and kangaroos (see Dawson & Munn, 2007; Olsen & Braysher, 2000; Pople & McLeod, 2000). At the time, studies had long demonstrated that while dietary overlap occurs, such a situation seldom constitutes a competitive relationship (see Barker, 1987: 79-81; Dawson & Ellis, 1994: 267-268; Duncan & Jarman, 1993: 778-779; Edwards et al., 1995: 324; 1996: 169; Ellis et al., 1977: 141-143; Griffiths & Barker, 1966: 42; Grigg, 2002: 53; Pulliam, 1988: 71; Storr, 1966: 32). Despite this, the discourse of the threats posed by kangaroo grazing persisted in what zoologist Gordon Grigg (2002: 53) referred to as 'folklore… even though scientific evidence for this is lacking'.

Thirdly, Frawley (2009: 52) challenged the relevance of such research as it did not occur in a moist temperate environment like the ACT. He claimed the ACT's pastures had a higher grass content, and eastern grey kangaroos are more specialised grass feeders than western and red kangaroos, which are not endemic to the ACT. Frawley (2009: 52) noted that recommendation 8 of the ACT Kangaroo Advisory Committee called for:

> … critical grazing exclusion studies to be undertaken to assess the impacts of the various grazing species (domesticated livestock, introduced vertebrate pests, kangaroos and other native herbivores) on pastures and sown fodder crops. (ACT Kangaroo Advisory Committee, 1996b: 3)

He highlighted that 'Since the publication of the KAC reports [see ACT Kangaroo Advisory Committee (1996a, 1996b, 1997)], the ACT Government, in conjunction with The University of Canberra, has sought research funding to undertake such studies but has been unsuccessful' (Frawley, 2009: 52). This statement was removed in the final version of the ACT KMP. This is significant as the government's argument for killing kangaroos hinges to a large extent on the assumed competition between kangaroos and other species for grass, either as food or for providing shelter. It is also the basis for rural lessees' 'beliefs' that kangaroo grazing economically harms their ventures (see ACT Government Parks and Conservation Service, 1994: 2, 4, 5). However, the need for such research continued to be highlighted, as was noted by Howland et al. (2014: 18).

While such basic research has failed to attract funding, research with the potential to produce marketable products attracted immediate support. For example, Frawley (2009: 96-97) flagged that the ACT Kangaroo Advisory Committee (1996b: 3; 1997: 2) recommended the ACT Government support the development of a kangaroo fertility vaccine, which it has done since 1998. Such research continues to be funded to the present date, with fertility drugs being administered in nature reserves from 2022 onwards (ACT Government Environment, Planning and Sustainable Development Directorate, 2024; Frawley, 2010: 97; Vassarotti, 2022). Processes such as those employed by the ACT Government to prioritise its research funding have been examined elsewhere. For example, in his study of the listing of the Inner Bay of Fundy salmon (*Salmo salar*) as an 'at risk' species, Hart (2018: 124, 130) found that research networks mobilised their sociopolitical power to select what science would be drawn upon and legitimised, and what questions and findings would be ignored.

Returning to the Draft ACT KMP, Frawley went on to introduce the 'habitat requirements

for threatened species' and 'significance of kangaroo impacts' in lines 17 to 20 through Table 3.4:

17. … The relationships between the habitat requirements
18. of ACT threatened species and kangaroo grazing are summarised in Table 3.4.
19. **Table 3.4 (2009) Habitat requirements for threatened species in ACT native grassy**
20. **ecosystems and significance of kangaroo impacts**
21. **For most of the species listed below, specific kangaroo impacts have not been**
22. **studied; therefore, a precautionary approach is an appropriate management**
23. **response**. (Frawley, 2009: 44, bolding in original)

The most pertinent sentence in this section occurs with Frawley's invocation of 'precautionary management' in lines 21–23.

Throughout the hearings, witnesses presented by both sides subscribed to the precautionary principle but differed in their understanding of how it should be applied. Under the banner of the 'precautionary principle', those supporting the ACT Government urged the killing of kangaroos (see Fletcher, 3/6/2009, Recording 2, 45:09-46:12; Jarvis, 5/6/2009, Recording 4, 52:33-52:52) and those supporting the applicants pressed for the kangaroos to be spared (see Ben-Ami, 05/06/2009, Recording 2, 47:06-48:13; Bennett, 4/6/2009, Recording 2, 30:29-31:43). This resonates with Hart's aforementioned research that demonstrated the Canadian Committee on the Status of Endangered Wildlife decided the Inner Bay of Fundy Atlantic salmon was endangered, despite contrary peer-reviewed evidence, so they invoked the precautionary principle to instigate conservation interventions. Hart (2018: 130) asserted that the precautionary principle contradicts the need to draw upon the 'best available peer-reviewed science'.

Given that empirical evidence was not available, lines 24–29 explain how Frawley filled the gap in knowledge by drawing on general knowledge, 'current understanding', and 'field

observations' as well as undisclosed 'data…, monitoring and research' by uncited researchers:

> **24. Assessment of the significance of kangaroo grazing impacts derives from**
>
> **25. knowledge of grazing impacts generally, current understanding of the habitat**
>
> **26. requirements of grassland species, data collected for some species, and field**
>
> **27. observations as part of survey, monitoring and research undertaken by ecologists**
>
> **28. within ACT Parks, Conservation and Lands and by researchers from other**
>
> **29. institutions.**
>
> 30. (See Table 2.1 for threatened status under ACT and/or Commonwealth legislation).
>
> (Frawley, 2009: 44, bolding in original)

Frawley then provided Table 3.4, which, given its centrality to my analysis, I present in full below (See Frawley, 2009: 44-46, bolding in original):

Threatened Plant Species in the ACT Native Grassy Ecosystems		
Species	**Habitat Requirements**	**Significance of Kangaroo Grazing Impacts**
Tarengo Leek Orchid (*Prasophyllum petilum*) (ACT Woodland Strategy, pp. 31–32)	Native grassland/grassy woodland on moister sites. ACT and NSW distribution suggests the species does not survive under constant stock grazing.	Hall Cemetery contains the only ACT Tarengo Leek Orchid population. This is not currently threatened by kangaroo grazing.
Small Purple Pea (*Swainsona recta*) (ACT Woodland Strategy, pp. 32–33)	Open grassy woodland. Species appears to not survive under heavy or constant stock grazing pressure.	There is no evidence that the ACT populations have been threatened by kangaroo grazing pressure, but studies are lacking. Indirect impacts possible (e.g. overgrazing facilitating weed invasion). A potential impact of high kangaroo density (e.g. Mt Taylor) is kangaroos resting on the remaining plants.
Austral Toadflax (*Thesium australe*)	Strongly associated with kangaroo grass dominated herbaceous understorey. ACT	Heavy grazing pressure (stock, rabbits, kangaroos, grasshoppers) is a threat to species. Indirect

(ACT Woodland Strategy, pp. 33–34)	populations should be managed to retain an open vegetation structure (e.g. limiting tree/shrub cover).	impacts (e.g. overgrazing facilitating weed invasion) also possible.
Hoary Sunray (*Leucochrysum albicans var. tricolor*) (ACT Woodland Strategy, pp. 34)	Open areas in grassy woodland, large numbers sometimes colonise disturbed sites. Usually found in ungrazed or lightly grazed areas. Appears to tolerate mowing.	Species appears to be very sensitive to grazing, but responds to disturbance as a colonizer. Studies are lacking to estimate the threat posed by kangaroo grazing pressure.
Canberra Spider Orchid (*Arachnorchis actensis*)	Species occurs in transition zone between grassy woodland and open forest, amidst grasses, forbs and low shrubs.	It is not known if kangaroo grazing has a deleterious impact in some circumstances. Studies are lacking. Fencing is proposed for the remaining orchid populations.
Button Wrinklewort (*Rutidosis leptorrhynchoides*) (ACT Grassland Strategy, pp. 24–27)	Occurs on margins of open grassy woodland with ground layer of native grasses and forbs. Prefers open habitat and is poor competitor amongst dense sward-forming grasses. The species is a tall palatable herb that is lost under stock grazing.	There is no evidence that the ACT populations have been threatened by kangaroo grazing, but studies are lacking. Low to medium intensity kangaroo grazing is likely to be beneficial in helping to maintain an open grass cover. This needs to be considered in terms of total grazing pressure.
Ginninderra Peppercress (*Lepidium ginninderrense*) (ACT Grassland Strategy, pp. 28–29)	At the one site where species occurs, it grows well where competing grass tussocks are short and open. The species appears to be susceptible to overgrazing as well as competition from other plant species.	Limited kangaroo grazing may be beneficial in removing competitive growth of grass species; however, heavy kangaroo grazing is likely to have deleterious impact. Site is protected by a fence.
Golden Moths (*Diuris pedunculata*) (ACT Grassland Strategy, p. 24)	Occur on moist grassy slopes or flats on peaty shale or fine granite and among boulders.	There is no evidence that the ACT populations have been threatened by kangaroo grazing pressures, but studies are lacking.
Tuggeranong Lignum (*Muehlenbeckia tuggeranong*) (ACT Riparian Strategy, pp. 40–42)	Known only from a very small population near the Murrumbidgee River. Current habitat is highly disturbed and weed invaded riparian shrubby woodland.	It is not known whether grazing animals such as kangaroos pose a threat to the survival of remaining plants or whether such grazing may benefit the species by keeping competing grass tussocks and other plant growth open and short.
Threatened Animal Species in the ACT Native Grassy Ecosystems		
Species	**Habitat Requirements**	**Significance of Kangaroo**

		Grazing Impacts
Grassland Earless Dragon (*Tympanocryptis pinguicolla*) (ACT Grassland Strategy, pp. 38–39)	Key habitat for the three remaining populations is well drained and relatively undisturbed natural temperate grassland dominated by Danthonia and Stipa spp. The species shelters within grass tussocks, beneath rocks and in arthropod burrows.	The species and its habitat appear to be maintained under stock and/or kangaroo grazing at low intensities. Heavy grazing pressure by stock, kangaroos and/or rabbits reduces and/or degrades this habitat. Kangaroo grazing pressure (exacerbated by drought conditions), with resultant loss of tussock grassland structure, has impacted on the dragon population.
Striped Legless Lizard (*Delma impar*) (ACT Grassland Strategy, pp. 39–40)	Key habitat is native grassland dominated by kangaroo grass, spear grasses and wallaby grasses. Species is also found in adjacent areas dominated by exotic grasses. An important habitat characteristic appears to be tussock structure, though little is known about how the habitat is used. Soils with moderate to high clay content, often producing cracks in summer are another habitat feature.	The species and its habitat appear to be maintained under stock and/or kangaroo grazing at low intensities. Grass tussock structure, important for this species, is lost under heavy grazing pressure by stock, kangaroos and/or rabbits.
Golden Sun Moth (*Synemon plana*) (ACT Grassland Strategy, pp. 40–41)	On current knowledge, this species appears to be dependent on a narrow range of native grasses (commonly a wallaby grass *Austrodanthonia carphoides* in the ACT), but has been found to utilise the introduced Chilean needle grass (Nassella neesiana) when native grasses have been significantly depleted (Braby and Dunford 2006). Austrodanthonia is low growing with tussocks usually separated by bare ground.	Native grasslands that support golden sun moth populations in the ACT are subject to low intensity management activities that apparently benefit low growing wallaby grasses and hence maintain habitat quality for the species. These activities include light grazing by stock and/or kangaroos. Such light grazing may have increased areas of native grassland dominated by wallaby grasses.
Perunga Grasshopper (*Perunga ochracea*) (ACT Grassland Strategy, pp. 41–42)	Key habitat appears to be natural temperate grassland dominated by wallaby, kangaroo and spear grasses with forb food plants located in the inter-tussock spaces. Species also occurs in open woodland with a grassy	The species persists in lightly grazed areas where tussock structure remains. When it has been recorded from heavily grazed areas, it was still associated with nearby grass tussocks. Observations to date suggest that

	understorey. Grass tussocks appear to be essential habitat, being used to escape predators and shelter from wind, low temperatures and frost.	heavy grazing pressure by stock, kangaroos and/or rabbits have the potential to reduce and/or degrade the habitat of this species.
Pink-tailed Worm Lizard (*Aprasia parapulchella*) (ACT Riparian Strategy, pp. 56–59)	Habitat in ACT is native grassland usually dominated by kangaroo grass, with numerous partially embedded rocks. Likelihood of occurrence of the lizard increases with increasing cover of kangaroo grass and decreases with increasing cover of other species that are indicative of disturbance	Livestock grazing and agriculture have probably had the most impact on this species through loss and degradation of habitat. Kangaroo grazing has not been specifically identified as a threat but could contribute to loss of habitat, in the context of total grazing pressure.
Hooded Robin (*Melanodryas cucullata*) (ACT Woodland Strategy, pp. 43–54)	Woodland understorey of tall tussock grasses, low shrubs and fallen logs, which support insects and other invertebrates on which the species feeds, is critical habitat. Intensive grazing which reduces the complexity of understorey habitat is a threat.	Kangaroo grazing has not been specifically identified as a threat, but could contribute to loss of habitat complexity and food supply (in particular, reduction of tall grass tussocks) in the context of total grazing pressure.
Brown Treecreeper (*Climacteris picumnus*) (ACT Woodland Strategy, pp. 43–54)	Critical habitat is relatively undisturbed grassy woodland with native understorey, especially grasses.	Kangaroo grazing has not been specifically identified as a threat, but could contribute to loss of habitat complexity and food supply (in particular, reduction of tall grass tussocks) in the context of total grazing pressure.
White-winged Triller (*Lalage sueurii*) (ACT Woodland Strategy, pp. 43–54)	Critical habitat in the ACT is grassy woodland, with intact grassy understorey and fallen timber that support insects and other invertebrates on which the species feeds.	Kangaroo grazing has not been specifically identified as a threat, but could contribute to loss of habitat complexity and food supply (in particular, reduction of tall grass tussocks) in the context of total grazing pressure.
Superb Parrot (*Polytelis swainsonii*) (ACT Woodland Strategy, pp. 43–54)	Main habitat in the ACT region is box woodlands. Species prefers to feed on ground on seeds of grasses and herbaceous plants associated with yellow box-red gum grassy woodland.	Intensive grazing of understorey of box woodland with loss of structure and diversity is identified as a threat to the species. Such grazing pressure could derive from stock, kangaroos and/or rabbits.

Note: Abbreviated titles have been used for ACT nature conservation strategies which contain information and action plans for declared threatened species and ecological communities: ACT

Woodland Strategy (ACT Government 2004); ACT Grassland Strategy (ACT Government 2005a); ACT Riparian Strategy (ACT Government 2007a).

At first glance, Table 3.4 appears to present an alarming array of vulnerable flora and fauna species that were detrimentally impacted by kangaroo grazing. The first species in the table, Tarengo leek orchids, was the only listing identified as 'not currently threatened by kangaroo grazing'. Frawley did not explain his reasoning for including it in the table. Despite citing the *Woodland* (Dunford et al., 2004), *Grassland* (Dunford et al., 2005), and *Riparian* (Lintermans et al., 2007) *Strategies*, Frawley presented no evidence of kangaroo grazing negatively impacting any species. For almost every species, Frawley noted 'no evidence', 'studies are lacking', 'not known', 'little is known' but went on to guess what impacts might have existed by mobilising terms such as 'suggests', 'appears to', 'possible' or 'potential' impacts, 'is likely to', 'may be', 'observations to date suggest', 'probably', 'has not been specifically identified', 'could contribute to' and 'could derive from'.

The one exception was grassland earless dragons, about which he cited the 'ACT Grassland Strategy, pp. 38–39' to claim, 'Kangaroo grazing pressure (exacerbated by drought conditions), with resultant loss of tussock grassland structure, has impacted on the dragon population'. The ACT *Grassland Strategy* lists other concerns as being key threats, as I discussed in section 4.5.2:

> In common with other threatened grassland animal species, the main threats to the Grassland Earless Dragon are the continued loss and fragmentation of its grassland habitat due to agricultural, urban and industrial development and degradation of habitat through changed grazing intensity, pasture improvement, weed invasion, changed fire regimes and impacts of stock. Other threats include the impacts of predators and direct human disturbance. (Dunford et al., 2005: 39)

It listed pending threats, which included 'airport taxiway extensions and new road and railway

routes' and 'nearby residential developments' (see Dunford et al., 2005: 39), the latter of which have occurred in and around many of the sites in question, including the Belconnen Naval Transmitting Station and Mulanggari Grassland Nature Reserve. The only mention made in the *Grassland Strategy* to the relationship between kangaroos and dragons is that the 'Land management practices that appear to be compatible with maintaining the habitat of the species include grazing by kangaroos (Majura Training Area)' (Dunford et al., 2005: 39). It must be noted that Dunford et al. provided no references to substantiate their claims throughout these sections of the *Grassland Strategy*.

In the foregoing discussion, I have demonstrated how, in constructing the Draft ACT KMP, Frawley misquoted or transformed the information contained in the references he cited (specifically Dunford et al., 2004; Dunford et al., 2005; Eddy, 2002) to ensure the information it contained resonated with the ACT Government's preferred approach to kangaroo management. Erasing the fact that the documents did not identify kangaroo grazing as threatening vulnerable species and ecological communities was an act of negotiation erasure. Without providing evidence, Frawley's suggestion – or, in the case of grassland earless dragons, his claim – that kangaroo grazing detrimentally impacted vulnerable species was a bibliopolitical construction. The Draft ACT KMP was released for 'public consultation' in March 2009, and submissions closed on 11 May 2009 (Stanhope, 2009), two days after Animal Liberation NSW applied to the ACAT for a review of the decision to kill kangaroos in the MTA.

6.5 Acting on the Draft ACT KMP in the 2009 ACAT hearing

In the 2009 ACAT hearing, the applicant, Animal Liberation NSW, presented three witnesses: Drummond, Ben-Ami and Ramp. (Refer to Appendix 2 for their background information.) Fletcher was the sole witness presented by the ACT Government. In the preliminary proceedings of the 2009 hearing, the witnesses drew heavily on the Draft ACT KMP to state their cases. It is important to understand the ways they interacted with the document to appreciate how their comments were used in the preparation of the final version of the ACT

KMP.

Fletcher (12/05/2009, Recording 2, 2:06:44-2:07:30) gave an example of the threats posed by kangaroo grazing by citing an unidentified 'expert' in saying, 'The danger [of kangaroo grazing] is to plants such as the [Canberra] spider orchid which the spider orchid expert says is being eaten by kangaroos'. Ben-Ami (13/05/2009, Recording 2, 1:15:00-1:29:15) challenged this statement by reading directly from the Draft ACT KMP, which states, 'It is not known if kangaroo grazing has a deleterious impact [on Canberra spider orchids] in some circumstances. Studies are lacking' (see Frawley, 2009: 44). Canberra spider orchids are not mentioned in the *Woodland* or the *Grassland Strategies*. Ben-Ami also provided other examples from the Draft ACT KMP before highlighting:

> If you go on further to the next page, page 46, two pages over, and you look at the hooded robin, 'Kangaroo grazing has not been specifically identified as a threat'. That is the key sentence. Then it goes on, 'but could contribute to habitat complexity and food supply'. If you look at the brown treecreeper, the next box down, 'Kangaroo grazing has not been specifically identified as a threat'. If you look at the next box down, you look at the white-winged triller, 'Kangaroo grazing has not been specifically identified as a threat'. So, as an ecologist, I'm perplexed. (Ben-Ami, 13/05/2009, Recording 2, 1:23:11-1:23:52)

In response to Ben-Ami's witness statement, Fletcher changed tack in the substantive hearing:

> The critical issue is not about threatened species. The critical issue is about viable and healthy ecosystems, and if one had no knowledge of the threatened species that were in that site at Majura, and, indeed, it is certain that our knowledge is incomplete. There must be other species there that we do not know about. There must be other places where the species we do know about also occur, but have not been detected simply for

> lack of survey. They are there. But even if we had no knowledge, we should be managing the system… We need to be thinking about ecosystem processes, and only in that way can we provide for the conservation of the unknown as well as the known individuals in those systems. (2/6/2009, Recording 3, 1:08:05-1:09:04)

Here, we see a negotiation erasure process in which, through a government document, a strong claim was made regarding the deleterious impacts of kangaroo grazing on threatened species, the statement was refuted, and then attention was redirected by Fletcher, who reneged on his focus on threatened species to foreground 'ecosystem processes'. The following day, he made several impassioned pleas arising from his perception of the deleterious impacts of kangaroo grazing on specific species:

> I caution people not to be optimistic. One might infer that the [kangaroo exclusion] fence [erected at the MTA] has resulted in an increase in the population [of grassland earless dragons]. That may indeed be the case. We certainly hope it is the case, but we know that when populations get as low as that one has got on that site, they do tend to bounce around, and that's how they go extinct. There'll be some random fluctuation at low level, and then they're gone. (Fletcher, 3/6/2009, Recording 1, 1:24:25-1:25:08)

> We do have the threatened species in the sites, we have the kangaroo impacts, we need to, in fact we [are] required legally and morally to respond to those impacts. (Fletcher, 03/06/2009, Recording 3, 49:32-49:45)

> I passionately hope that these guys [ENSR Corporation Limited environmental consultants hired by the Department of Defence] just didn't manage to find it [hooded robins] and that there's a few still out there. But if indeed it isn't out there to be found any longer then it's disappeared from one more place. (Fletcher, 03/06/2009, Recording 3, 58:47-58:38)

Fletcher and Jarvis constructed a complex citational web to assert that kangaroo grazing had eliminated hooded robins from the MTA. Fletcher (03/06/2009, 3: 54:23-58:36) produced as evidence a bird atlas of the ACT compiled by Dr McComas Taylor (1992), a lecturer in Sanskrit (see Australian National University, n.d.), in conjunction with a local community group, the Canberra Ornithologists Group (see Taylor & Canberra Ornithologists Group, 1992: 110). Citing the atlas, Fletcher (03/06/2009, Recording 3, 54:23-58:36) noted that hooded robins had 'some years ago' been sighted 'across… all of the Majura Training Area' but that they were not detected in a study conducted by consultants contracted by the Department of Defence in 2008. In his submissions to the tribunal at the end of the hearing, Jarvis stated:

> There is also the evidence of the apparent disappearance of the hooded robin. It is recorded in the Woodland Strategy as being one of the species to be found, and the Woodland Strategy is dated… 2005. It's not the case that we need to go back to the ACT bird book from the 1980s. (05/06/2009, Recording 4, 24:45-25:23)

In the *Woodland Strategy*, Dunford et al. (2004: 108) anchored their statement that the 'species [hooded robin] is recorded from the southern part of Majura Field firing range' by citing Cunningham (2003). As outlined in the reference section of Dunford et al. (2004: 123), the Cunningham (2003) citation was an unpublished analysis of the Canberra Ornithologists Group's database. In doing so, Fletcher and Jarvis took the tribunal on a tour of documents (including Cunningham, 2003; Dunford et al., 2004; Taylor & Canberra Ornithologists Group, 1992), all of which arose from the database of a citizen science project of a local community group. Their argument that kangaroo grazing had eliminated hooded robins from the MTA, therefore, hung on the validity of a database developed through a citizen science project that commenced in 1986 (see Taylor & Canberra Ornithologists Group, 1992: 7). The following day, Fletcher (04/06/2009, Recording 2, 50:15-50:32) acknowledged that hooded robins were only 'surmised to be affected by heavy grazing pressure':

> They [hooded robins] are surmised to be affected by heavy grazing pressure, as indicated in my statement of evidence, and they are known to have been there, and I think I said that I desperately hope they are still there and that the people doing the more recent surveys have failed to find them.

In their *Reasons for Decision* document, the ACAT panel members stated that where the evidence of the experts conflicted, they 'prefer[red] the evidence of Dr Fletcher' (paragraph 123). In section 4.5.2, I discussed how Fletcher produced as evidence photographs for which he could not identify who took them; the time, date or location they were taken; and he acknowledged that they were not representative of the MTA site. However, the ACAT panel members found the photographs Fletcher produced 'compelling' (paragraph 84), 'convincing' (paragraph 111) and 'concluded that overgrazing by kangaroos has caused and continues to cause severe damage to endangered ecological communities and to the habitat of threatened species at the MTA' (paragraph 115) (see Stefaniak et al., 2009: 19, 25, 26).

During the hearing, Fletcher noted that criticisms such as those put forward by Ben-Ami would be considered when the final version of the ACT KMP was constructed (Fletcher, 02/06/2009, Recording 3, 58:30-59:12): 'The ACT Kangaroo Management Plan was released as a draft for public comment... The task now remains to assess the comment and modify the policy.' As noted by McGann (1991: 4), the text, in this case the Draft ACT KMP, was 'silent and passive' and required Ben-Ami's reading to 'infuse it with meaning, to bring it to life'. According to Smith (2005b: 105), however, such 'activation' of the text is 'probably never quite as the maker intended'. In activating the text, Ben-Ami 'insert[ed] the text's message into the local setting and the sequence of action into which it [was] read' (Smith, 2005b: 105) in a way that its author may not have intended. In the following section, I trace how such discussions were translated into the final version of the ACT KMP.

6.6 The final version of the ACT Kangaroo Management Plan, 2010

In addition to being closely examined throughout the 2009 hearing, the Draft ACT KMP was available for public comment for two months until 11 May 2009, two days after Animal Liberation NSW submitted an application for a review of the ACT Government's decision to issue licences to kill 7,000 kangaroos at the MTA (see Crebbin, 12/5/2009, Recording 1, 6:20-6:46; Stanhope, 2009). In this section, I examine the ACT KMP to look for indications of how the ACT Government 'asses[ed] the comments and modif[ied] the policy', as I noted in the previous section, Fletcher stated would occur. I focus on the transformation of the information provided regarding the impacts of kangaroo grazing on one species of bird, hooded robins (*Melanodryas cucullata*), depicted below in Photographs 19 and 20.

Photograph 19: A female hooded robin

(Source: Martinez (2023a), reproduced under licence.)

Photograph 20: A male hooded robin

(Source: Martinez (2023b), reproduced under licence.)

A broader comparison of the changes made from the draft to the final version of the ACT KMP for the remaining species is available in Appendix 5. Before doing so, however, I note that 'Figure 3.2 Diagram of the fragmentation process of species extinction', which appeared in the Draft ACT KMP, was removed from the document's final version. This diagram depicted an inverse relationship between the degree of habitat fragmentation and species abundance. This instance of negotiation erasure prevented drawing further attention to the deleterious impacts of urban development on vulnerable species and ecological communities, which was highlighted in other ACT Government documents.

Without providing any further references, the wording of the final version of the ACT KMP was changed to reiterate the deleterious impacts of kangaroo grazing on vulnerable species (see Frawley, 2010: 46-50). In transitioning from the draft to the final version of the ACT KMP, Frawley removed original references in the draft version of the ACT KMP that acknowledged there had been no research into the impacts of kangaroo grazing on almost all the species of flora and fauna listed. In most of these cases, these statements of limitations were

replaced, without explanation or referencing, with sentences that reinforced the ACT Government's positioning of kangaroo grazing as being ecologically destructive. Regarding the 'Significance of kangaroo grazing impacts' on Canberra spider orchids and button wrinkleworts as was presented in the table, the words 'studies are lacking' were simply removed.

While in this section I limit my discussion to hooded robins, the transition in the statement is identical for brown treecreepers and white-winged trillers. I chose to focus on hooded robins as they were a species discussed at length in the 2009 ACAT hearing. The introductory paragraph preceding Table 3.3 in the final version of the ACT KMP reads:

> 1. **Table 3.3 Habitat requirements for threatened species in ACT native grassy**
> 2. **ecosystems and significance of kangaroo impacts**
> 3. Grazing impacts from all herbivores, as well as other potential threats, are
> 4. considered in managing habitat for these species. Assessment of the significance
> 5. of kangaroo grazing impacts derives from knowledge of grazing impacts
> 6. generally, current understanding of the habitat requirements of grassland species,
> 7. data collected for some species, and field observations as part of survey,
> 8. monitoring and research undertaken by ecologists within ACT Parks,
> 9. Conservation and Lands and by researchers from other institutions. For
> 10. threatened species reliant on grassland or grassy understorey, the precautionary
> 11. management response is to avoid overgrazing from any source. In ACT reserves
> 12. where there is no grazing by domestic stock (or limited stock grazing in
> 13. particular locations for fire fuel reduction) overgrazing is mainly by kangaroos
> 14. and rabbits. (Frawley, 2010: 47, bolding in original)

The crucial first sentence in the draft version was removed, which stated, 'For most of the species listed below, specific kangaroo impacts have not been studied; therefore, a precautionary approach is an appropriate management response.' It was replaced with the sentence that appears in lines 3 to 4. The second sentence in lines 4 to 9 is identical in both

versions of the ACT KMP. However, a sentence (lines 9 to 11) was added that obliged the ACT Government to protect 'threatened species' by implementing 'precautionary management… to avoid overgrazing from any source'.

In the final sentence of the above passage (lines 11 to 14), Frawley stated that 'overgrazing is mainly by kangaroos and rabbits' in 'ACT reserves where there is no grazing by domestic stock (or limited stock grazing in particular locations for fire fuel reduction)'. Frawley did not cite the source of this information, which is necessary for understanding which grazers are in each reserve. In section 4.4.3, I highlighted how sheep and/or cows were agisted to control vegetation levels at a number of sites, while kangaroos were killed to reduce the impacts of their grazing. This statement also reintroduces the contentious issue that kangaroos compete with other species for food, as I discussed in section 6.4.

In Table 1, I show how the section of 'Table 3.4 Habitat requirements for threatened species in ACT native grassy ecosystems and significance of kangaroo impacts' in the Draft ACT KMP regarding the 'significance of kangaroo grazing impacts' on hooded robins was transformed in the creation of what would become Table 3.3 in the final version of the ACT KMP. The entries for the draft and final versions perform quite different functions. The draft version assumed that evidence was required and, as it was not available, explained the possible impacts that might result from kangaroo grazing. No justification was provided for the change in wording in the final version of the ACT KMP, and the tone is noticeably different in taking on a more 'magisterial voice' (see Smith, 1999: 147), one that was not obligated to provide evidence but authoritatively painted a picture that pointed to kangaroo grazing as a threatening process.

Table 1: The transformation of information about kangaroo grazing impacts on hooded robins

Table 3.4 in the Draft ACT KMP (Frawley, 2009: 46)	**Table 3.3. in the final version of the ACT KMP (Frawley, 2010: 49)**
Kangaroo grazing has not been specifically identified as a threat, but could contribute to loss of habitat complexity and food supply (in particular, reduction of tall grass tussocks) in the context of total grazing pressure.	Intensive grazing which reduces the complexity of understorey habitat is a threat and in some important ACT woodlands (e.g. Mulligans Flat) this grazing is mainly by kangaroos. Rabbits are also important in some areas.

The reference for the entry was attributed as 'ACT Woodland Strategy, pp. 43–54' and was carried across from the draft to the plan's final version. Tracing the citation back to the *Woodland Strategy*, we find Dunford et al. (2004: 49) asserted that 'the principal threat to the Hooded Robin is loss of its woodland habitat', and kangaroos were not mentioned at all. The 'Protection and Management' measures they listed include the protection of habitat, limitation on the removal of live and dead timber, maintenance of patches of shrubs or eucalypt, regeneration of habitat, and the minimisation of the adverse effects of fire (Dunford et al., 2004: 53-54). They also recommended the prevention of intensive grazing, highlighting that 'appropriate levels of stock grazing in Yellow Box-Red Gum woodland will be encouraged through LMAs [Land Management Agreements]' with rural lessees in the ACT (Dunford et al., 2004: 54).

We can see that information challenging the ACT Government's preferred approach to kangaroo management was not addressed but transformed, replaced, or removed. The final version of the ACT KMP was heavily relied upon in the subsequent hearings and in other government documents. For example, the information in Table 3.3. in the final version of the ACT KMP was uncritically replicated in the *Nature Conservation (Eastern Grey Kangaroo) Controlled Native Species Management Plan 2017* (see ACT Government Environment Planning and Sustainable Development Directorate, 2017: 21). In the following subsection, I

will demonstrate how Frawley's approach to editing the Draft ACT KMP was replicated and extended in other ACT Government documents.

6.7 The management of contested information across government documents

In this section, I will discuss how the final version of the ACT KMP was mobilised in the subsequent hearings. I will consider two other ACT Government documents to trace how their construction replicated the way contested information was handled in the ACT KMP. I will first discuss how the 2013 'Q and A' document was drawn into the 2013 ACAT hearing before examining how the 2013 'Number to cull' document was interrogated in the 2014 ACAT hearing. Doing so indicates established processes of presenting and erasing information about kangaroos in ACT Government documents.

6.7.1 The 2013 ACAT hearing: The ACT KMP and the 'Q and A' document

In the 2013 ACAT hearing, Stefaniak presided over the substantive hearing as he had done in the 2009 hearing. Fletcher was again the ACT Government's sole witness, and consulting ecologist Raymond Mjadwesch was the sole witness presented by the applicant, the Australian Society for Kangaroos. The hearing provided the opportunity for the changes made to the Draft ACT KMP and other government documents to be discussed. Mjadwesch drew upon the ACT KMP to challenge Fletcher's evidence, but he did not flag or discuss the changes made in the transition from the draft to the document's final version. He detailed how the ACT KMP contradicted the ACT Government's own assertions that kangaroo grazing deleteriously impacted numerous vulnerable species:

> There's this impression being created by all these species, so many species, that kangaroos are having an impact on them all, when the fact of it is, when most of them are described, as a fair proportion of them are described by Frawley as not impacted.

> Many of the others are described as benefitting from kangaroo grazing. (9/7/2013, Recording 2, 52:40-53:02)

Mjadwesch went on to discuss how the ACT KMP disproved the ACT Government's claims that kangaroo grazing detrimentally impacted vulnerable species that were made in the 'Q and A' document on the website of the ACT Government Directorate of Territory and Municipal Services (TAMS), in a media release, and in Fletcher's witness statement:

> **Mjadwesch:** And so, we come to a list that the TAMS have provided that I've built out of various sources. Obviously, Dr Fletcher's statement lists various species. He mentioned button wrinklewort, striped legless lizards and grassland earless dragons in a media release to the *Canberra Times,* and then the Minister also released a 'Questions and answers about culling' which included another few species. So, those species are just listed very briefly on pages 34 and 35. Now the Kangaroo Management Plan itself sorts plenty of them out for us. It says, basically, with those first few – Tarengo leek orchid; small purple pea; button wrinklewort; Ginninderra peppercress; golden moths, which is a type of orchid, it's not a moth; that there's no evidence that those populations are threatened by kangaroo grazing. So, I don't know why they found their way into these sort of discussions about impact of kangaroos on species given that the management plan itself says that. It surprises me even more that, for example, Mr Iglesias said "button wrinklewort" even though the Kangaroo Management Plan said that there is no evidence that the ACT populations have been threatened by kangaroo grazing. That's badly advised, possibly, by someone. And then there's a heap of species that are listed that it just defies comprehension that kangaroos are blamed. (9/07/2013, Recording 2, 42:14-43:58)

Mjadwesch drew upon a book published by Rentz (1996) entitled *Grasshopper country: the abundant orthopteroid insects of Australia* to counter Fletcher's claims about Canberra raspy crickets (*Cooraboorama canberrae*):

> So, Dr Fletcher mentioned earlier the raspy cricket, for example. This [book] is *Grasshopper country*. It's written by Dr Rentz. He's a CSIRO entomologist. He says about the raspy cricket, 'Virtually nothing's known of its habits and its restricted distribution suggests that it is a grassland species and may be endangered by the expansion of housing developments in the Canberra district.' So, we can take very many easy examples out of all of these species and say, 'This is wrong.' We can just put lines through species that the department have put up really, really easily. Unless, of course, Dr Rentz with his experience with these sorts of species was wrong. That's possible. Don Fletcher might be right. David Rentz might be wrong. (9/07/2013, Recording 2, 43:58-45:45)

Fletcher then made two important interventions. The first appeared in lines 29 to 34, where his narrative changed from being alarmed by the potential of species extinction resulting from kangaroo grazing:

> **Fletcher:** I didn't say it was threatened by kangaroos.
> **Mjadwesch:** That's correct, but why did you raise it in this forum, then?
> **Fletcher:** It was an example of one of the many species we are seeking to conserve by taking an ecosystem approach and not all of which have been listed as individually as threatened species. *We surmise that they [raspy crickets] are, like many of these other things that go across the ground surface, disadvantaged by the absence of groundcover but we don't have evidence.* (9/07/2013, Recording 2, 44:45-45:57, emphasis added)

Mjadwesch obligated Fletcher to respond to the lack of evidence of the negative impacts of kangaroo grazing on most of the listed species, particularly regarding raspy crickets. In lines 31 to 33, Fletcher immediately redirected attention away from individual threatened species to adopting 'an ecosystem approach' as he had done in the 2009 hearing. Lines 33 to 35 seem to indicate that adopting such an approach absolved the need for evidence of deleterious impacts on kangaroo grazing – one could merely 'surmise' them, as Fletcher had done regarding hooded robins in the 2009 hearing (see section 6.5).

The second intervention Fletcher made appeared in line 40, where he identified a category of scientific information designed for public consumption, which he called 'P.R.':

> 36. **Mjadwesch:** Regardless of which, with regard to the raspy cricket, it appears on
> 37. the 'Q and A' that the Minister released as one of these species that's at risk. So,
> 38. you raised it yourself. It's on the 'Q and A'. One must presume that the TAMS
> 39. consider this to be a species at risk from kangaroo grazing.
> 40. **Fletcher:** Well, I don't work for TAMS and I'm not in charge of their P.R. so –
> 41. **Mjadwesch:** The 'P.R. document' is the 'Q & A'. TAMS are approaching
> 42. kangaroo management as P.R.? We'll leave that aside. (9/07/2013, Recording 2, 46:48-47:15)

This sowed the seed for a practice in which information categorised as being for 'P.R.' purposes could be of a lower quality and could be revoked from public access when it suited the ACT Government's needs. This continued the process whereby Frawley simply removed the statements that 'studies were lacking' and replaced them with statements that provided stronger support for the ACT Government's preferred approach to kangaroo management, but with no citations to support the changes. Fletcher's designation of some scientific information as 'P.R.' was more than a slip of the tongue. In the 2014 ACAT hearing, Fletcher was dismissive of information the ACT Government provided to the public in another document, as I will discuss in the section that follows. Later that day, Fletcher conceded that some of the comments

contained in his previous statement and in other government documents were not evidence-based:

> I don't really want to go through all the individual species. I guess I can. But I admit there's some confusion there. The document we can probably refer to most is the Kangaroo Management Plan rather than media releases and the like. But we don't claim that there are negative effects of kangaroo grazing on many of these threatened species. So, for example, the button wrinklewort, as far as I know, it's not impossible the kangaroo grazing helps it. We're certainly not contending that it harms it. In the main, though, the comment has to be that the research hasn't been done. The button wrinklewort observation is an observation that some of us, like me, have made in the field. That's all. (09/07/2013, Recording 3, 17:40-18:45)

In the above passage, Fletcher repeated a negotiation erasure process he established in the 2009 hearing. As I discussed in section 6.5, through various government documents, strong claims were made regarding the deleterious impacts of kangaroo grazing on specific threatened species and Mjadwesch refuted such statements. Fletcher first denied stating that kangaroo grazing deleteriously impacted raspy crickets and 'many of these threatened species' in the ACT KMP, before acknowledging that he surmised it was so, and then reneging on his focus on threatened species to foreground 'ecosystem processes'. These moves by Fletcher were incongruent with a declaration made later the same day by Kristy Katavic, counsel for the ACT Government:

> The Kangaroo Management Plan itself is an example of the transparent commitment that has been adopted to ensure that the management research in relation to kangaroo populations is made public. It is a policy document, but it's one that's been developed in consultation. It's a gathering of scientific material that's relevant. (9/7/2013, Recording 4, 2:03:54-2:04:46)

Questions regarding the quality of Fletcher's evidence and the data upon which he drew haunted him from the previous hearing. In the 2009 hearing, ACAT Senior Member Louise Donoghue (4/6//2009, Recording 3, 0:55-1:45) acknowledged flaws in the evidence that supported the decision to kill kangaroos, stating that there were 'plainly some errors in the count, in the raw data, and in the methodology and so forth'. Such errors were described by Bennett, representing the applicant, as 'sloppy science' (see 5/6/2009, Recording 3, 7:39-8:29). In the substantive hearing in 2013, ACAT President Stefaniak made an important transition in his assessment of Fletcher's evidence. On the day before the tribunal's decision was handed down, he noted to Fletcher:

> You have, uh, now it's, it's possibly the best of a whole lot of bad science, and you've indicated that the figures may be wrong or are probably wrong and may be revised in future… (Stefaniak, 9/7/2013, Recording 3, 55:24-55:53).

In delivering the *Reasons for Decision* statement the following morning, Stefaniak reframed Fletcher's evidence as 'an evolving science':

> It is an evolving science we're dealing with here. A lot of work has been done, certainly locally in the last 20 years and I think, perhaps nationally too, in relation to biodiversity and I think that stands us in very good stead for future improvements in the future to this area of science. Coming to the actual decisions … taken by the government issue of seven licences, the tribunal, because this is not an exact science and mindful of the intent behind the Act and the intent that killing an animal is only to be done where it's deemed absolutely necessary,… we are of the view that unless there is good reason shown why that should not occur, the upper limit of [a population density of] 1.5 'roos per hectare is the figure that we should base our decision on and we so do… So, the Tribunal's decision is that all seven licences, the decision to issue the seven licences will be affirmed. (Stefaniak, in Stefaniak et al., 2013b: 13-14)

Transforming the ‘whole lot of bad science’ Fletcher presented into ‘an evolving science’ and then ‘not an exact science’ enabled Stefaniak and his colleagues to affirm the Conservator’s decisions to issue the licences to kill kangaroos in the seven nature reserves in question. Stefaniak felt that ‘Mr Madgwick [sic] did not seem to have the same – any real documentation to back up to any great extent a lot of what he was actually saying’ and Davey positioned him as an advocate and lacking independence, as I discussed in section 5.5.3.2 (see Stefaniak et al., 2013b: 7, 13). The decision was handed down on 10 July 2013, and the shooting was completed on 31 July 2013 (Raggatt, 2013). The starkly different ways the ACAT panel members regarded the academic nature of the evidence would be extended in the following hearing.

6.7.2 The 2014 ACAT hearing: The ACT KMP and the ‘Number to cull’ document

In the 2014 ACAT hearing, information in the 2013 ‘Number to cull’ document (see ACT Government Environment and Planning Directorate, 2013) was discussed. I follow those discussions to illustrate how the processes applied to the draft and final versions of the ACT KMP and the ‘Q and A’ document were also used elsewhere. The 2013 ‘Number to cull’ document claimed that kangaroo populations were capable of a growth rate of 73% by citing Banks et al.’s (2000) paper ‘Predation by red foxes limits recruitment in populations of eastern grey kangaroos’. In the 2013 hearing, Mjadwesch claimed that ‘Banks said no such thing’ as the study ‘showed change in behaviour of kangaroos’ (08/7/2013, Recording 2, 1:06:55-1:07:03). After that hearing, the information was removed from the document that was publicly available on the ACT Government’s website. In the 2014 ACAT hearing, Mjadwesch was again presented as an expert witness, and he highlighted the omission. Arthur, the barrister for Animal Liberation ACT, questioned Fletcher about that:

> Arthur: I take it you accept that Mr Mjadwesch is correct –
>
> Fletcher: No.
>
> Arthur: – at least to that extent?

Fletcher: No, I don't accept that he was correct. I accept that –

Arthur: Why would you change [it] if you thought you were right?

Fletcher: Because this is a document on the webpage. *It's got a P.R. function and if people are going to have those sort of qualms and difficulties about it, why put it in there?*

Arthur: Indeed. Indeed. So, can we take it from that, that if there are matters in which there are qualms and difficulties, we may not find them on the webpage?

Fletcher: No, but it's unnecessary for the paragraph to state the 73% [kangaroo population growth rate], and it is only in that one study, so *take it out*. *You know, if people are going to have trouble with it, then we don't need it.* (5/6/2014, 3:52:36-3:52:41, emphasis added)

As I discussed in the previous section, Fletcher invoked the term 'P.R.' in the 2013 hearing to classify information presented as fact to the public by the ACT Government, but, when interrogated, it was not based on scientific evidence. In the above discussions, Fletcher divulged that scientific information that was considered to be for 'P.R.' purposes should be removed from public access if it was contested (see Fletcher, 5/6/2014, 3:52:36-3:52:41). Therefore, in the 2014 hearing, we can see negotiation erasure in play as Fletcher admitted to removing contested information and constructing a 'P.R.' science that enabled him to do so.

The ACAT panel members, again, upheld the Conservator's decision to issue licences to kill kangaroos in nature reserves that were part of the Canberra Nature Park. They were 'satisfied with Dr Fletcher's expertise'. They were 'of the view that his evidence, together with the documentary evidence that he referred to, established a solid scientific basis for the issue of the licences' (Lunney et al., 2014: 6). ACT Government Parks and Conservation Director Daniel Iglesias was present for much of the 2014 ACAT hearing. Following the announcement of the ACAT panel members' decision, he walked out of the hearing room into the awaiting press to affirm that the decision served as proof that the kangaroo management was, indeed, based on 'best science':

> What we have is a situation not unlike the climate change deniers, where we have clear scientific evidence that suggests that a course of action should be taken and for whatever reason there's a small group of people that just refuse to accept it. We're talking about ideology with this group. … As a land manager we have to act not on ideology but on what the best science is telling us. (Iglesias, 2014b)

Iglesias's statement positioned the ACT Government as the holder of 'clear scientific evidence', acting on 'best science' and existing in an ideological vacuum. Framing the dissenters as 'den[ying]' and 'refus[ing] to accept' scientific evidence positioned them as unreasonable and marginalised them as Cooper had done in her 2009 report, as I discussed in section 4.4.3. Constructing them as being 'ideologically' driven marginalised them along the lines of being extremist and placed them in a category of being unworthy of consideration. Iglesias's claim of 'act[ing] not on ideology' masks that the ACT Government's approach to kangaroo management and environmental management more broadly was grounded in an ideology that was closely intertwined with urban developers (see section 4.2), demonstrated longstanding support for the commercial killing of kangaroos (see section 2.3.3.1), and the prioritising of marketable research over the basic foundational research required to determine the impacts of kangaroo grazing (see section 6.4). Such decisions reflect the ideals of New Public Management to which the ACT Government is committed, as I discussed in section 3.2.3.3. I will return to this in the following section.

Iglesias's claim that kangaroo management in the ACT was based on 'best science' created an accountability circuit of the ACT Government's reliance on 'best science', much of which was not apparent to members of the public. The Draft ACT KMP was drawn into the 2009 ACAT hearing with Frawley's (2010: 93) pronouncement that it was based on the 'best available scientific knowledge'. Over the span of the three hearings, therefore, we can see a complicated form of negotiation erasure in which Bennett's 'sloppy' science and Stefaniak's 'bad' science were processed into Fletcher's 'P.R.' science. The 2013 ACAT panel members then transformed it into an 'evolving' and 'not an exact science'. The 2014 ACAT panel

affirmed the ACT Government's evidence as 'solid' science before Iglesias confirmed it represented 'best science'.

6.8 Analysis: 'Best science' as ruling relations

In this chapter, I demonstrated how ACT Government staff created discursive boundaries around what good science looks like. Such boundaries, however, were flexible and changeable, but only in ways that benefitted the ACT Government's project of maintaining its desired course of kangaroo management. They effectively put everything done by or in service to the ACT Government in the 'best science' category and everything everyone else did in a category that rendered it inadequate and, therefore, dismissible.

Walking through the text–act–text sequence illuminated how negotiation erasure practices were intertwined with achieving the bibliopolitical end of strengthening the ACT Government's commitment to its preferred approach to kangaroo management. I approached the 'act' stage of my text–act–text sequence as the way a text was mobilised and interrogated in the 2009 hearing, a practice uncommon to IE. The 'text' stages of the sequence referred to the transition from the draft to the final version of the ACT KMP. Doing so challenged the appearance of the 'best available scientific knowledge' in the Draft ACT KMP. It was drawn into the hearings where the decisions to kill kangaroos were affirmed, with 'best science', as proclaimed by Iglesias (2014b), exiting the final hearing. However, examining how the ACT KMP and other government documents were developed and employed has revealed otherwise. In the remainder of this chapter, I will discuss how three key ends were achieved through the way the knowledge underpinning the licences to kill kangaroos was developed, assessed and validated. This includes constructing kangaroo grazing as a threatening process, directing attention away from the impacts of development and other human actions, and marginalising dissenters.

Through my foregoing discussion, I argue that the primary task of the ACT Government's documents and involvement in the ACAT hearings was to establish kangaroo

grazing as a threatening process, as was apparent in my discussion in Chapter 4. This frequently involved negotiation erasure. That the interventions furthered the ACT Government's project renders them bibliopolitical accomplishments. While the ACAT was pivotal to constructing the content of what the ACT Government presented as 'best science' that informed kangaroo management in the ACT, other background interventions occurred. For example, Frawley, Fletcher and possibly others within the ACT Government addressed comments on the Draft ACT KMP, including the conversations in the 2009 ACAT hearing, when preparing the final version of the ACT KMP. While we are not privy to those conversations, I traced the decisions made by following the changes between the Draft ACT KMP and its final version. Two other backstage procedures associated with the ACAT hearings similarly transformed the conversations throughout the hearings into the 'magisterial' (Smith, 2006b: 75-76) text of the *Reasons for Decision* documents. These included how the ACAT panel members made sense of the ongoing challenges to the ACT Government's decisions and how Stefaniak transitioned from stating the ACT Government's evidence was a 'whole lot of bad science' in the 2013 hearing to recommending in the 2014 hearing licencing and legislative changes that ultimately foreclosed further administrative reviews on the issue.

In the Draft ACT KMP, Frawley misquoted the *Woodland Strategy* to energise the perception that many species were threatened by kangaroo grazing, even though there was no evidence to justify including them. However, the dissenting witnesses mobilised sections of the document to undermine the ACT Government's claims in the ACAT hearings. In the final version of the ACT KMP published in 2010, Frawley removed or altered the text that Ben-Ami used to support the applicant's argument to ensure the final version lent greater support to the ACT Government's preferred approach to kangaroo management. Similar mechanisms were employed by the staff of the ACT Government Directorate of Territory and Municipal Services in constructing the 2013 'Q and A' document and by Fletcher in the transition from the 2013 to the 2014 'Number to cull' document.

In the 2009 ACAT hearing, Fletcher developed a strategy in which he made strong statements that presented kangaroo grazing as a threat to endangered species. When presented

with evidence from ACT Government documents that refuted his claims, he then denied having made such statements. Fletcher then redirected attention to focusing on 'ecosystem processes' instead of threatened species and ran through the steps again within the same hearing. When pressed, Fletcher acknowledged that gaps in evidence of kangaroo impacts were filled with what the ACT Government staff 'surmised' (section 6.5). Focusing on hooded robins in the 2009 hearing, Fletcher and Jarvis created a citational chain that presented the *Woodland Strategy* as substantiating claims that kangaroo grazing had eliminated hooded robins from the MTA. This obfuscated the fact that the data supporting the claim arose from a citizen science project that commenced in the 1980s (Taylor & Canberra Ornithologists Group, 1992).

In many respects, the data in this chapter echoes that of Chapter 4, which highlights the negotiation erasure techniques that government staff applied to distract attention away from the ecologically destructive impacts of urban, infrastructure, and agricultural development, as well as other human actions. This was evident in Frawley's construction of the impacts of kangaroo grazing on threatened species in the Draft ACT KMP. Frawley neglected the other processes that threaten endangered species and ecological communities, which were detailed in the material he cited. More specifically, he did not contextualise the greater threat posed by urban development and associated habitat fragmentation and destruction, as was suggested by Figure 3.2 in the Draft ACT KMP and was subsequently removed from the final version of the Plan.

The data in this chapter also echoed that in Chapter 4 regarding the negotiation erasure of dissenters and their evidence. In section 4.4.3, I discussed how Cooper 'respected' the views of those who 'are likely to find culling at any time unacceptable' and 'carefully considered' their submissions to her investigation while foreclosing their ability to meaningfully engage in reviewing the Draft ACT KMP. She did this by alerting government departments of her impending recommendation for the killing of kangaroos to commence before the closure of the period allocated to submitting public comments on the Plan. Similarly, in this chapter, I noted how ACT Government Parks and Conservation Director Daniel Iglesias aligned the dissenters with 'climate change deniers' who he positioned as being driven by 'ideology' and suggested this was not the case with the ACT Government. However, in this and previous chapters, I

highlighted how the decisions of ACT Government staff reflected that the ACT Government's approach to kangaroo management and environmental management more broadly was grounded in an ideology closely intertwined with commercial interests (see sections 2.3.3.1, 4.2 and 6.4). Marginalisation was also achieved through the uneven handling of the applicant's and the respondent's evidence. For example, in the ACAT 2009, the ACAT panel members rejected Mjadwesch's evidence as being insufficiently substantiated while accepting Fletcher's photographs as 'compelling' despite their acknowledged flaws. Where the information presented by the ACT Government was shown to be lacking, Fletcher and the ACAT panel members devised categories of science to render it acceptable, such as Fletcher's 'P.R.' science.

Throughout this chapter, I have highlighted numerous examples of how the processes the ACAT panel members used to identify the evidence upon which they would rely was infused with elements of New Public Management (NPM), including prioritising marketable over basic research (section 6.4) and imposing a narrow focus on the impacts of kangaroo grazing which diverted attention away from rural lessees' 'beliefs' (section 6.1) and urban development (section 6.2). Numerous manoeuvres were implemented to ensure the efficient completion of the hearings and foster a business-as-usual approach to kangaroo management, including removing contested information from public access (sections 6.4, 6.6 and 6.7), misquoting documents to produce a result agreeable to the ACT Government's project (section 6.4), the aforementioned tendency to position work conducted by or on behalf of the ACT Government as 'best science' and everything else as dismissible (section 6.7.2), and marginalising and excluding dissenters (sections 6.5 and 6.7). Similarly effective was Stefaniak's transformation of Fletcher's 'whole lot of bad science' to 'an evolving science' and 'not an exact science' (section 6.7.1). While these labels stuck and were successful to the extent that they enabled the decision to be upheld, those employed by the applicant were ineffectual, as with Bennett's description of Fletcher's evidence as 'sloppy science'. By acknowledging the deficiencies of the ACT Government's evidence and upholding its decision, the ACAT panel members performed a forceful act of negotiation erasure, as their decision, but not the intricate details of the hearing, was conveyed to the public through the press.

The aforementioned practices occurred between 2009 and 2014 across multiple government departments, including the ACT Government Territory and Municipal Services Directorate (the draft and final versions of the ACT KMP, the 'Q and A' document, and Iglesias's media interview), Conservation Research (Fletcher's witness statement, the 'Number to cull' document, and Fletcher's contributions to the draft and final versions of the ACT KMP) and the Department of Justice and Community Services (the ACAT's *Reasons for Decision* documents and the associated transcripts). Despite being created by people working in different areas for disparate purposes over different time frames, I have traced how they employed similar practices when constructing the documents they authored to ensure the persistence of the ACT Government's approach to kangaroo management. This reflects 'multiple strands of varied activity that are coordinated into a functional complex' (Hastings & Mykhalovskiy, 2023: 76) which powerfully maintains and extends ruling relations. In effect, these processes constructed ecological facts which were later turned into legal facts. Similar processes have been illuminated through the work of institutional ethnographers of law. For example, by mapping the social organisation of knowledge surrounding people involuntarily admitted to mental care facilities in Poland, Doll's (2017: 34) demonstrated how the production of medical facts justifying such admissions was translated into legal facts.

The ACAT's involvement in the construction of 'best science' was a necessary part of its role in enacting 'open government'. The fact that the ACT panel members upheld the decisions three times and, by extension, the science upon which the licences were based, inspired Stefaniak to offer the ACT Government advice on mitigating the ongoing conflict and the repeated administrative reviews more specifically. Doing so contributed to discussions that led to radical legislative changes that foreclosed democratic processes, as I shall explore in the following chapter.

Chapter 7: Public participation as an accountability circuit

Chapter contents

7.1 Introduction: 'Public participation' in texts and acts

In Western societies, public participation is often considered a valued facet of democratic citizenship and decision making, having been found to positively impact democracy, play an educational role, improve environmental policy, and aid in the resolution of environmental conflict (see Beierle & Cayford, 2002; Michels, 2011). Public participation in government processes heavily centres around and is mediated by texts. The definition of 'public participation' is highly contested. This may not be surprising given the vastly differing public participation goals, as presented by the 'Spectrum of Public Participation' shown in Table 2 (Federation of International Association for Public Participation, 2024). These include informing, consulting, involving, collaborating with, or empowering the public. Another lens through which to appreciate public participation is Hendriks and Colvin's (2024) 'invited spaces' and 'insisted spaces'. 'Invited spaces' occur when 'the public' is invited by governance institutions to provide input. 'Insisted spaces' are created when groups and individuals promote an idea or proposal in the hope of changing government policy. I draw upon the International Association of Public Participation (n.d.) to define the 'public' as actors who may be affected by or wish to contribute to public policy but are not a part of the decision making body. I have adapted Hendriks and Colvin's (2024) definition of 'public participation' to position it as the 'work', in the IE sense (see Smith, 2005b: 228), that people do to become involved or engaged in a public issue or problem.

The three facets of the ACT Government's commitment to 'open government' are 'transparency in process and information, participation by citizens in the governing process, public collaboration in finding solutions to problems and participation in the improved well-being of the community' (ACT Government, 2016; Gallagher, 2011). This commitment was legislated through the *ACT Protection of Public Participation Act 2008*, which, according to section 5 of the Act, was introduced 'to protect public participation, and discourage certain civil proceedings that a reasonable person would consider interfere with engagement in public participation'.

IAP2 Spectrum of Public Participation

IAP2's Spectrum of Public Participation was designed to assist with the selection of the level of participation that defines the public's role in any public participation process. The Spectrum is used internationally, and it is found in public participation plans around the world.

INCREASING IMPACT ON THE DECISION

	INFORM	CONSULT	INVOLVE	COLLABORATE	EMPOWER
PUBLIC PARTICIPATION GOAL	To provide the public with balanced and objective information to assist them in understanding the problem, alternatives, opportunities and/or solutions.	To obtain public feedback on analysis, alternatives and/or decisions.	To work directly with the public throughout the process to ensure that public concerns and aspirations are consistently understood and considered.	To partner with the public in each aspect of the decision including the development of alternatives and the identification of the preferred solution.	To place final decision making in the hands of the public.
PROMISE TO THE PUBLIC	We will keep you informed.	We will keep you informed, listen to and acknowledge concerns and aspirations, and provide feedback on how public input influenced the decision.	We will work with you to ensure that your concerns and aspirations are directly reflected in the alternatives developed and provide feedback on how public input influenced the decision.	We will look to you for advice and innovation in formulating solutions and incorporate your advice and recommendations into the decisions to the maximum extent possible.	We will implement what you decide.

Table 2: International Association of Public Participation's Spectrum of Public Participation.

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Section 7(1) of the Act defines 'public participation' as 'conduct that a reasonable person would consider is intended (in whole or part) to influence public opinion, or promote or further action by the public, a corporation or government entity in relation to an issue of public interest'. Section 7(2) highlights that this excludes illegal activities or conduct that causes or is reasonably likely to cause injury or damage. Refer to Appendix 6 for the complete wording of this section. However, the Act does not require that government entities do anything about the issues based on such participation. I will discuss this further below.

While being committed to 'open and genuine consultation' to encourage 'engagement with government decision making' to 'influence government to achieve more effective policy and project outcomes', the ways the ACT Government 'connects with community' are

predominantly through information dissemination and inviting public comments on specific topics over defined time periods (ACT Government Chief Minister, Treasury and Economic Development Directorate, 2024: 1). The ACT Government's approach to public participation related to kangaroo management has focused heavily on information provision on the issue through its website, conducting community attitudes surveys, and presenting public seminars (see ACT Government Conservation Research Unit, 2015; ACT Government Environment, Planning and Sustainable Development Directorate, n.d.; Micromex Research, 2008, 2012, 2015, 2019, 2022). Releasing specific government documents for public comment under the assurance that the Minister for the Environment would 'consider' such comments is legislated in the 1980 and 2014 iterations of the *ACT Nature Conservation Act*. While not required by legislation to do so, the ACT Government released the Draft ACT KMP for public comment 'because it seemed an appropriate thing to do' (see Fletcher, 02/06/2009, Recording 3: 58:30-59:12), as I discussed in sections 4.4.3 and 6.5. Thus, the ACT Government's presentation of its approach to public participation in its own documents spans the first four categories of the IAP2 Spectrum of Public Participation, including informing, consulting, involving, and collaborating.

In this chapter, I examine how government staff held themselves accountable to the ACT Government's commitment to facilitate public participation in the three ACT Civil and Administrative Tribunal (ACAT) hearings and in the *Nature Conservation Act*. Doing so, however, will demonstrate that the ACT Government declares its commitment to different types of public participation in different circumstances. I limit my consideration of 'public participation' to the process of determining whether a community group had the legal standing to proceed with an administrative review and to the legislation used to manage opposition to government policies, such as the ACT Government's approach to kangaroo management. In doing so, I contrast the approach to public participation presented in the ACT Government's documents with how government staff facilitated it in their daily work.

I commence this chapter by providing a background to the data I rely on in section 7.2. In section 7.3, I explain how I use accountability circuits, as understood through IE, as my analytical focus. In section 7.4, I will consider how ACAT Presidents Linda Crebbin and Bill

Stefaniak approached public participation within the tribunal through the ways they held themselves accountable to the principles of the *ACAT Act 2008*. In section 7.5, I will explore how Simon Corbell, the then Minister for the Environment, ensured public participation by holding himself accountable for the changes to the *Nature Conservation Act 2014*. He also ensured the new legislation remained accountable to the *ACT Human Rights Act 2004*. I conclude this chapter in section 7.6 by arguing that accountability circuits have been mobilised to reinforce ruling relations by creating the perception that the ACT Government facilitated and extended public participation while simultaneously constraining it and criminalising dissent.

7.2 Background to the data: The Acts, the Bill, and the Explanatory Statement

The primary data sources I draw upon in this chapter are the *ACAT Act 2008*, the *Nature Conservation Act 1980* and the *Nature Conservation Act 2014*. The process I will trace follows the path depicted by the solid arrows in Figure 9 below, which commences with these two Acts. In section 7.4, I use the official recordings of discussions of the ACAT presidential members throughout the three ACAT hearings to better understand how they held themselves accountable to the principles of the *ACAT Act* when determining issues about public participation in the tribunal. This process is depicted in the section above the dotted line near the bottom of Figure 9. In the final hearing, President Stefaniak advised how the ACT Government could mitigate the ongoing conflicts over kangaroo management and their management through licencing and legislative changes.

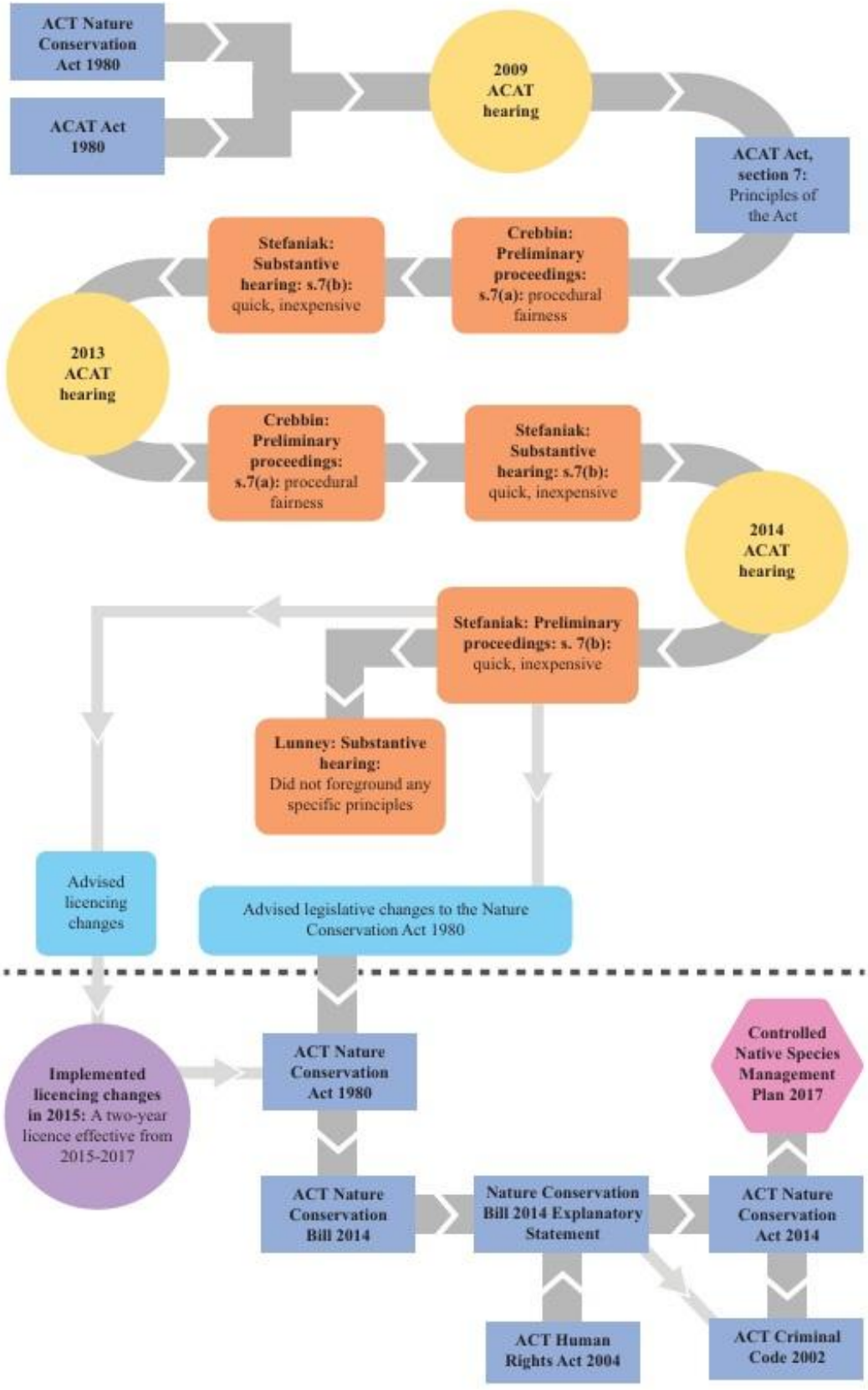

Figure 9: Texts and acts implicated in accountability circuits associated with kangaroo management in the ACT

Minister Corbell completed the long process of introducing the wholly revised *Nature Conservation Act 2014.* Corbell (2024) worked for the ACT Government from 2001 to 2016 as the minister for a variety of areas, including Environment, Climate Change and Energy; Planning; Health; and Police and Emergency Services, as well as acting as the Attorney-General. After leaving the ACT Government, he focused on clean and renewable energy, working for the Victorian Government before moving into private industry. In section 7.5, I will draw upon Minister Corbell's (2014c) *Nature Conservation Bill 2014: Explanatory Statement* (hereafter referred to as the 'Explanatory Statement'), which was an intermediary document on the path to replacing the *Nature Conservation Act 1980* with the wholly revised *Nature Conservation Act 2014*. I also rely on the Nature Conservation Bill 2014, which was tabled in the ACT Legislative Assembly, the *ACT Human Rights Act 2004*, and the *ACT Criminal Code 2002*, which are available online. This process is depicted below the dotted line in Figure 9. In the remainder of this section, I will discuss the relevant section of the *ACAT Act 2008* (subsection 7.2.1), the transition process between the 1980 and 2014 versions of the *Nature Conservation Act* (subsection 7.2.2), and the relationships between both versions, the Nature Conservation Bill 2014, the Explanatory Statement, the *Human Rights Act 2004*, and the *ACT Criminal Code 2002* (subsection 7.2.3).

7.2.1 The ACAT Act 2008

The Law Council of Australia (2021: 5) stated that the system of administrative law is 'intended to provide a web of accountability which protects individuals against unfair and arbitrary use of public power; is needed to legitimise and ensure public confidence in government; and enables informed participation in democratic processes'. Provisions under the *Nature Conservation Act* (*1980* and *2014*) and the *ACAT Act 2008* outline which government decisions members of the public can bring to an administrative review and who would be permitted to do so.

Much of the work of facilitating public involvement in administrative reviews occurs in the preliminary proceedings of the ACAT hearings, where one person presides over the case and must determine whether the applicant should be granted standing to be able to proceed with the

administrative review. Crebbin presided over the preliminary hearings in 2009 and 2013. Due to other commitments, she could not preside over the substantive hearings, and Stefaniak filled that role. In 2014, Stefaniak presided over the preliminary proceedings but, due to his other commitments, could not continue to oversee the substantive hearing, so ACAT Senior Member Graeme Lunney completed that task, as is depicted in Figure 9 above. In making their determinations, Crebbin and Stefaniak mobilised different facets of section 7 of the ACAT Act which outlines the principles of the Act that must be upheld. Section 7 outlines two facets of the principles of the Act:

> **7 Principles applying to Act**
>
> In exercising its functions under this Act, the tribunal must—
>
> (a) ensure the procedures of the tribunal are as simple, quick, inexpensive and informal as is consistent with achieving justice; and
>
> (b) observe natural justice and procedural fairness.

The ACAT commenced operation on 2 February 2009 (ACAT, n.d.-a), as I discussed in section 2.4.1. On 9 May 2009, Animal Liberation NSW applied for a review of the decision to grant the licence to kill kangaroos at the MTA (Crebbin, 12/5/2009, Recording 1, 6:20-6:46). Crebbin was mindful that she could draw upon no precedents in the newly formed tribunal and that her decisions would set precedents. She and the legal counsel often drew upon precedents set in other jurisdictions and under other acts of administrative and common law to guide their arguments and decisions (see Crebbin, 14/5/2009, Recording 1, 1:02:57-1:13:05). Crebbin put much thought into deciding whether the applicant should be granted standing and whether a stay, or injunctive orders, should be placed on the licence until the tribunal heard the matter, as I discussed in section 2.4.2. She often thought aloud as she worked through her decision making process, all of which was captured on the official recordings. As I shall demonstrate in section

7.4, while Crebbin and Stefaniak both rendered their decisions about public participation accountable to section 7 of the ACAT Act, they did so in starkly different ways and to divergent ends.

7.2.2 The transition from the Nature Conservation Act 1980 to its 2014 iteration

Rapid changes in environmental knowledge and social values occurred concurrently with the *Nature Conservation Act 1980* being republished almost every year, and often several times within the same year. Such changes included a shift away from the management of single species to species assemblages, increasing public expectations to participate in government and academic discussions on wildlife management, and growing public opposition to lethal wildlife management techniques (see Banks, 2007; Kellert, 1995; Lindenmayer et al., 2007; Lunney, 2010). By the turn of the century, the Act was considered fragmented and in need of an overhaul (see Corbell, 2014c: 2; Rattenbury, 2014: 4235). This set in motion a series of texts and acts aimed at updating the Act. While this process spanned many years, I will focus on the period from May to September 2014, depicted in green in Table 3 below.

Table 3: Chronology of the development of the *Nature Conservation Act 2014*

Year	Date	Text/Act	References
2004	September–October	The review of the *Nature Conservation Act 1980* was a Labor Party election promise in 2004.	Rattenbury (2014: 2435).
2008	23 July	Marsden Jacob Associates: Review of the *Nature Conservation Act 1980*.	Binney and Whiteoak (2008).
2010	3 December	Public submissions regarding the review of the *Nature Conservation Act 1980* were invited. This included a discussion paper with 43 'Have your say' questions.	ACT Government Environment, Planning and Sustainable Development Directorate, (n.d.-a) and ACT Government Environment and Planning Directorate (2014: 4).
2011	February	Community forum.	ACT Government Environment and Planning Directorate (2014: 5).
	April 11	Public submissions regarding the review of the *Nature Conservation Act 1980* closed.	ACT Government Environment and Planning Directorate (2014: 4).
	June	Review of the Roles and Functions of the ACT Conservator of Flora and Fauna.	Pricewaterhouse Coopers (2011).
2012		ACT Pest Animal Management Strategy: 2012–2022, which included a suggestion to include provisions for Native Animal Management Plans along the lines of Pest Animal Management Plans in the *Nature Conservation Act 2014*.	ACT Government Environment and Sustainable Development Directorate (2012: 20, 49).
2013	October 14	ACT Government Standing Committee on Justice and Community Safety (Legislative Scrutiny Role) Scrutiny Reports 24 and 26.	Doszpot et al. (2014a, 2014b).
	October 31	Nature Conservation Bill 2013 Exposure Draft released.	ACT Parliamentary Counsel's Office (2013).
	December 13	Public submissions were invited for the Nature Conservation Bill 2013.	ACT Government Environment and Planning Directorate (2014: 4).
2014	January 8	Final public submissions were accepted for the Nature Conservation Bill 2013.	ACT Government Environment and Planning Directorate (2014: 4).
	April 14	Stakeholder roundtable.	ACT Government Environment and Planning Directorate (2014: 4).
	May 20	Stefaniak advises on changes to render conservation licences disallowable.	Stefaniak (20/5/2014, 8:51:44-9:02:37).
	September 18	Nature Conservation Bill 2014 Explanatory Statement.	Corbell (2014c).
	September	Nature Conservation Bill 2014 Consultation Report.	ACT Government Environment and Planning Directorate (2014).
	November 27	Amendments moved by the Minister for the Environment. Supplementary Explanatory Statement.	Legislative Assembly for the Australian Capital Territory (2014b).
2015	June 11	*ACT Nature Conservation Act 2014* A2014-59 came into effect.	ACT Government (n.d.-c).

The *Nature Conservation Act 1980* required any information gained through public consultation to be 'considered' by the relevant authority, as is reflected in sections 28(3), 30(ii) and (iii), 37(3) and 42(2). Depending on the context, such authority may include the ACT Conservator of Flora and Fauna, the Minister for the Environment, or the Flora and Fauna Committee, which was renamed the 'scientific committee' in the 2014 Act. Sections 14 to 17 of the *Nature Conservation Act 1980* conveyed that the Flora and Fauna Committee was a group of seven members with 'appropriate expertise in biodiversity or ecology' appointed by the Minister to provide them with advice in relation to nature conservation. The advice Stefaniak offered to the government representatives who attended the 2014 ACAT hearing added but one more voice to conversations that had long been taking place about the need to revise the dated *Nature Conservation Act 1980*.

7.2.3 The Bill, the Explanatory Statement, the Act and the ACT Criminal Code

When Minister Corbell approached rewriting the *ACT Nature Conservation Act 1980*, he put much thought into how public participation would be enabled through the Act. Corbell tabled the precursor to the *Nature Conservation Act 2014*, the ACT Nature Conservation Bill, in the ACT Legislative Assembly, which he contextualised in his Explanatory Statement (see Corbell, 2014c). The objects of the Act itself were outlined in section 6 of the Nature Conservation Bill, and later in the *Nature Conservation Act 2014*. A complete copy of the 'Objects of Act' is reproduced in Appendix 7. Many objects relate to biodiversity, nature conservation, and human interactions with the nonhuman environment. I will focus on the object of the *Nature Conservation Act 2014* found in section 6(2)(g)(ii), which ensures 'that members of the public have… opportunities to participate in policy development, nature conservation planning and conservation work'.

Through Corbell's Explanatory Statement and subsequent documents, the bill, and later the *Nature Conservation Act 2014*, were widely promoted as improving accountability and transparency, resulting from extensive consultation and reflecting community expectations (see ACT Government, n.d.-c; Corbell, 2014c: 6, 7, 16; Corbell, 2014d). However, this was no easy

feat as the bill radically constricted democratic processes and expanded punitive measures. The Commonwealth, Victorian, ACT, and Queensland Governments require human rights scrutiny of proposed legislation (Mulcahy & Seear, 2025: 192). At the time, sections 37 and 38 of the ACT *Human Rights Act 2004* (Republication No. 8) required a standing committee to report to the Legislative Assembly on human rights issues raised by the bill and the Attorney-General to submit to the Legislative Committee a statement of the compatibility of the bill with human rights. This was preceded by a statement by the Minister who presented the bill explaining how the proposed legislation is compatible with the *Human Rights Act 2004,* and much of Corbell's Explanatory Statement did just that.

Corbell's explanation specifically addressed five key sections in the *ACT Human Rights Act*, two of which he grouped to relate to specific sections of the Nature Conservation Bill. These included section 12: right to privacy and reputation; section 18: right to liberty and security of person; section 13: freedom of movement; section 17: taking part in public life; and section 22(1): presumption of innocence. Therefore, the key documents I rely on in section 7.5 of this chapter include Corbell's Explanatory Statement and how it maintained a link between the Nature Conservation Bill and the *ACT Human Rights Act 2004*.

Section 4 of the *Nature Conservation Act 1980*, which became section 5 in the new Act, was amended so that the *Criminal Code 2002* was applied to all offences in the Act. I will discuss the significance of this in section 7.5.3. Before commencing in that direction, however, I will discuss how accountability circuits, as understood through the lens of IE, are ideal for better understanding the ACT Government's approach to public participation.

7.3 Analytical focus: Accountability circuits

I approach my analysis through the lens of 'accountability circuits', which I discussed in section 1.3.1. In section 7.4, I will trace how Crebbin and Stefaniak read and applied the same section of the *ACAT Act 2008* in different ways to starkly different ends, with the former prioritising 'procedural fairness' and the latter foregrounding procedures that were 'quick' and

'inexpensive'. Campbell indicated the value of unpicking these different processes and results through the lens of IE's 'accountability circuits':

> When the new knowledge regime is *not* taken for granted, and the work of transliteration is revealed, its effects – the framing-up of what actually happens into management and discourse-relevant language, categories, and accounts – must be recognised as a ruling practice. Ruling practices have definite consequences. (Campbell, 2014: 75, emphasis in original)

In section 7.5, I consider how Minister Corbell held the Nature Conservation Bill he presented to the ACT Legislative Assembly accountable to specific sections of the *ACT Human Rights Act 2004*. In both examples, government staff connected their conduct and decisions to the imperatives outlined in boss and subordinate texts, which aligned with institutional objectives.

7.4 Determining legal standing in the ACAT hearings

In section 2.3.3.2, I mentioned that the conflicts over kangaroo management had raged since at least the early 1990s (ACT Government Parks and Conservation Service, 1994). Dissenters created 'insisted spaces' (Hendriks & Colvin, 2024) by engaging in protests and direct action, conducting media interviews, publishing lay and academic papers, and submitting reports, letters and other documents to the ACT Government (see, for example, Ben-Ami & Mjadwesch, 2017; Drew & Drew, 2009; Linke, 2008; Mjadwesch, 2012; Taylor et al., 2013). In the ACAT hearing, Katavic, representing the ACT Government, asserted that the dissenters' concerns were a matter for lobbying, not for the tribunal (9/7/2013, Recording 3, 1:41:53-1:44:02). Up to that point, however, lobbying efforts had largely been fruitless, with communication being effectively ignored (as with Taylor, 4/6/2014, 2:33:06-2:34:31) or discontinued (as with Fillinger, 3/6/2014, 3:51:52-3:52:07; Mjadwesch, 3/6/2014, 5:36:25-5:39:10).

In a small number of instances, ACT Government staff invited dissenting witnesses and the

associated community groups to participate in the construction of knowledge about kangaroos in the ACT. The proposals involved government staff providing members of the public with information or getting specific information from them. At times, conditions were imposed on those interactions, as I shall discuss below. When the invitations were declined, the interactions were presented in ways that suggested the dissenters were unreasonable or that they chose to be excluded from such processes. For example, while Fletcher invited dissenting ecologists Dr Daniel Ramp and Dr David Croft to contribute to the ACT KMP, the invitation was limited to writing about collisions between kangaroos and motor vehicles:

> I even rang Dan Ramp and asked him, particularly, to write on the roads issue, which he's published a number of papers on, but also drew his attention to its [the ACT Kangaroo Management Plan's] coverage of the issue he had opposed me in court [the ACAT] here in 2009. And we got nothing. Not even an email or a phone call, and certainly not a submission in response to that, and that was the time for this discussion. It is a policy. We're getting on with it. (Fletcher, 9/7/2013, Recording 2: 20:08-21:10).

This precluded Ramp and Croft from meaningfully being involved in the broader context of the document. Despite declining the invitation, both Ramp and Croft were extensively referenced by Frawley (2009, 2010) in the ACT KMP. Similarly in 2013, Fletcher extended an invitation to Mjadwesch to observe the kangaroo counts on the condition that 'he could not bring anyone else without [Fletcher's] agreement and that he would convey to [Fletcher] any comments on our counts before he made them to other people' (8/7/2013, Recording 2, 1:11:47-1:12:16). Fletcher similarly offered to give members of Animal Liberation a 'run down' on kangaroo counting methods, but the offer was declined (8/7/2013, Recording 2, 1:11:05-1:11:35).

Ramp and Croft were instrumental in founding 'THINKK', which is not an acronym but represents a think tank for kangaroos at the University of Technology Sydney. By 2010, THINKK had formed and was publishing reports that criticised the commercial kangaroo culling industry (see Ben-Ami et al., 2010; Boom & Ben-Ami, 2010; THINKK, 2014). In 2010,

Commissioner Cooper met with representatives of THINKK but noted in her report that they did not provide information for her when she was preparing a report on the Canberra Nature Park, the Molongolo River corridor and the Googong Foreshores:

> During this Investigation, a meeting was held with THINKK, a group focused on kangaroos, which stated that it had new information regarding the management of kangaroos and that this could affect policies in the ACT Kangaroo Management Plan. At the meeting this group was invited to provide information to the Investigation but it has not taken up this offer. THINKK were subsequently contacted to request this information but none was provided. (Cooper, 2011: 67)

By the time of the 2013 hearing, therefore, ACT Government staff could claim that they had gone to some lengths to include the public in processes associated with kangaroo management and had been refused by key groups and individuals in at least four instances. However, ACT Government staff specified the times the dissenters' input was welcomed, the topics that would be covered, and the circumstances under which such events would occur. The information that would flow out of those events would be controlled in whole (in the case of Cooper's report and the ACT KMP) or in part (in the case of Fletcher's kangaroo counts) by the government staff involved. In the remainder of this subsection, I will explain the relevant sections of the *ACAT Act 2008* and how Crebbin and Stefaniak applied them.

7.4.1 Activating the principles of the ACAT Act

In the preliminary proceedings of the three ACAT hearings, the respective presidents had to decide whether to grant the applicants the legal standing required to proceed with the administrative review. They also had to determine whether to place a stay on the licence, which would prevent the ACT Government from proceeding to kill kangaroos until the cases had been heard. They 'activated' (Smith, 2005a: 228) the principles of the *ACAT Act* by linking their decisions, directly or indirectly, to them. As I mentioned previously, the *ACAT Act* divided the

principles into two areas: ‘simple, quick, inexpensive and informal’ procedures that are ‘consistent with achieving justice’ and observing ‘natural justice and procedural fairness’.

While the principles don’t speak directly to public participation, I will demonstrate how the ACAT presidents employed them to determine whether the public, through community groups, could participate in an administrative review. Smith (2005b: 113) saw institutional discourses not as directing actions but as ‘providing the terms under which what people do becomes accountable’. In tracing how Crebbin and Stefaniak applied the principles of the *ACAT Act,* I will show how their decisions remained accountable to the ‘Principles applying to Act’ while upholding different ruling practices. In section 7.4.2, I show how Crebbin’s decisions bolstered the ACT Government’s commitment to public participation. In section 7.4.3, I detail how Stefaniak was mindful to prevent ‘prejudice to the government’ and facilitate a ‘quick’ and ‘inexpensive’ process. Through these discussions, Stefaniak indicated that the *Nature Conservation Act 1980*, which enabled the administrative reviews, needed to be revised to remove the ability to do so.

7.4.2 Section 7(b): Procedural fairness: 2009–2013

7.4.2.1 The preliminary proceedings of the 2009 ACAT hearing

The preliminary proceedings of the 2009 ACAT hearing ran over 12, 13 and 14 May before proceeding to the substantive hearing. ACAT President Linda Crebbin drew upon two sections of the *ACAT Act 2008* to make her determinations. She mobilised section 22Q, which outlines how the Act defines ‘People whose interests are affected’ by a decision to determine whether Animal Liberation NSW should have been granted legal standing to proceed with the administrative review of the Conservator’s decision to issue a licence to kill kangaroos at the MTA. The key part that was debated was section 22Q (2):

> **22Q People whose interests are affected**
>
> (1) In an authorising law, a reference to a person whose interests are affected by a decision (however described) includes a reference to

an unincorporated body, the Territory, the Commonwealth, a territory authority or Commonwealth authority.

(2) A body has interests that are affected by a decision if the decision relates to a matter included in the objects or purposes of the body.

(3) Subsection (2) does not apply in relation to a decision given before the body was formed or before the objects or purposes of the body included the matter.

(4) The tribunal may decide whether or not a person's interests are affected by a decision, and the tribunal's decision is conclusive.

(5) In this section:

Commonwealth authority means a body established under a Commonwealth law.

This significantly constrained those who could seek a review of government decisions. The 'objects or purposes of the body' were found in the 'Memorandum of Understanding and Articles of Association 1999 Animal Liberation New South Wales'. That document was verified by the presentation of the minutes of the meeting at which the members of the organisation accepted the constitution on 4 April 1977 (see Crebbin, 12/5/20009, Recording 2, 0:05-08:36). On the second day of the preliminary proceedings, Crebbin was attentive not only to the wording of the relevant sections of the Act but to her perception of the intention of the Act to enable a wide range of organisations to launch an administrative review of government decisions that detrimentally impacted their interests:

> You could say that section 22Q (2) evidences a specific intention by the legislature to open up a class of bodies that might challenge decisions to incorporate general public interest bodies that are a broader category than entities that are affected by the decision; that that deeming provision supports an opening up of the ability to challenge a

decision. (Crebbin, 13/5/2009, Recording 1, 38:34-39:25).

On the final day of the preliminary proceedings, Crebbin explored the arguments surrounding whether she should make an interim order to place a stay on the licence, thereby halting any further killing of kangaroos, until the case had been heard. To make that decision, she referred to section 53 of the *ACAT Act 2008*:

> **53 Interim orders**
>
> (1) This section applies if, before the hearing of an application—
>
> (a) a party to the application applies to the tribunal for an order under this section; and
>
> (b) the tribunal is satisfied that, if an order under this section were not made before the hearing of the application, the party applying for the order would be disadvantaged or suffer harm.

The key section that was debated was section 53(1)(b), concerning whether Animal Liberation NSW would 'be disadvantaged or suffer harm' if the killing was not halted for the duration of the hearing. Crebbin loosened the definition of 'disadvantage' to prevent defeating the aims Animal Liberation NSW set out to achieve by having the decision reviewed:

> If one takes a too rigorous approach of the interpretation of 'disadvantage', it will almost inevitably always be the case that a body whose objects and purposes relate to a matter the subject of a decision… will struggle to show any, certainly any harm, or will struggle to show a disadvantage unless there is recognition given to the importance of ensuring that the subject matter of the application [kangaroos], the thing that it is coming to the tribunal about, is somehow preserved in such a way that there is able to be a process that could, if the applicant met all of the other requirements of the Act, meet the aim it set out to achieve. (Crebbin, 14/05/2009, Recording 2, 16:30-17:39)

Crebbin's broadening of the definition of 'disadvantage' was pivotal in allowing community organisations with no economic interest in a decision to proceed with the administrative review. Had the interim order not been made, Animal Liberation NSW would have withdrawn from the proceedings as the point of the application would have been rendered 'a mere academic exercise' (see Jarvis, citing Caulfield, 14/5/2009, Recording 1: 1:37:17-1:39:03). Crebbin completed an accountability circuit by linking her decision to two sections of the *ACAT Act 2008*: 22Q (4) (the tribunal may decide whether or not a person's interests are affected by a decision) and 53(1)(b) (granting an interim order if the party applying for the order would be disadvantaged or suffer harm) (14/5/2009, Recording 2, 3:37-17:39). She granted standing to proceed with the administrative review and issued an interim order to stop the shooting of kangaroos at the MTA until the case had been heard. Due to the unanticipated duration of the preliminary proceedings and her prior commitments, Crebbin could not preside over the substantive hearing, and ACAT President Bill Stefaniak took on that role, as I shall discuss in section 7.4.3. The 'replaceability' of the presidents had considerable material implications due to the different lenses they applied in their decision making.

7.4.2.2 The preliminary proceedings of the 2013 ACAT hearing

In the 2013 hearing, two community groups submitted applications for a review of the decision to kill kangaroos: the Australian Society for Kangaroos and Animal Liberation ACT. Again, Crebbin presided over the preliminary proceedings before granting standing to both applicants. She considered whether to issue a stay on the licences to kill kangaroos in nature reserves throughout the Canberra Nature Park until the matter had been determined in the substantive hearing. Through that process, Crebbin interpreted the original intention of the Act as ensuring that the process of reviewing decisions that affected the applicant's interests was a 'meaningful one':

1. I also accept that if a stay [on the licences to kill kangaroos] is not granted, the

practical point of these applications for review of the decision will be rendered significantly otiose. I accept, likewise, the applicant's indication that there would be prejudice to their interests identified in their respective objects or purposes [if the stay was not granted]. I also accept that there would be prejudice to the public interest if a stay is granted such that the efficacy of the licences is undermined and, ultimately, I have to make a decision and I've borne in mind that in giving organisations or entities whose interests are affected by a license a right to seek review of decisions to issue licences and in creating in section 22Q of the ACAT Act a framework to allow organisations with public purpose or public interest objects an ability to bring applications before the tribunal, the legislature must have envisaged that the mechanism for review would be able to be a meaningful one. It seems to me to be the point in allowing applicants such as these to challenge decisions only to have a situation arising in which the subject matter of the decisions under challenge might be effectively destroyed before the right to review can be properly exercised. (12/6/2013, Recording 3, 3:32:25-3:35:09)

In lines 3 to 16, Crebbin foregrounded the interests of the public. In deciding whether to place a stay on the licences in lines 11 to 12, she speculated on the intent of the Act behind the written words on the page, what 'the legislature must have envisaged', as she had previously done in the 2009 case. In doing so, she created a chain linking the Act to her decision through her own words and logic. In section 7.4.3.2, I note how Stefaniak (20/5/2014, 8:52:17-8:53:28) concurred with Crebbin's interpretation of the intent of the legislation.

The day after Crebbin made the above statement, Kristy Katavic, counsel for the ACT Government, requested that the application made by the applicants be struck out due to the late delivery by the applicant of documents associated with the case (see 3/7/2013, Recording 1, 3:30-31:48). Crebbin rejected the request, claiming it was not 'in the interests of procedural fairness'. In doing so, she oriented her actions to accountability by connecting her decision with the principles of the *ACAT Act 2008* as outlined in section 7(b) (see 3/7/2013, Recording 1,

31:48-34:28). Crebbin lent further accountability to her course of action by citing a case in the High Court decision in the *Minister for Immigration and Lee,* which was handed down on 8 May 2013 regarding a decision made in the Migration and Refugee Review Tribunal. Crebbin stated that 'the High Court has made it pretty clear that tribunals' obligations in relation to procedural fairness well and truly outweigh obligations relating to, or the objects relating to quickness, speed, etcetera, etcetera' (See Crebbin, 3/7/2013, Recording 1, 34:28-34:49). Thus, Crebbin's interpretive scheme strived to facilitate public interest groups' ability to have administrative decisions reviewed by the tribunal.

7.4.3 Section 7(a): Quick, inexpensive procedures: 2013–2014

In 2013, the Australian Society for Kangaroos proceeded to the substantive hearing to challenge the Conservator's decision to kill kangaroos in nature reserves that form part of the Canberra Nature Park. As I shall discuss in subsection 7.4.3.1, discussions between expert witnesses who provided concurrent evidence led to President Stefaniak noting that ACAT panel members can comment if they believe legislation should be changed. This provided a segue to advice he would give in the preliminary proceedings in the following year. In 2014, Animal Liberation ACT launched a similar application to the ACAT. In contrast to Crebbin's approach, Stefaniak prioritised procedures that were quick and inexpensive, as I will highlight in subsection 7.4.3.2. To that end, he recommended licencing and legislative changes that, when enacted, radically constrained democratic processes (as with Ward, 2017a, 2017b).

7.4.3.1 The substantive hearing in 2013

In giving his evidence, ACT Government senior ecologist Dr Donald Fletcher argued that a decline in the population of grassland earless dragons at Jerrabomberra East Grasslands Nature Reserve in the ACT was caused by kangaroo grazing. He stated that this necessitated a proportion of them to be killed in 2009 and this needed to be repeated 'because of the grazing impact' (see Fletcher, 8/7/2013, Recording 3, 1:34:00-1:35:26; 09/07/2013, Recording 2, 1:03:33-1:05:31). Mjadwesch responded with information regarding Queanbeyan Nature

Reserve in NSW, which abuts Jerrabomberra East. The ACT–NSW border separates the two nature reserves, as depicted in Maps 1 and 2. Mjadwesch compared the management approach in the Queanbeyan reserve with that of the ACT Government: 'the grassland earless dragon in Queanbeyan is a good population. It's never had kangaroo culling. They're very happy with the structure of everything there in terms of vegetation' (9/7/2013, Recording 2, 1:00:20-1:01:12).

Map 2: Jerrabomberra East Grasslands Nature Reserve, ACT, and Queanbeyan Nature Reserve, NSW.

(Source: Google Maps (n.d.). Scale 1:200.)

Katavic later responded that the ACAT was not the appropriate avenue through which to critique management plans:

> Mr Mjadwesch, the view that you've offered about there should be some review of documents… isn't that a matter for lobbying rather than expert opinion before this tribunal? … I put to you that much of the opinion you've expressed today is that, in particular, the management plans and strategies that have been put into place are, you

> consider in your opinion, they require review and put to you whether that's more of a lobbying matter rather than one for expert opinion. (9/7/2013, Recording 3, 1:41:53-1:44:02)

In doing so, Katavic continued to construct and gather categorisations that she presented as objectionable and, at times, oppositional. Thus, 'lobbying' joined 'advocacy' in being placed in opposition to 'expert witnesses' and their opinions. Her statement was important as it prompted those present to reflect on the role of the tribunal in relation to government policies, plans, and the legislation and regulations under which it operates. In response, Jeffrey Kennett, counsel for the Australian Society of Kangaroos, appeared to attempt to invoke the ideals of good governance, particularly as expressed through the *ACAT Act 2008* in sections 8 (tribunal need not comply with the rules of evidence), 23 (tribunal decides own procedure) and 26 (tribunal may inform itself in any way it considers appropriate) (9/7/2013, Recording 4, 2:23:00-2:25:36). Unfortunately, the recording quality is poor, but Kennett noted that the tribunal was 'not bound by government policy' and went on to say that Katavic's:

> … submission was that to the extent that we criticise policy documents and think they should be changed was really a matter for political lobbying rather than a case in this tribunal. [Inaudible] that, with respect, was just another way of saying that the policy is off limits, which is just wrong… The tribunal needs to [inaudible] about the merits of the matter [inaudible] appropriate regard to policy. Policy documents [inaudible] just can't be inviolate. (9/7/2013, Recording 4, 2:23:00-2:25:36)

Stefaniak tended to agree with Kennett, stating:

> Well, I suppose, policy documents form the intent of plans, and, to some extent, I suppose, rationale behind legislation and regulations. I mean, courts and tribunals will often comment if they think something needs to be changed, even if it's a statute that

needs to be, perhaps, changed because of various considerations that might crop up in a hearing, or whatever. (9/7/2013, Recording 4, 2:25:36-2:26:05)

Stefaniak's comment was guided by the boss text under which he functioned. Section 14 of the *ACAT Act* stated that 'if it appears to the tribunal that applications to the tribunal indicate a systemic problem in relation to— (a) the operation of an authorising law; or (b) other matters that come to the tribunal's attention in the course of the tribunal exercising its functions' then the 'general president must tell the Attorney-General about the problem'. On 10 July 2013, Stefaniak delivered the ACAT panel's decision to uphold the Conservator's decision to issue the relevant licences and the kangaroos in the nature reserves were killed.

7.4.3.2 The preliminary proceedings in 2014

On 14 May 2014, ten months after the ACAT panel handed down its decision on the 2013 hearing, Stefaniak presided over the preliminary proceedings for another application for a similar administrative review that Animal Liberation ACT submitted. On the second day of the preliminary proceedings, Stefaniak advised the ACT Government on actions it could take to resolve the ongoing legal challenges. As I will not reproduce the lengthy section in its entirety in the discussion that follows, the line numbers to which I will refer indicate the line numbers I have assigned to my transcription of the official recording in which Stefaniak addressed Dr Douglas Jarvis, barrister for the ACT Government:

1. … my colleague [ACAT] President Crebbin… talking on the intent of the
2. legislation [in the preliminary proceedings in 2013].… [I]n the stay application,
3. paragraph 53 in the applicant's [Animal Liberation ACT] submission, they quote
4. President Crebbin as saying that 'If the stay isn't granted, the practical point of this
5. application to review the decision will be rendered significantly otiose' and noted
6. that:
7. 'In giving organisations or entities whose interests are affected by a licence or

right to seek review of the decisions to issue licences in creating sections in 22Q of the *ACAT Act* a framework to allow organisations with public purpose or public interest objects an ability to bring applications before the tribunal, the legislature must have envisaged that the mechanism for review would be able to be a meaningful one.' I would have to say that probably is a reasonably accurate statement of the intent of the legislature in terms of the mechanism for review being a meaningful one…. It probably coincides with my recollection of the debates in the [ACT Legislative] Assembly on that. (Stefaniak, 20/5/2014, 8:51:44-8:53:28)

That the applicant had quoted Crebbin as part of their evidence obligated Stefaniak to respond and talk through his reasoning for the different lens he would apply. Stefaniak acknowledged what, in Crebbin's words, the Act 'must have envisaged' (lines 1 to 10) and agreed that the 'mechanism for review' should be 'meaningful' (lines 13 to 16). He added:

I don't know if anyone could really cavil with that. I also note in relation to this, the licences are given annually, and they are subject to review in accordance with the legislation. It isn't like a situation where effectively, this is my second point, the licences are exactly the same year in year out. I suppose my point there would be given that that is the state of the legislation, if there are ongoing concerns about this from a government point of view, the logical thing may be to change the legislation… (20/5/2014, 8:53:28-8:54:06)

While in lines 19 to 20, Stefaniak acknowledged that the licences and the goals they sought to achieve by killing kangaroos differed yearly, he shifted his attention to the 'ongoing concerns' the administrative reviews created for the ACT Government in lines 21 to 23. He extended this

in lines 23 to 27 to suggest licencing and legislative changes that would frustrate or preclude further administrative reviews:

> … Perhaps, to look at is there any way we have a three or a five-year plan which might then lead to a licence being granted with all of the relevant sort of restrictions and conditions and taking into account weather changes and things like that. I mean, that would be conceivably a possibility, or the legislature might put this in the category of some of those areas of the law where basically they're not reviewable… (20/5/2014, 8:54:06-8:55:30)

Stefaniak then noted at length how the estimated kangaroo population densities the ACT Government targeted varied between reserves and across years, at times being far lower than its previously stated target range of 1.0 to 1.5 kangaroos per hectare (Stefaniak, 20/5/2014, 8:55:30-8:59:20). Given that, he returned to his original statement from lines 17 to 20 to ponder whether it would be most appropriate to continue issuing new licences yearly:

> … in many of these cases, in most of these cases it's going to be less than one kangaroo per hectare. In some instances, it's considerably less than one kangaroo per hectare and that seems to be very different from what the tribunal did last year. And that in itself would indicate that, well, hello, we've got these new determinations now. They do appear to be very different from what was ruled last year and possibly somewhat different from what was initially sought at any rate and why is this so? And is that something that really should be explained and needs to be explained fully? Hence, the substantive hearing in relation to that. So, I suppose that's my second point apart from the point I've raised in relation to my presidential colleague, the General President Linda Crebbin, made in relation to the stay in 2009. … (Stefaniak, 20/5/2014, 8:59:20-9:00:33)

He then raised a point that had not been discussed in the hearing: prejudice to the ACT Government. He mentioned 'TAMS', in reference to Territory and Municipal Services, and 'Planning', both of which are arms of the ACT Government Directorate of Environment, Planning and Sustainable Development:

> … And I suppose the other one of prejudice to the respondent, I'd probably go back to what I said earlier about the law as it stands. The knowledge, perhaps, that this is the second year in a row, and don't worry. You're not Robinson Crusoe. In many decisions in terms of admin review and especially in a lot of planning matters. I note that there would be regular and very similar types of objections, especially like, should we have thirteen units on these two blocks, or should we have ten? And there seems to be a fairly predictable stream. And clearly, groups such as the recent decision of the North Canberra Community Council, where [ACAT President] Professor Spender certainly gave them standing, and whilst it certainly is probably annoying to TAMS and Planning and certainly, sometimes if TAMS are accepting the proposed development, it is again part of the process which, while may be ultimately not successful, goes through the rigour of it because it can according to our Acts and basically the same applies here. A proper airing.
>
> (Stefaniak, 20/5/2014, 9:00:33-9:02:04)

At that point, Stefaniak remained mindful of how taxing the reviews were for the government but was open to the fact that maintaining the status quo of reviewable decisions may have been warranted. In voicing his thoughts out loud, Stefaniak seemed to oscillate between section 7(a) ('simple, quick, inexpensive and informal') and 7(b) ('procedural fairness'). However, in lines 88 to 99, Stefaniak returned to focus on the negative impacts of the reviews on the government. Stefaniak noted that this was the 'second year in a row' the government's decision was

reviewed (line 89) and he surmised that they were ‘probably annoying’ to its staff (line 96).

Stefaniak made an interesting point in lines 97 to 99 that, while the administrative reviews ‘may ultimately not be successful’, participants ‘go through the rigour’ of ‘a proper airing’ because the legislation allowed them to. It was a curious statement to make at the beginning of an administrative review, in which he had already accepted that the applicant had standing and could proceed with the case, as the tribunal had previously and would continue to undertake the arduous work of the hearing, despite its questionable success. In wrapping up, Stefaniak curiously positioned constraining and ultimately foreclosing the avenue of administrative reviews of decisions as being ‘a logical thing for all parties’ (Stefaniak, 20/5/2014, 9:02:17-9:02:23). Stefaniak’s application of section 22Q of the ACAT contrasted with President Crebbin’s statement, which required ‘the mechanism for review would be able to be a meaningful one’.

The tribunal’s decision to uphold the licences to kill kangaroos was handed down on 11 June 2014. At the close of the 2014 tribunal hearing, however, the applicant’s legal defence flagged that the hearings served more than an avenue through which their concerns would be given ‘a proper airing’: ‘This isn't just about the welfare of thousands of kangaroos and their joeys, it's also about ensuring that government decisions are transparent and based on science’ (Animal Defenders Office, 2014). Little did they know the licencing changes Stefaniak suggested would be introduced in the following year. The *Nature Conservation Act 2014* was enacted exactly one year after the close of the 2014 ACAT hearing, while activists were attempting to halt the shooting of kangaroos in the nature reserves (see Iglesias, 2014a). I will now discuss the intervening steps that enabled this.

7.5 Holding the Nature Conservation Bill accountable to the *Human Rights Act 2004*

As I depicted in Table 3, completely overhauling the *Nature Conservation Act 1980* and replacing it with the wholly revised *Nature Conservation Act 2014* was lengthy and involved a complex web of documents. ACT Legislative Standing Order 168(c) requires the parliamentary member presenting the bill to provide an explanatory statement for it (see Legislative Assembly for the Australian Capital Territory, 2025). The ACT Legislative Assembly's Standing Committee on Justice and Community Safety requires that statement to 'identify all respects in which provisions of the bill may be fairly regarded as limiting a right stated in the *Human Rights Act 2004*, and/or any right based on some other source …and present a justification for such limitation' (Legislative Assembly for the Australian Capital Territory, 2011: 2). In this section, I will examine the *Nature Conservation Bill 2014* and the Explanatory Statement for the Bill in greater detail as they bridge the repealed and current versions of the *Nature Conservation Act*.

On 18 September 2014, the ACT Nature Conservation Bill 2014 was tabled in the ACT Legislative Assembly, and Corbell issued his Explanatory Statement regarding the Bill on the same day (see Corbell, 2014c). The Bill was passed on 27 November 2014, and the *Nature Conservation Act 2014* came into effect on 11 June 2015 (see ACT Government Environment, Planning and Sustainable Development Directorate, n.d.-a). In this section, I explore the accountability circuit through which Corbell honoured the ACT Government's commitment to public participation when developing the new nature conservation legislation. I commence by providing background information about the Bill in section 7.5.1. In the remaining sections, I explore Corbell's Explanatory Statement as a tool through which he held the Nature Conservation Bill accountable to the *ACT Human Rights Act 2004*. In section 7.5.2, I focus on how Corbell balanced the expansion of 'disallowable instruments' with the human right to participate in public life. Rendering specific actions and documents 'disallowable' removes the ability to challenge them in an administrative review. In section 7.5.3, I will discuss how

Corbell justified the expansion of provisions that revoked the right to be presumed innocent until proven guilty.

7.5.1 Background to the Nature Conservation Bill 2014

To appreciate the changes introduced in the *Nature Conservation Act 2014*, it is essential to understand the sequence of legal instruments from which it arose. Before 1988, the ACT was administered by the Commonwealth Government, which governed environmental management through the *Nature Conservation Ordinance 1980*. When the ACT was granted self-governance in 1988, it transitioned to the *Nature Conservation Act of 1980*. Despite being enacted on 11 May 1989, the Act retained the date in its title of '1980' because it had been converted from a former Commonwealth ordinance (see page 3 of Republication 6 of the *ACT Nature Conservation Act 1980*).

While the federal Ordinance contained no restrictions on the ability to review decisions, the *Nature Conservation Act 1980* excluded specific declarations and management plans, among other things (see sections 18 and 52H). Subsequent republications of the Act made the appeals process progressively more bureaucratic, introducing exclusionary criteria regarding who could mount such reviews. A limited time was introduced for an application to review an administrative decision to be submitted. The number of government actions and texts rendered disallowable increased through the 1990s and 2000s.

Under the Nature Conservation Act 1980, certain key documents were declared disallowable instruments, primarily including the Nature Conservation Strategy and Action Plans. The *Nature Conservation Act 1980* underwent dozens of amendments over its lifespan (see ACT Government Parliamentary Counsel's Office, 2024), resulting in what Corbell (2014c: 2) saw as being 'fragmented nature conservation and biodiversity protection laws'.

Since 2004, representatives of the major political parties pressed for the Act to be revised, as I depicted in Table 3 above (see Lawder, 2014: 4233; Rattenbury, 2014: 4235). As such, the conflicts and the aforementioned 'annoyance' the tribunal hearings might have been to the ACT Government (see section 7.4.3.2) may have influenced the reimagining of the *Nature*

Conservation Act 1980. However, they did not prompt the commencement of such discussions. Compared with the 1980 Act, the *Nature Conservation Act 2014* rendered an array of plans disallowable, including controlled native species management plans, reserve management plans, Ramsar Convention on Wetlands management plans, and land management plans. Not only were documents disallowable, but so too were the processes that led to their development.

An 'exposure draft' of the Nature Conservation Bill was tabled in the ACT Legislative Assembly on 31 October 2013 (see ACT Parliamentary Counsel's Office, 2013). A consultation report was published the following year (see ACT Government Environment and Planning Directorate, 2014), and Corbell (2014c) released an Explanatory Statement on the Nature Conservation Bill on 18 September 2014. At various points, Corbell indicated that the new legislation was catalysed by the ACT Government's commitments to open government, particularly in terms of transparency:

> The primary objective of the [Nature Conservation] bill [2014] is to streamline and update nature conservation processes and procedures to allow more efficient, flexible and effective application of nature conservation policy and to provide for increased transparency and accountability of Government processes. (Corbell, 2014c: 2).

While Corbell foregrounded 'transparency', he did not mention the two other facets of the ACT Government's approach to open government: participation and collaboration.

The 'Objects of the Act' were introduced in the new Act, whereas its predecessor had none. In many sections, the *Nature Conservation Act 1980* mentioned the requirements to engage in public consultation, notification and information. The objects of the Nature Conservation Bill, and later the *Nature Conservation Act 2014*, foregrounded public participation, as is reflected in section 6(2), below. Refer to Appendix 7 for a complete list of the objects of the Act.

6 Objects of Act

(1) The main object of this Act is to protect, conserve and enhance the biodiversity of the ACT.

(2) This is to be achieved particularly by— …

(g) ensuring that members of the public have—

(i) access to reliable and relevant information in appropriate forms to facilitate a good understanding of nature conservation issues; and

(ii) opportunities to participate in policy development, nature conservation planning and conservation work;

…

Returning to the IAP2 Spectrum of Public Participation (see Federation of International Association for Public Participation, 2024) from section 7.1, we can see the public participation goals of 'inform' and 'consult' at play in the wording in the bill.

7.5.2 Disallowable instruments and the right to participate in public life

Section 37 of the *ACT Human Rights Act 2004* requires a statement to be submitted to the ACT Legislative Assembly explaining how proposed ACT laws are consistent with human rights and, if inconsistent, how so. However, this is not required for private members' bills, which are bills presented by a person who does not act on behalf of the executive (Mulcahy & Seear, 2025: 199). From 2020 to 2025, over one-sixth of bills introduced were private members' bills (Mulcahy & Seear, 2025: 199). Public involvement in civic life is presented at a basic level for a representative democracy through section 17 of the *ACT Human Rights Act 2004*:

Every citizen has the right, and is to have the opportunity, to —

(a) take part in the conduct of public affairs, directly or through freely chosen representatives; and

(b) vote and be elected at periodic elections, that guarantee the free expression of the will of the electors; and

(c) have access, on general terms of equality, for appointment to the public service and public office.

In his Explanatory Statement, Corbell linked the Nature Conservation Bill with the *Human Rights Act 2004*:

> The Bill aligns with the right to take part in public life (Human Rights Act 2004, s 17,) by increasing the ACT community's level of consultation on a range of plans and strategies. The Bill expressly provides for alternative approaches to communication for people with particular communication needs.
>
> The Bill also provides citizens with greater opportunities to access information relating to biodiversity by requiring the Conservator to publish a number of reports and reviews. (Corbell, 2014c: 7-8, bolding in original)

Corbell's statement appears to incorporate public participation goals from the IAP2 Spectrum of Public Participation (see Federation of International Association for Public Participation, 2024), which include 'inform', 'consult', 'involve' and 'collaborate'. I will work between the bill and the Explanatory Statement to explore how these goals were incorporated into the former and explained by the latter.

In the Explanatory Statement, Corbell did not explain the increase in disallowable instruments despite noting 21 areas in which they applied in the 'Bill provisions in detail' section. He did not speak to the considerable constraint of democratic processes that this presented. I have reproduced his section on 'Nature conservation licenses' below and added line numbers for referential purposes. Provisions for licences, such as those required for the killing of kangaroos, were contained in Chapter 11 of the exposure draft of the Nature Conservation Bill. In this regard, Corbell noted:

1. This chapter provides the process for the granting of nature conservation
2. licences. A range of similar provisions were established under the Nature
3. Conservation Act 1980 through a regulation and a disallowable instrument. It is
4. important that the primary requirements for licencing are in the Act rather than
5. subsidiary documents. These provisions have thus been included in the Bill
6. making the requirements clearer. The provisions have been revised to reflect
7. permit requirements under the Public Unleased Land Act 2013. Having similar
8. processes for different authorisations reduces red-tape because it makes the
9. provisions easier to understand and, therefore, comply with. (Corbell, 2014c: 82)

In lines 2 to 3, Corbell indicated that the provisions in the Nature Conservation Bill are 'similar' to the ones under the *Nature Conservation Act 1980*, which were 'established under the *Nature Conservation Act 1980* through a regulation and a disallowable instrument'. The 'regulation' is the Magistrates Court (Nature Conservation Infringement Notices) Regulation 2005. The 'disallowable instrument' refers to section 106(2) of the *Nature Conservation Act 1980*, which covers 'Licencing criteria'. This section of the *Nature Conservation Act 1980* renders the licencing criteria determined by the Minister for the Environment disallowable. This may include the granting or refusal of a licence, the imposition of conditions, and the duration of the licence. It is not clear from Corbell's statement that 'nature conservation licences' were not disallowable instruments. He brushed over the issue by indicating in lines 5 to 9 that the changes implemented expedited the process, clarified the requirements and increased compliance. Conservation licences may be issued for many purposes, such as selling native plants or animals and excavating a wilderness area. In the instance of issuing a licence to kill kangaroos, the interventions that Corbell claimed made the process clearer, more efficient, and enhanced compliance had the effect of centrally positioning the licensee and/or those responsible for conducting the licenced activity. Therefore, the licensees and those responsible for killing kangaroos were framed as the primary users of the document and the focus of

improvements and interventions.

The path to how licences to kill kangaroos became disallowable in fact, if not in law, is convoluted. Following on from Stefaniak's advice in the 2014 ACT hearing, the ACT Government instigated licences that were valid for two years instead of a few months, as 'it minimises the public expense of yearly defences to ACAT, which are based on the same arguments' (ACT Government Territory and Municipal Services Directorate, 2015: 6). Extending the period for which each licence was valid effectively rendered the Conservator's associated decisions disallowable. With their resources depleted from previous hearings, community groups could not afford to apply for another administrative review in 2015, thereby foregoing the opportunity to do so in 2016 (see Drew, 2015b). The *Nature Conservation Act 2014* came into effect on 11 June 2015, a time when the shooting of kangaroos in nature reserves was still underway. The considerable expansion of disallowable instruments in the new Act foreclosed any further administrative reviews of the decisions to issue licences to kill kangaroos. In contrast to his treatment of disallowable instruments, Corbell wrote at length about the increase in strict liability offences, which I will now discuss.

7.5.3 The right to be presumed innocent until proven guilty

The *Nature Conservation Act 2014* introduced and expanded upon several provisions that effectively criminalised dissent. While it is beyond the scope of this chapter to explore this in detail, I will discuss it briefly, as such changes are of significant consequence. In the transition from the repealed to the current versions of the *Nature Conservation Act*, the number and types of offences increased substantially. Also significantly increased was the number of 'strict liability' offences. According to section 23 of the *ACT Criminal Code*, there is no need for an element of fault with 'strict liability' offences, as with intention or recklessness, to be proven, with the demonstration of a 'reasonable mistake of fact' being the only defence.

Corbell's key intervention in the transition from the old to the new *Nature Conservation Act* was the relationship between the *Nature Conservation Act* and the *ACT Criminal Code 2002* (hereafter referred to as the *Criminal Code*). Section 4 of the *Nature Conservation Act 1980* is

entitled ‘Offences against Act – application of Criminal Code etc’. It identified two groups of offences that would be charged according to the *Criminal Code 2002*: Division 8.2, pertaining to clearing native vegetation in reserved areas (sections 63 to 82), and Division 8.3, which related to damaging land in reserved areas (sections 83 to 91). Section 5 of the *Nature Conservation Act 2014*, however, states that the *Criminal Code* ‘applies to all offences against this Act’. The significance of this decision is that it renders some infringements as ‘absolute liability’ offences. Section 24 of the *Criminal Code* provides that ‘absolute liability’ refers to a situation where ‘there are no fault elements for any of the physical element of the offence’. However, the defence of ‘mistake of fact’ is not available, thereby removing the right to be presumed innocent until proven guilty. In his discussions of how the *Nature Conservation Act 2014* met the requirements of the *Human Rights Act 2004*, Corbell did not discuss the expansion of absolute liability offences by linking the *Nature Conservation Act 2014* to the *Criminal Code 2002*.

These provisions appear to breach section 22(1) of the *ACT Human Rights Act 2004* which provides that ‘[e]veryone charged with a criminal offence has the right to be presumed innocent until proved guilty according to law’. Section 37 of the *ACT Human Rights Act* requires a statement be submitted to the ACT Legislative Assembly explaining how proposed ACT laws are consistent with human rights and, if inconsistent, how so. Corbell invoked section 28 of the *ACT Human Rights Act 2004* which provides that human rights may be limited if consideration is given to:

(a) the nature of the right affected;
(b) the importance of the purpose of the limitation;
(c) the nature and extent of the limitation
(d) the relationship between the limitation and its purpose;
(e) any less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve.

He claimed ‘protection of the environment’ had more ‘value to society’ than the ‘presumption of innocence’ and positioned the purpose of the provisions as existing ‘not to punish wrongdoing but to protect the environment’ (Corbell, 2014c: 5, 8). Corbell (2014c: 5) also stated that the provisions ‘are an efficient and cost-effective deterrent for breaches of regulatory provisions’ that ‘can be dealt with by infringement notice which is a cheaper and less time-consuming alternative to a Court prosecution’. In developing the Human Rights Act, the ACT Government positioned its main purpose as ‘encourag[ing] the development of a human rights-respecting culture in ACT public life and in the community generally’ (see ACT Bill of Rights Consultative Committee, 2003: 41). Situations such as this have been flagged by Mulcahy and Seear (2025: 195) who noted how constructing a ‘human rights culture’ makes the space for validating the limitation of rights or protection for some people. We can see that Corbell’s language resonated with the ideals of New Public Management (NPM) (see section 3.2.3), prioritising ‘efficiencies’ and ‘effectiveness’ over basic human rights.

The expansion of strict liability offences in the Nature Conservation Bill was debated in the ACT Legislative Assembly and scrutinised by the members of the Standing Committee on Justice and Community Safety in their ‘Legislative Scrutiny Role’ (see Corbell, 2014a, 2014b; Doszpot et al., 2014b; Legislative Assembly for the Australian Capital Territory, 2014a). While the Scrutiny of Bills Committee rejected some of the proposed strict liability offences (see Legislative Assembly for the Australian Capital Territory, 2014b), a number of controversial provisions remained.

Of great concern is that strict liability offences apply not only to acts that have been committed but to ones that are believed might be committed at some point in the future. This can be seen in Chapter 14 of the *Nature Conservation Act 2014*, entitled ‘Enforcement’, which enables a person to be charged with an offence if a conservation officer believes on reasonable grounds that they are about to commit an offence (see sections 319(1)(a) and 325(1)(b)(ii)), are about to breach a nature conservation licence (section 329(1)(a)), or are about to engage in conduct that may place at risk threatened or protected species ecological communities (section 329(1)(c)). Sections 320, 326 and 330 highlight that these aforementioned sections are strict

liability offences; therefore, they are legally assuming guilt with no option for the accused to present a case of innocence. This places great authority in the hands of the Conservation Officers who frequently encountered protesters and local residents around the nature reserves during the times when kangaroos are being shot.

Through this section, I have demonstrated how, in their 'Legislative Scrutiny Role', Corbell and the Standing Committee on Justice and Community Safety dutifully fulfilled their requirements to ensure their work remained accountable to the respective boss texts under which they worked. While doing so, they simultaneously created and approved a new piece of legislation that radically constrained human rights. I will discuss this further in the section below.

7.6 Analysis: Accountability and public participation

In this chapter, I illuminated how, in principle, the ACT Government values and is committed to public participation 'by citizens in the governing process' and 'public collaboration in finding solutions to problems' as enshrined in the *ACT Protection of Public Participation Act 2008* and reiterated through government statements and documents (as with, ACT Government, 2016; Gallagher, 2011). ACAT Presidents Crebbin and Stefaniak enacted this in their own ways in all three hearings, as did Minister Corbell in his explanation of the Nature Conservation Bill 2014. I illustrated how various ACT Government documents reflected that the public participation goals of the government spanned 'informing', 'consulting', 'involving' and 'collaborating' on the Federation of International Association for Public Participation (2024) Spectrum of Public Participation. I have noted no instances where the ACT Government attempted to 'collaborate' with the public, and its efforts to 'consult' or 'involve' them were constrained and conditional (see sections 4.4.3 and 7.4). The combination of the efforts of the lay and academic dissenters suggests that their participatory goals on the issue of kangaroo management in the ACT were in the 'involvement' or 'collaboration' sections, aiming for their 'concerns and aspirations' to be 'understood and considered' or for the 'development of alternatives and the identification of the

preferred solution' (Federation of International Association for Public Participation, 2024). This indicates that the conflict may have been partly about the issue itself but also about the differing expectations of how 'public participation' would occur. This is particularly the case given the promise of 'involvement' and 'collaboration' in government documents has fallen short of the mark in practice.

I outlined how public participation was considered in two areas of work conducted by the ACT Government. The first instance involved a situation not commonly examined in IE: two people conducting separate accountability circuits involving the same boss text, as I shall discuss in section 7.6.1. The second area of work is evident in the way Stefaniak and Corbell dutifully completed their accountability circuits but did so in ways that compromised public participation and reinforced ruling relations. I will expand upon this in section 7.6.2. In section 7.6.3, I will note how the work done through the *Nature Conservation Act 2014* is evident in other areas of the ACT Government, as with the services provided or withheld under the *Freedom of Information Act.*

7.6.1 Crebbin and Stefaniak: Different approaches to the same accountability circuit

I contrasted how ACAT Presidents Crebbin and Stefaniak ensured their work remained accountable to section 7 of the *ACAT Act 2008*. While Crebbin's focus was on equity issues, Stefaniak's was on being cost-effective and efficient, evincing a clear commitment to the ideals of NPM. The difference in their approaches is interesting in that criticisms of NPM highlight the 'equity costs of a preoccupation with cost-cutting and a focus on 'bottom line ethics'' (Hood, 1991: 10). Stefaniak's approach facilitated processes of exclusion that were necessary to maintain the ruling relations in this issue.

Crebbin's 'text–reader conversation' (Smith, 2005b) predominantly took place between herself, the *ACAT Act* and those involved in the hearing. However, Stefaniak's text–reader conversation remained in dialogue with the *ACAT Act*, with Crebbin through the transcribed proceedings of the previous hearing, and the applicant's application for a stay to be placed on the licences. In effect, this created a double accountability circuit where Stefaniak held his

decisions accountable to both section 7 of the *ACAT Act* and to the lens his colleague brought to the same passage of text. It is interesting, therefore, that Stefaniak acknowledged Crebbin's previous prioritisation of section 7(b) of the *ACAT Act* and yet proceeded to foreground section 7(a) to achieve a result that appears to be in opposition to the work Crebbin did to ensure community groups were able to participate in administrative reviews.

As Crebbin and Stefaniak were both ACAT presidents, they possessed many of McCoy's (1995: 182) 'known in-common interpretive schemes'. In some instances, Crebbin and Stefaniak mobilised similar techniques to further their arguments. For example, they both drew upon other legal cases to support their stances: Crebbin noted a High Court decision, and Stefaniak drew upon a previous decision made by ACAT President Professor Peta Spender. However, while the *ACAT Act* mediated their respective courses of action, how they individually activated that text required different 'sequence[s] of action into which [the Act was] read' (Smith, 2005b: 105).

Many institutional ethnographers have examined how different people have activated the same document in different ways that benefit their differing roles. Many have traced how a document was produced through a processing interchange, and was activated differently by different actors. For example, Pence (2001) traced how a person called emergency services to report a domestic violence incident; a communication centre operator completed a set of scripts in a computer document that was sent to and acted upon by police officers, probation officers, judges and prosecutors in different ways to constitute intimate-partner violence textually. Other institutional ethnographers have studied how competing parties have jostled to influence the contents of the final version of a document, as with Eastwood's (2014; 2021) research into environmental policymaking by the United Nations and Cunliffe's studies of legal proceedings that wrongfully convicted mothers of murder or compromised the safety of Aboriginal women who survived intimate violence (see Cunliffe, 2007; Cunliffe & Cameron, 2007). Smith (1996) examined two different textual accounts of the same incident, a conflict between members of the public and police on the streets of Berkeley, California. However, I have yet to locate studies investigating multiple people conducting the same type of work using the same

document but to vastly different ends, as was the case with Crebbin and Stefaniak. I will now consider how the accountability circuits Stefaniak and Corbell engaged in reinforced ruling relations.

7.6.2 Stefaniak and Corbell: Accountability circuits as ruling relations

In section 7.2.1, I noted how the Law Council of Australia (2021: 5) positioned administrative law as providing a 'web of accountability' to enable 'informed participation in democratic processes' and to protect the public against the government's 'unfair and arbitrary use of public power'. That accountability process was, in many instances, removed with the enactment of the *Nature Conservation Act 2014*. However, Stefaniak, Corbell and others within the ACT Government (see Rattenbury, 2014: 4242) presented the changes as positive moves. Stefaniak positioned legislative changes that would render the decision to issue the licences to kill kangaroos a disallowable instrument as 'a logical thing for all parties' (20/5/2014, 9:02:17-9:02:23). Corbell (2014c: 7-8) claimed the Nature Conservation Bill 2014 aligned with the right to take part in public life and increased public consultation on a range of documents.

This resonates with the findings of other institutional ethnographic studies of accountability circuits, such as that of Kearney et al. (2023) who studied clinical examinations of medical students. Their research illuminated how the regulatory body governing such examinations valued patient safety, but following the rules established by that body created a shift away from patient-centred caring practices to ones that prioritised accountability (Kearney et al., 2023: 1611). They concluded that the accountability process 'validates the accountability circuit itself rather than the "product" of the circuit' (Kearney et al., 2023: 1609). Examining accountability circuits has revealed that a goal the accountability circuit strives to ensure (such as public participation or patient-centred care practices) was compromised as part of, or possibly *because of*, the accountability process.

Stefaniak and Corbell kept at the forefront of their minds their need to ensure their work remained accountable to the authorising texts that directed their day-to-day activities. However, the wording of the rules outlined therein gave them vast latitude in interpretation and application. The language mobilised by Corbell and Stefaniak before him directly reflected a

solid grounding in NPM ideals. Their shared and multifaceted methods of marginalising and excluding dissenters and ultimately criminalising dissent extended the efficiencies that are central to NPM. This strengthened the ruling relations by enabling the tribunal hearings to progress quickly and the process of killing kangaroos to be conducted with minimal obstructions. It created a veneer of valuing and facilitating 'public participation' while radically constraining it. It also enabled the ACT Government's preferred approach to kangaroo management to continue to develop without external scrutiny, and for dissent to occur at great risk to the individuals involved. Such a finding is unsurprising from the point of view of IE, as has been noted by Campbell:

> 'Ruling,' as understood by institutional ethnographers, influences what happens by substituting the interests of rulers for those of the people being ruled. Ruling takes place routinely, in contrast to being enforced violently, when people's everyday work organizes them to act in terms of somebody else's interests. (Campbell, 2014: 73)

In tracing the ways Stefaniak and Corbell participated in the accountability circuits in which they were involved, I have shown that they held themselves accountable in word to the ideals of open government, but in deed to the efficiencies of the ACT Government. By extending the disallowable instruments in the *Nature Conservation Act 2014*, the ACT Government effectively demarcated the areas where it would not be expected to be held accountable outside of its own 'scientific committee' (formerly the Flora and Fauna Committee). This change placed enormous power and responsibility on the scientific committee regarding the information they drew upon and the recommendations they made. That every significant document and process within the Act has been deemed disallowable has fortified environmental management in the ACT against effective external scrutiny. A double layer of protection was ensured in the Act through the extension of infringements and strict liability provisions, and by linking the whole *Nature Conservation Act 2014* with the *ACT Criminal Code 2002*.

Similar to Campbell's (2014: 75) institutional ethnography of the Organisation for

Economic Co-operation and Development's aid effectiveness, the utility of exploring these accounts is not to consider the usefulness of repositioning environmental legislation in terms of such 'efficiencies' but to illuminate what is valued and what goes missing in that construction. As I have demonstrated in this chapter, one strength of IE, and of exploring accountability circuits more specifically, is its ability to illuminate alternative possibilities and junctures at which other decisions could have been followed. We see this in the lengths to which Crebbin went to enable participation by community groups in a 'meaningful' process. She accounted for her decisions through a discourse of enablement and empowerment rather than the cost-effectiveness and efficiencies upon which Stefaniak and Corbell focused. While the latter's efforts served to suppress the ongoing conflicts, Crebbin's earlier efforts indicated that other paths were possible that didn't require constraining democratic processes.

My foregoing discussion illuminates many bibliopolitical (Montcher, 2017, 2023) interventions in operation, three of which I will highlight. Firstly, the radical changes introduced through the *Nature Conservation Act 2014,* which foreclosed democratic processes and criminalised dissent, were promoted by both Stefaniak and Corbell as positive moves for those involved and for the broader public. In section 1.2.1, I discussed how governments across Australia have enacted anti-protest laws that breach human rights and have targeted the environmental, climate and animal rights movements. I noted the reciprocal relationship between protest and suppression and how dissident intellectuals and experts in Australia have been suppressed, particularly environmental scientists, animal studies scholars, and those who challenge the killing of kangaroos, more specifically.

Secondly, I highlighted how the checks and balances that ensure basic human rights are upheld seem to have been elided comparatively easily by Corbell (2014c: 4) by invoking section 28 of the *Human Rights Act*, which allows the ACT Government to limit human rights. He justified this by foregrounding environmental protection over punishing wrongdoing, and positioned the introduction of strict liability offences as being 'cheaper' and more 'efficient' and 'less time-consuming' than court prosecution (Corbell, 2014c: 5, 8). The third bibliopolitical accomplishment I wish to draw attention to relates to the process of constructing the perception

of public inclusion. While Cooper and Fletcher extended the invitation to participate, it was constricted, conditional, and the involvement and outcomes of the proposed activities remained wholly under the control of the government staff involved. Unsurprisingly, the dissenters declined participation and were marginalised for doing so in government documents and in the tribunal hearings.

The circumstances that enabled Stefaniak to justify revoking democratic processes and Corbell to sacrifice human rights to criminalise dissent have been examined thoroughly in broader literature. Mulcahy and Seear (2022a: 289; 2023: 55-58) detailed how those involved in the parliamentary human rights scrutiny process didn't have sufficient time to adequately scrutinise proposed legislation. They illuminated the circumstances under which those involved had inadequate grounding in human rights assessment and insufficient support to do so (Mulcahy & Seear, 2025: 200-205). Dyzenhaus (2017: 425) positioned justifications for human rights infringements as being 'a kind of political justification'. Mulcahy and Seear (2025: 206) interviewed one parliamentarian who stated that debates on the compatibility of proposed legislation with the Human Rights Act are 'usually almost ideological and party positions'. This point has been echoed in their other work, which presented justifications for human rights infringements as 'socially constructed, often variable, deployed flexibility to suit the policy objectives of legislators, contested, complex and intrinsically political' (see Mulcahy & Seear, 2022b: 243). Drawing on Mureinik (1994: 32), Grenfell and Debeljak (2020: 798-804) discussed how the scrutiny of proposed Australian legislation for its compatibility with human rights occurs within a 'culture of justification'. Mulcahy and Seear (2025: 196) asserted that such a culture may serve to simply improve justifications offered for infringing upon human rights or detract from the need to address the complex and political ways evidence is constructed and applied in legislative settings. The political nature of the changes to the *Nature Conservation Act* is evident in other areas of ACT legislation, as I will discuss in the following section.

7.6.3 *The ripple effect of legislative changes: Nature Conservation and Freedom of Information*

Through research into drug policy and law, Seear (2020: 260) demonstrated the need for careful consideration of the impacts of current laws. Running parallel with the radical changes to the *Nature Conservation Act 1980*, the ACT Government similarly revised the *Freedom of Information Act 1989*. It was replaced by the *Freedom of Information Act 2016*, hereafter referred to as the *FOI Act 2016,* which was notified on 26 August 2016 and came into effect on 1 January 2018 (ACT Parliamentary Counsel, 2025). The provision of information to the public is central to the ACT Government's commitment to 'open government' (ACT Government, 2016; Gallagher, 2011), to the objects of the *Nature Conservation Act 2014* and forms the most fundamental level of public participation (Federation of International Association for Public Participation, 2024).

Because the changes introduced through the *Nature Conservation Act* foreclosed the ability for government decisions on kangaroo management to be reviewed by the ACAT, it is important to consider how freedom of information applications are managed. FOIs are a key avenue through which members of the public may gain information about kangaroos in the ACT that does not appear on the ACT Government's website. As with the changes introduced through the *Nature Conservation Act 2014,* we can see that FOI applications have been managed in a way that has strengthened ruling relations.

In accordance with section 30 of the *FOI Act 2016,* FOI applications have been submitted requesting evidence that substantiates the killing of kangaroos and information about the use and disposal of the kangaroos killed. Bren Burkevics (2023, 2025), Executive Group Manager with the ACT Government's Environment, Heritage and Parks Division has refused applications or sections of applications. To do so, he invoked Schedule 1 of the *FOI Act 2016*, which outlines 'Information disclosure of which is taken to be contrary to the public interest', and section 1.14, more specifically, which pertains to 'Law enforcement or public safety information'. Sections 1.14(1)(c) and (d) refer to information 'the disclosure of which would, or could reasonably be expected to':

(c) endanger a person's life or physical safety; or

(d) result in a person being subject to a serious act of harassment or intimidation …

In almost identical 'Decision on Freedom of Information Access Application' letters, Burkevics (2023: 3; 2025: 3) substantiated his decision to deny or restrict access to information due to the 'extended history of protest activity associated with the kangaroo management program [which] is sufficient to consider that staff safety is a legitimate concern'. This protected information surrounding the way the ACT Government has enacted the 'carcass utilisation' provision I discussed in section 3.2.3.2 and, by extension, the economic interests of the government and other beneficiaries of this provision. Thus, we can see a broader, more complex web of legal instruments that have been developed that not only foreclosed public participation, compromised the transparency of government decisions and criminalised dissent, as I discussed above, but also functioned to protect economic interests. How government staff applied the Acts and Codes I have discussed indicates that the ACT Government's commitment to Public Values Management is minimal compared to its firmly entrenched embrace of the ideals of New Public Management.

In the previous four chapters, I have explored how the ACAT panel members determined the causes of the ecological damage that was evident at the sites that were the subject of the hearings (Chapter 4), and how they determined their preferred witnesses (Chapter 5) and the evidence (Chapter 6) upon which they would rely. In this chapter, I focused on 'public participation' to explore how ACAT presidents and the Minister for the Environment engaged in accountability circuits to ensure their work fulfilled the obligations specified in the boss texts under which they operated. I will now draw the threads of the preceding four data chapters together in my concluding chapter.

Chapter 8: Conclusions: The management of human conflicts over kangaroo management as ruling relations

Chapter contents

8.1 The suppression of dissent through the administrative review system

I opened my thesis by acknowledging how, by 2015, the ACT Government's approach to kangaroo management and to human conflicts over kangaroo management appeared to be stunning successes on both counts. Three administrative reviews upheld the ACT Conservator of Flora and Fauna's decisions to issue licences to kill kangaroos. This was presented by ACT Government Parks and Conservation Director Daniel Iglesias Iglesias (2014b) as confirmation that kangaroo management in the ACT was based on 'best science'. The Minister for the Environment, Simon Corbell (2014c: 7-8), positioned the new legislation, the *Nature Conservation Act 2014*, as enhancing the right to participate in public life by increasing public consultation. ACT Government staff concluded that the heated exchanges between protesters and those coordinating the killing of kangaroos 'became insignificant' after the *Nature Conservation Act 2014* was enacted in 2015 (see Gordon et al., 2021: 128).

However, having witnessed the 2014 ACAT hearing as part of previous research, I was aware of the starkly uneven handling of the dissenting expert witnesses and their evidence. This led to the development of my 'problematic' (D. E. Smith, 1988b: 91) that asked how human conflicts over kangaroo management in the Australian Capital Territory were suppressed through and beyond the administrative review system, with a specific focus on hearings in the ACT Civil and Administrative Tribunal (ACAT) in 2009, 2013 and 2014. I detailed how the ACAT panel members determined the cause of ecological damage (Chapter 4), their preferred witnesses (Chapter 5), the evidence they would rely on (Chapter 6), and how they held themselves accountable to the ACT Government's commitment to 'open government' and to 'participation by citizens in the governing process' (ACT Government, 2016), more specifically (Chapter 7).

My research has revealed the complex documentary practices that facilitated the continuation and extension of the ACT Government's preferred approach to kangaroo

management while reducing resistance from dissenters. This was achieved by creating a knowledge base that underpinned the need to kill kangaroos and kangaroo management more broadly. Central to this was constructing kangaroo grazing as an ecologically threatening process and backgrounding the detrimental impacts of urban development and other human actions. It also required maintaining a narrative that presented lay and academic dissenters as misinformed, unreasonable and extreme, which enabled their marginalisation and exclusion. I provided examples spanning from Cooper's report in 2009 (section 4.4.3) to Iglesias's media statement following the close of the 2014 ACAT hearing (section 6.7.2) and ultimately to the sections of the *Nature Conservation Act 2014*, enacted in June 2015, that foreclosed the possibility of initiating administrative reviews and criminalised dissent (section 7.5). This was done in ways that simultaneously compromised democratic processes and the scientific basis of kangaroo management in the ACT, while conveying that the ACT Government had delivered on its commitments to basing kangaroo management on the 'best available scientific knowledge' and to 'public participation'.

ACT Government documents claimed to be committed to public participation in terms of informing, consulting, involving and collaborating (see section 7.1). However, a closer examination of how this was enacted reflects that 'participation' was largely limited to the ACT Government providing information and supporting the public in volunteering in ACT Government-run conservation efforts, as evidenced in the *Nature Conservation Act 1980* and *2014*, Cooper's (2009b) report and Corbell's (2014c) Explanatory Statement. The ability to initiate an administrative review is a fundamental, albeit constrained, avenue through which public participation might occur (see Law Council of Australia, 2021). This was removed in the transition to the new *Nature Conservation Act*.

In this concluding chapter, I will provide an overview of the foregoing chapters in section 8.2. In section 8.3, I will discuss the contributions my research makes to knowledge, focusing specifically on the impact of New Public Management (NPM) on wildlife management, institutional ethnography (IE), studies of human conflicts over wildlife management, and the related fields of inquiry. In section 8.4, I will highlight the implications of my research before

noting areas where further research is required in section 8.6.

8.2 Overview of the key decisions in the administrative reviews

In Chapter 4, I surveyed the scope of the tribunal's assessment of the causes of the ecological degradation in the sites under consideration. Their work was preceded by Commissioner Cooper (2009b) who excluded from her own report the sections of the *Grassland Strategy* that did not align with the ACT Government's approach to kangaroo management. This was achieved by asserting that Dunford et al. (2004) 'failed' by not identifying kangaroo grazing as a threatening process. She then transformed Hodgkinson's (2009) conclusions to be able to identify kangaroo grazing as an ecological threat that urgently needed to be addressed by killing kangaroos. Cooper (2009b: vi-vii) alerted ACT Government departments of her impending recommendation of the need to kill kangaroos 'several months' before the publication of her report. In doing so, she prevented the public from being able to meaningfully provide feedback on the 'Public Consultation Draft' of the ACT Kangaroo Management Plan (ACT KMP) as the shooting commenced prior to the close of the consultation period. I traced the rules the ACAT panel members developed, which cut out the deleterious impacts of human actions on the sites in question and accentuated the impacts of kangaroo grazing. The upshot of these texts and acts was that consideration of the cause of the ecological degradation at the sites in question was limited to the impacts of kangaroo grazing, which, in turn, limited the scope of options to address that problem.

In Chapter 5, I traced the construction of contrast structures that enabled the development of five rules the ACAT panel members developed to determine which people qualified as expert witnesses. I showed how they translated the broad guidelines in the *ACT Civil and Administrative Tribunal (Expert Witness Code of Conduct) Procedural Directions 2009* (hereafter referred to as the '*Code of Conduct*') to do this. The main contrast structure compared witnesses to Fletcher's specific characteristics. This was evident in rules one, two and four, which included having worked with and researched eastern grey kangaroos, possessing a

specific mix of qualifications, and having studied, worked and conducted research in the ACT. Rule five, which favoured participation in a pre-trial expert conference, enabled the evidence of dissenting statistician Dr Mark Drummond to be deemed 'not contentious', if not the 'right witness'. However, his participation highlighted only one point upon which he agreed with ACT Government senior ecologist Dr Donald Fletcher, but appeared to erase all his contrary evidence in the eyes of the ACAT panel members. Rule three, requiring impartiality, was unevenly applied to the witnesses to the advantage of those presented by the ACT Government. The ACAT panel members explained such determinations in their *Reasons for Decision* document, which subsequent ACAT panels drew upon to guide their decisions when qualifying future witnesses.

In Chapter 6, I probed the ACT Government's commitment to base kangaroo management on the 'best available scientific knowledge' by examining how it presented information on the impacts of kangaroo grazing on threatened species. Using Smith's text–act–text sequence, I followed the construction of a section of the Draft ACT KMP*,* how it was interrogated in the 2009 ACAT hearing, and how the comments made in the hearing influenced the way it was edited to form the final version of the ACT KMP. I discussed how the ACT KMP was mobilised in the subsequent hearings. Similar editing processes were evident in two other government documents I examined: the 'Questions and answers: 2013 Kangaroo control program' and the 'Calculation of the number of kangaroos to cull' documents. While Fletcher acknowledged in the ACAT hearings that there was no evidence to support claims of detrimental impacts of kangaroo grazing on any of the species listed, the subsequent editing process altered the wording to more strongly indicate that such impacts existed without providing references to substantiate the changes.

In Chapter 7, I explored how key government staff completed an 'accountability circuit' to ensure their work upheld the ACT Government's commitment to 'open government', focusing predominantly on facilitating public participation. I examined how ACAT Presidents Crebbin and Stefaniak ensured their decisions were guided by the principles of the *ACAT Act 2008* and how the ACT Government Minister for the Environment, Simon Corbell, ensured the provisions

of the Nature Conservation Bill met the requirements of the *ACT Human Rights Act 2004*. However, the wording of the rules outlined in these Acts gave them considerable latitude in interpreting and applying them to their work. Stefaniak and Corbell made pivotal decisions that precluded public participation while simultaneously creating the appearance of enhancing it. The *Nature Conservation Act 2014* foreclosed democratic processes and criminalised dissent. Those who wished to challenge the status quo of kangaroo management were excluded and could be punished through the vastly extended list of offences under the new legislation. I will now discuss the insights my research contributes to the broader body of knowledge in IE and wider fields.

8.3 Contributions to knowledge

This thesis makes important contributions in four areas. In section 8.3.1, I will discuss how economic interests have influenced kangaroo management in the ACT and the impacts of such influences. I will go on to discuss the contributons my research makes to IE in section 8.3.2. I will first highlight the insights it brings to IE generally (section 8.3.2.1) before drawing attention to how it adds to and extends areas of scholarship that have arisen out of IE, including institutional ethnographies that span multiple institutions (section 8.3.2.2) and Political Activist Ethnography (section 8.3.2.3). In section 8.3.3, I emphasise the important perspectives that need to be considered when planning future research into human conflicts over wildlife management. Although not being informed by socio-legal studies or Science and Technology Studies, I mention in section 8.3.4 how this project may be of interest to scholars in those areas.

8.3.1 New Public Management and environmental management

An important thread running throughout this thesis is the overriding influence of economic interests, including those of the ACT Government, on the management of kangaroos and of the nature reserves more broadly. Iglesias's implication that kangaroo management in the ACT takes place in an ideological vacuum (section 6.7.2) is, of course, a belief that harks back to Galileo (Lacey, 1999: 2). Many government staff and academics involved in wildlife

management in Australia denounce how politics impinges on associated management plans (as with Lunney & Matthews, 2003). They associate 'science' with 'logic', present it as being 'value free', and assert the need to distance it from 'politics', which they conjoin with 'emotions' (see Johnson et al., 2015; Lunney, 2010: 394-396; 2012b; 2012c: 83; 2017). In positioning their efforts to conserve Australian fauna as being 'thwarted by ideological opposition to the basic tenets of biology', Lunney, Dickman and Banks (2012: 172) fail to acknowledge the ideological nature of such tenets.

My research sheds light on the elephant in the room regarding the dominant approach to kangaroo management in Australia: that the increasing push to allow market mechanisms to guide kangaroo management, and wildlife management more broadly, is underpinned by the ideology of NPM and is inherently political. This has touched every aspect of the conflict under study. Early research into kangaroo management originated from an agroeconomic model developed by researchers closely aligned with the commercial kangaroo culling industry (section 2.3.1). Marketable research was prioritised over the basic research that would provide information crucial to understanding the relationships between grazers and their impact on vegetation in the ACT (section 6.4). Legislative changes and policy decisions have foreclosed external scrutiny of government plans and processes (section 7.5.2), particularly those that may be profitable. This is the case with the 'carcass utilisation' provision in the *Nature Conservation (Eastern Grey Kangaroo) Controlled Native Species Management Plan 2017*, which has been exempted from the external scrutiny that would normally be possible under the *Freedom of Information Act 2016* (sections 3.2.3.2 and 7.6.3). These changes were made in the interests of improving 'efficiency' and 'cost-effectiveness' (section 7.5).

The prioritisation of economic imperatives was evident in how the effects of the development of urban areas, agriculture and infrastructure, and the concomitant habitat fracturing and destruction, were downplayed, backgrounded or excluded in the key documents (see Chapters 4 and 6). This is unsurprising given the close ties the housing industry has had with the ACT Government, as with longstanding involvement of the Housing Industry Association in the creation of key environmental documents (section 4.2). For example, Frawley

inadequately addressed the impact of development and habitat destruction when linking his claims in the draft and final versions of the *ACT KMP* to what was reported in the *Woodland Strategy* about the impacts of kangaroo grazing on threatened species (section 6.4). Fletcher also claimed species were not negatively impacted by urban development in the ACT (section 4.6.1).

More explicit attempts to allow the market to guide kangaroo management have failed spectacularly. While efforts to promote the market for kangaroo products aimed at improving areas damaged by sheep grazing, the shift instead to the export of goat products has exacerbated environmental destruction (section 3.2.3.2). This reinforces the need for plans to marketise wildlife management to be more critically examined.

8.3.2 Institutional ethnography

8.3.2.1 Expanding how institutional ethnography might be conducted

This thesis has provided a window into the regulatory administrative processes of environmental management and analytical tools for better understanding conflicts associated with administrative decisions. Using IE has enabled me to illuminate how some interests in this issue have been impeded or subsumed, while others have been legitimised. I revealed the conceptual frames that were developed to legitimise the need to kill kangaroos and deligitimise other potential solutions to the problems at hand. I demonstrated how the way in which problems were identified and defined organised specific 'logical' solutions that strengthened ruling relations.

This research has demonstrated how processes that exist to facilitate democratic 'participation', as with the ACAT, and legislative changes presented as furthering such participation, as with the *Nature Conservation Act 2014*, were an institutional achievement that upheld the ACT Government's preferred approach to kangaroo management and interests that benefitted from the associated government decisions. I have illuminated the importance of specific sites where governmental decisions were made and how those decisions were coordinated across multiple sites in an ongoing and mutually beneficial manner. I highlighted the relationship between the evidence and dominant narratives presented in the ACAT hearings,

and the individual sites, processes and practices that contributed to the radical changes made to the *Nature Conservation Act 1980.*

I showed how boss texts, far from being stable, were changed or replaced when they failed to adequately serve the imperatives of the ACT Government. This illuminated the inner workings of ruling relations as Frawley, Stefaniak and Corbell conducted their everyday tasks according to the Acts under which they operated. While the ACT KMP is widely presented as being a product of public consultation (section 6.7.1), employing a text–act–text sequence revealed that contributions such as those made by the dissenting ecologists were not used to improve the ACT KMP or the ACT Government's associated plans, but to fortify the ACT Government's commitment to its preferred approach to kangaroo management. This process has been observed in other institutional ethnographies, as with Deveau's research on how the government of New Brunswick in Canada handled public opposition to shale gas mining in the province (section 6.3). Ultimately, the changes made in transitioning from the 1980 to the 2014 iterations of the *Nature Conservation Act* foreclosed further administrative reviews and criminalised dissent.

My research advances the small but growing focus on environmental issues and on the lived experiences of those served by front-line government staff. Few institutional ethnographies have focused on environmental issues, as I discussed in section 1.3.2. Randle Hart's (2017) study of the management of moose in Nova Scotia is the only institutional ethnography that has studied wildlife management that I have sourced to date. Many IE studies concentrate on the experiences of institutional employees working on the front line. Griffith and Smith (2014a: 346-347) highlighted the need for institutional ethnographic studies that focus more on how new managerial practices impinge upon and influence the work of those served, such as clients, patients and prisoners. Sinding's (2014) study on cancer care from the patient's perspective is one example of work being done in that area. My study has shed light on the work of challenging government decisions from the perspective of dissenters who have appeared as legal counsel or expert witnesses in ACAT hearings.

My research has generated rich insights by relying on naturally occurring data, which, in

some instances, would not have been obtainable had I been present and identified as engaging in fieldwork for this research. I noted in section 3.3.1 how, through previous research, I observed the 2014 ACAT hearing, conducted participant observations and semi-structured interviews over an 18-month period, and undertook 12 months of field observations in one key nature reserve in the ACT. Drawing on the recorded proceedings of the hearings illuminated the alternative narratives that were always present and were persistently presented to and within the ACT Government. This was not limited to the contrary evidence presented by the dissenting witnesses. It was also evident in how President Crebbin aligned her decision with that of the High Court in positioning the tribunal's obligations to 'procedural fairness' as outweighing conducting the procedures 'quickly' (section 7.4.2.2) and in the way Senior Member Anforth foregrounded the inevitable environmental impacts of the ACT's approach to urban development (section 4.6.1). Foregrounding such alternative perspectives is important as the public received little media coverage of the discussions that took place during the hearings, and the transcripts of the hearings were extremely difficult to access (section 3.4.3.1).

I demonstrated how ACAT Presidents Crebbin and Stefaniak differentially interpreted the ACT Government's commitment to ensuring public participation. Viewing this through the lens of IE's accountability circuits has shown how ACT Government staff diligently performed their duties by ensuring their actions remained accountable to the boss texts under which they operated. Doing so enabled Stefaniak and Corbell to maintain an appearance of ensuring that socially desirable ends were upheld (such as facilitating public participation or ensuring a fair hearing) while maintaining a business-as-usual approach to kangaroo management. Thus, they held themselves accountable in word to the provision of such desirable ends, but in deed to the economic efficiency of the ACT Government, which I argue ultimately came at the cost of justice and democratic processes. Tracing these accounts has powerfully highlighted the utility of examining government processes, decisions and documents through IE's approach to accountability circuits. Institutional ethnographers have often found that accountability circuits compromised the goal they attempted to achieve, as I discussed in reference to the work of Kearney et al. (2023) in section 7.6.2.

IE has a long history of drawing upon interview transcripts, or typescripts where recordings have not been possible (see Smith, 1978: 25). A small number of institutional ethnographers of law have examined legal transcripts and court reports (see, for example, Cunliffe, 2007; Cunliffe, 2013a, 2013b; Doll, 2017; Pence, 2001; Pence & Sadusky, 2006). When doing so, they simultaneously engaged in a critical reading of the transcripts and the transcription process, as I discussed in section 3.4.3.2. My research provides original insights to this body of work.

8.3.2.2 IE across multiple institutions

Dorothy Smith (1988b: 160) noted that when referring to 'institution' and 'institutional', she was identifying a 'complex of relations forming part of the ruling apparatus organised around a distinctive function', such as law, environmental management, education, and so on. She highlighted that the terms indicated multiple modes of ruling. Doll (2017: 300) pointed out that there might not be a direct link between such functional complexes. The concept of 'institution', therefore, does not refer to single entities, but to how they are woven around specific functions (Grahame, 1998: 349).

Hastings and Mykhalovskiy (2023: 69) troubled 'the single institution tendency' in IE. Acknowledging that ruling relations are 'unbounded phenomena', they encouraged institutional ethnographers to consider how 'institutional practices intersect across functional complexes' (Hastings & Mykhalovskiy, 2023: 69, 80). They identified institutional ethnographers who have already done so (see Doll, 2020; Hastings, 2019, 2022; Luken & Vaughan, 2006; Namaste, 2006; Nichols, 2014; Ugarte, 2021). Namaste (2006: 167-168) acknowledges the limitations of analyses that are restricted to one institution. Had I just focused on the ACAT hearings themselves, I would not have come to appreciate the links and connections between seemingly disparate arms of the ACT Government or what Namaste (2006: 168) refers to as 'the attending consequences for the institutional ordering of experience'.

In her work on Indigenous dispossession in Chile, Ugarte (2021: 231) noted how the development of a key text revealed 'how different forms of institutional dominance and power

get enacted through the actions of government planners in the seemingly beneficial landscape of the international Indigenous rights discourse'. Similarly, my thesis has served to illuminate the forms of institutional dominance and power enacted through 'seemingly beneficial' discourses associated with 'best science', 'open government' and 'public participation'.

My research has detailed how the work of many individuals situated in disparate arms of the ACT Government has contributed to maintaining and strengthening the organisation's preferred approach to kangaroo management. In section 6.8, I noted how this included sections of the ACT Government associated with environmental management (the Territory and Municipal Services Directorate, Conservation Research, and the the Office of the Commissioner for Sustainability and Environment), law (the Department of Justice and Community Services, particularly the ACAT, but also ACT Policing, and the Magistrates and Supreme Courts for the disciplining of dissent), and the Legislative Assembly. In tracing their work, I showed that this was not a coordinated effort by a network of people committed to ensuring the continuation of the ACT Government's preferred approach to kangaroo management, but by a group of people going about their everyday lives, doing their work according to the requirements under which they operated. I have walked readers through the many small decisions several government staff and contractors made, the sum total of which, over time, had immense repercussions, as is evident in the provisions introduced in the *Nature Conservation Act 2014*. I have demonstrated how the foreclosure of democratic processes, the criminalisation of dissent and compromised environmental knowledge have resulted from overlapping legal, scientific and economic processes. My findings exemplify Campbell's observation that '[r]uling takes place routinely, in contrast to being enforced violently, when people's everyday work organises them to act in terms of somebody else's interests'. I have also discussed the strong ties this issue has with industry, the academy and the media.

8.3.2.3 Political Activist Ethnography

In section 1.2.1, I acknowledged that at the commencement of my research into human conflicts over kangaroo management, I supported the killing of kangaroos in the ACT's nature reserves,

believing the news articles that reported the killing of kangaroos as necessary for protecting vulnerable species and endangered ecological communities. I also believed the conflict was influenced by the ACT Government staff's poor communication techniques and a lack of understanding of the 'facts' by the dissenters. In section 3.2.2, I noted that by the end of my project, my research had strong resonances with Political Activist Ethnography (PAE). Like IE from which it arose, PAE generates knowledge *for*, not *about*, people, but also maps the social relations (both the ruling relations and those of the activists) to produce knowledge that may improve the effectiveness of the dissenters' efforts (Doll et al., 2024: 4; Frampton et al., 2006b: 9).

My research has detailed how dissenting perspectives were erased and contestation was suppressed, enabling the ACT Government to give the impression that it successfully mitigated the conflict (see Gordon et al., 2021: 127-128). Illuminating the institutional processes mobilised in managing this conflict has revealed organisational openings where alternative ways of processing administrative reviews could have taken place. This knowledge can be leveraged strategically by those working towards social and legal change.

However, the alternative narratives that were put forward were not limited to the contrary evidence presented by the dissenting witnesses, as I noted in section 8.3.2.1. ACAT Senior Member Anforth also played the devil's advocate when challenging Fletcher's dual role of expert witness and advisor to the government's barrister (section 5.5.2). While such information is available in the transcripts, they are prohibitively expensive and are now unobtainable due to the contract for transcription services being awarded to different successive companies.

8.3.3 Human conflicts over wildlife management

My research may prove helpful in considering ways to avoid or mitigate similar conflicts in the future. In section 1.1.2, I noted how scholars from the environmental humanities and social sciences have criticised 'human dimensions' approaches as being overly simplistic (as with van Dooren, 2012). Studies published in key academic journals in the field, such as *Human*

Dimensions of Wildlife and *Human-Wildlife Conflicts*, have rarely considered the involvement of the management agency in human conflicts over wildlife management, despite research detailing intra-agency barriers to public involvement in wildlife management (see Lord & Cheng, 2006; Miller & Jones, 2005; Mortenson & Krannich, 2001). As I mentioned in section 8.3.2.1, IE has enabled me to illuminate how several arms of the ACT Government made interventions that served to uphold and strengthen the government's preferred approach to kangaroo management while suppressing and criminalising dissent. I demonstrated how democratic 'participation' was an institutional accomplishment.

From its earliest beginnings, surveys have been used to guide institutional responses to human conflicts over wildlife management (see, for example, Decker et al., 2001; Kellert, 1978; Manfredo et al., 1995). In section 1.3.2, I briefly discussed how the community attitudes surveys were structured and executed in ways that benefitted the ACT Government's position on kangaroo management (see Micromex Research, 2008, 2012, 2015). In Chapters 4 to 7, I have noted numerous points at which oppositional voices were shut down or subsumed while those supporting the ACT Government's position were legitimised. I highlighted points at which government actions inflamed the conflict (as indicated in section 1.2.2). This reinforces my argument that scholarship on human conflicts over wildlife management must pay critical attention to bureaucratic processes and decision making.

While the *Human Dimensions of Wildlife* journal has encouraged the application of qualitative and mixed-methods research (see Vaske et al., 2006), this has been minimally adopted to date. Throughout this thesis, I have presented rich and compelling data that could not be obtained through quantitative or survey research. Candid conversations of participants in the hearings, at an academic conference, and when approached by awaiting reporters have produced some of the most pertinent insights throughout my research. As such, I strongly encourage the application of qualitative methods in studies of human conflicts over wildlife management, and of IE more specifically.

In section 8.3.1, I mentioned how this research has illuminated how kangaroo management in the ACT has been guided by economic imperatives even when commercial

culling wasn't taking place within its borders. ACT Government staff and its contractors have long lobbied at the state and federal levels for governments to allow market mechanisms to guide wildlife management and kangaroo management more specifically (see, for example, Cooney, 2008; Cooney et al., 2009; Cooney et al., 2018; Wilson, 2014a, 2015, 2018b, 2019; Wilson et al., 2016, 2018). I also discussed how my research highlighted the role of economic imperatives in shaping many aspects of kangaroo management in the ACT and of the failure of relying on a market for kangaroo products to reverse the ecological damage caused by sheep grazing. My research highlights the need for critical attention to be paid to discourses surrounding the promise of marketised approaches to wildlife management and the 'sustainable use of wildlife'.

Grounding this study in an IE ontology has yielded important insights that significantly contribute to the wildlife management literature and, more specifically, to studies of human conflicts over wildlife management. I have detailed the processes that were mobilised to promote a particular definition of what the problem was that needed to be addressed. I then identified the frames that were used to present killing kangaroos as the logical solution. I traced the processes employed to address contradictions in evidence, which served the priorities of the ACT Government and other economic interests rather than those of the dissenters. I have demonstrated how some interests were legitimised while others were rendered institutionally invisible. While this process is common to all examples of wildlife management, these dynamics are not commonly subjected to detailed analysis.

8.3.4 Socio-legal studies and Science and Technology Studies

While I have not situated this project in the fields of socio-legal studies, critical legal studies, or Science and Technology Studies (STS), it makes important contributions that may be useful to scholars in these areas. My research has traced the functioning of legal and bureaucratic complexes, which have extended to regulatory and legislative reforms. I highlighted the frames mobilised by the ACAT panel members to identify the problem to be addressed and to identify

the witnesses and the evidence upon which they would rely. Such frames enabled them to make decisions that served the priorities of the ACT Government and others with aligned economic interests. I discussed how President Stefaniak activated section 14 of the *ACAT Act 2008* to recommend licencing changes that would restrict and ultimately foreclose future democratic participation in matters related to kangaroo management in the ACT. I demonstrated how the changes Minister Corbell made to the *Nature Conservation Act 1980* served to suppress conflict and criminalise dissent. While the wholly revised *Nature Conservation Act 2014* extended 'strict' and 'absolute' liability offences in ways that breached human rights, the Legislative Assembly was able to pass the reforms under section 28 of the *Human Rights Act 2004*. I noted how both Stefaniak and Corbell presented their decisions as being in the interests of all parties and extending public participation. Considering this, my research may also assist professionals in various fields, including lawyers, social justice advocates, and policymakers, particularly those interested in reforming discriminatory and exclusionary institutional practices.

STS scholars may be interested in the specific frame that was produced and reinforced through the ACAT hearings and related policy processes to legitimise positioning kangaroo grazing, not human activities, as an ecological problem. Smith (2005b: 56, 58-59) used the term 'blobontology' to convey that a concept with indeterminate referents must be filled with meaning. I demonstrated how terms such as 'best science', 'scientific expertise', 'scientific knowledge', 'open government', and 'participation' were ascribed meanings that helped organise social relations in ways that strengthened the ACT Government's commitment to its approach to managing kangaroos. This, in turn, affected the ability of the public to engage in democratic processes in an informed manner.

The accountability circuits I discussed, which validated scientific knowledge and its holders, have direct applications to STS. This is particularly evident in the Reasons for Decision documents, which clearly applied specific interpretations of 'scientific expertise' and ecological knowledge to legitimise the ACAT panel members' conclusions and the ACT Government's decisions. In section 3.5, I mentioned the gendered nature of the expert witnesses presented and the seriousness afforded to their evidence, topics to which feminist STS scholars have long

devoted their attention. The hearings also appeared exclusionary in terms of race and class.

8.4 The potential implications of this research

The potential implications of my research include contributing to the limited scholarship in IE on environmental issues and polarised conflicts, which I will discuss in section 8.4.1, as well as strategic policy criticism, which I address in section 8.4.2. I note how my research contributes to other voices that oppose compromising democratic processes to address environmental exigencies in section 8.4.3. I will mention how my research may inform those navigating through legal and quasi-legal processes such as the ACAT in section 8.4.4.

8.4.1 Applying IE to a polarised environmental issue

As I mentioned in section 1.3.1, I noted how the institutional ethnographer Lund (2024) identified two key areas requiring attention in the development of IE: environmental issues and polarised conflicts. Approaching this study as an institutional ethnography has revealed the lived experiences of the dissenting witnesses to be vastly different to what was portrayed in government documents, such as the *Code of Conduct,* and in the local media. Previous research revealed my own confusion over the uneven treatment of dissenting witnesses and their evidence in the 2014 ACAT hearing, which appeared to differ from the practices outlined in the *Code of Conduct*. Immersing myself in the minutiae of the discussions that took place throughout the hearings and the labyrinth of documents that were drawn into those discussions illuminated the ruling relations that impacted the dissenters from 'elsewhere and elsewhen' (Smith, 2005b: 225).

Adopting this bird's-eye view illuminated the extra-local influences that directed what could be achieved through the administrative review system. For example, when Ben-Ami highlighted that the Draft ACT KMP supported the applicant's argument that there was no evidence to support the ACT Government's claim of deleterious ecological impacts of kangaroo grazing, Frawley amended the text but not the government's assertion. Tracing the influence of

ruling relations also helped to contextualise acts that might seem self-defeating or contradictory. For example, administrative reviews serve to hold government departments accountable for their decisions, ensure public confidence in the government, and enable public participation in democratic processes (Law Council of Australia, 2021: 5). In contrast, ACAT President Stefaniak positioned licencing and legislative changes to prevent further administrative reviews as being 'a logical thing for all parties' (section 7.4.3.2) and Minister Corbell positioned the Nature Conservation Bill 2014 as 'align[ing] with the right to take part in public life' while it prevented further administrative reviews and criminalised dissent.

I demonstrated the commonalities in the work conducted by different government staff members across various arms of the ACT Government over different time periods. That such common work practices were conducted without concerted coordination suggests they complete their day-to-day tasks in accordance with the organisational consciousness of the ACT Government.

8.4.2 Strategic policy criticism

Illuminating how ruling relations were protected and extended in the issue under study may assist lay and academic dissenters to determine the best avenues to direct their efforts. The recorded proceedings reflect that dissenters were aware of some of the practices employed by the ACT Government to further their preferred approach to kangaroo management, such as repeatedly drawing on the same 'independent' consultants, handpicking like-minded consultants and drawing on a small circle of supportive scientists to coauthor documents. Such consultants reviewed the kangaroo counts and population density estimates and monitored shooters' compliance with National Code of Practice for the Humane Shooting of Kangaroos and Wallabies for Non-Commercial Purposes (see sections 2.3.4 and 5.6).

When dissenters' lobbying efforts were effectively ignored or communication was discontinued (section 7.4), community groups initiated administrative reviews in the ACAT. ACAT President Stefaniak highlighted that while the administrative reviews 'may ultimately not be successful', participants were permitted to 'go through the rigour' of 'a proper airing'

because the legislation allowed them to (section 7.4.3.2). Participation in the ACAT hearings drew heavily on the resources of the dissenters and the aligned community groups (section 7.5.2) and dissenting witnesses received uneven treatment compared with those who supported the ACT Government's approach. The hearings illuminated how, in some instances where the ACT Government's evidence was contested, ACT Government staff edited the documents, not by addressing the dissenters' concerns, but by altering or deleting text in ways that fortified the government's preferred approach to kangaroo management (sections 6.6 and 6.7).

Running parallel with this, the marginalisation and exclusion of dissenters and their evidence were progressively developed in government documents, as with the rejection of the dissenting witnesses and their evidence, to some extent based on Martire and Edmond's (2017: 984) 'crude set of legal proxies' (section 5.7). It is also evident in Cooper's 2009 report (section 4.4.3), Stefaniak's advice on licencing and legislative changes to prevent further administrative reviews (section 7.4.3.2), and Minister Corbell's subsequent introduction of the wholly revised *Nature Conservation Act 2014* (section 7.5). While the *Nature Conservation Act 1980* would have been updated irrespective of the ACAT hearings, one can only wonder whether the protests or the hearings influenced the radical constriction of democratic processes and human rights ushered in by the new Act. Reflecting on the experiences of the lay and academic dissenters may assist others who wish to provide information that challenges government policy in the future.

8.4.3 Investigating the practice of compromising democratic processes to address environmental exigencies

The ecological exigencies of our time increasingly give rise to calls to sacrifice democratic processes in order to expedite ameliorative environmental interventions (see, for example, Shearman & Smith, 2007). We can see this in the ACT, where changes introduced through the *ACT Nature Conservation Act 2014* significantly diminished the ability of those external to the government to participate in government decisions that concern them. Dissent has been criminalised, and many decisions, reports and government processes cannot be subjected to

administrative reviews. This placed enormous authority and responsibility on the ACT Government's 'scientific committee' regarding all aspects of environmental management within the ACT. The scrutiny of the knowledge base that has informed wildlife management decisions is inadequate. This was apparent in the abundance of errors and misrepresentations that the dissenting witnesses illuminated in the ACT Government's evidence, which was acknowledged and accepted by the ACAT panel members. Scrutiny of the information underpinning environmental decision making is invaluable in ensuring interventions are as well-informed as possible under the circumstances.

8.4.4 Navigating legal or quasi-judicial proceedings

Much can be learned from the decision making of the ACAT panel members in this study. It has been difficult in my thesis to convey a sense of the pressures and stresses involved in conducting an administrative review. Space has precluded me from bringing to light the 'pressure cooker environment' (Arthur, 6/6/2014, 5:20:38-5:21:52) which 'necessitated things to be done on the run' (Stefaniak, 4/6/2009, Recording 3, 5:40-6:08) and the time constraints that routinely challenged the participants. In such circumstances, errors are inevitable, and statements and decisions may be made by all parties that are less than ideal. However, I have explained in detail the starkly uneven ways in which the ACAT presidents and panel members assessed the witnesses and their evidence across the three hearings. Illuminating such processes may assist others when navigating their way through legal or quasi-judicial proceedings such as the ACAT.

8.5 Further research

Following on from my discussion in section 8.3.1, there is an obvious need for greater scrutiny of plans to allow market mechanisms to guide wildlife management interventions and to employ the basic tenets of adaptive management to assess the impacts of such plans. As I mentioned in section 3.2.3.2, efforts to use the export of kangaroo products to ameliorate the environmental destruction caused by sheep grazing saw a shift instead to the more damaging, but more

profitable, grazing of goats.

Despite claims to the contrary (see Gordon et al., 2021: 128), conflicts over kangaroo management in the ACT continue to date, with some dissenters expressing their opposition through legal avenues (see Animal Defenders Office, 2017; Animal Justice Party of the ACT, 2022; City News, 2025; Lee, 2023, 2024; MacDougall, 2024; Save Canberra's Kangaroos, 2022; Seymour, 2024; Ward, 2025) and others accepting the risks that come with engaging in direct action (as with Drew, 2017; Knaus, 2018; Soxsmith, 2016a). While approaches overseas moved to co-management and cooperative ventures (see Austin et al., 2010; Haubold, 2012; Lankow et al., 2022; Lauber et al., 2011; Leong et al., 2009; McKinney & Kemmis, 2011; Pellikka & Salmi, 2008; Plummer & Hashimoto, 2011; Rajaspera et al., 2011; Reed et al., 2013; Schusler et al., 2000; Treves et al., 2006), public involvement in wildlife management decision making has been opposed by Australian wildlife managers (Miller & Jones, 2005: 270-271). The approach taken in the issue under study has been one of forced compliance, as evidenced by the radical changes introduced through the *Nature Conservation Act 2014*. Further investigation of human conflicts over wildlife management in the Australian context is vital and must consider the involvement and influence of the management agency. This would involve a considerable shift in focus for the subfield of 'human dimensions of wildlife', as I indicated in section 1.1.2.

In section 3.5, I noted how my reliance upon those who participated in the hearings was a limitation of my research. Doing so brought into focus the voices of Caucasian middle- to retirement-aged, highly educated males. Further research into human conflicts over wildlife management, and kangaroo management more specifically, is required that invites contributions from people representing the breadth of demographic characteristics, and First Nations people more specifically.

Given the dire situation many Australian native species are in, interventions aimed to conserve them must be handled with the utmost care. I have illuminated complex processes that have ensured that kangaroo management practices, and environmental management more broadly, in the ACT have functioned in ways that resonate with powerful interests. I have demonstrated how such processes have sidelined or rendered invisible important insights

offered by those outside of and not associated with the ACT Government. That the government's preferred approach to kangaroo management has endured through the suppression and criminalisation of dissent undoubtedly contributes to the continuation of the conflict. However, the documentational architecture has long been in place for other possibilities through the ACT Government's stated commitment to 'open government' and to transparency, participation and public collaboration, more specifically.

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Appendices

Appendix 1: A comparison of audio recordings and transcripts

In Anne Graffam Walker's (1990: 203) research into the transition from oral to written legal proceedings, she acknowledged 'obvious' discrepancies in transcripts such as 'a misidentified speaker, a garbled stretch of speech, something missing, something added'. Her research also detailed less obvious discrepancies that greatly impacted the accuracy of the transcriptions. In the following section, I will first discuss the less obvious discrepancies Walker found before focusing on how Walker's 'obvious' discrepancies were apparent when I compared the official recordings with the associated official transcripts of ACAT proceedings.

Walker (1990: 218, 229) noted the historical propensity of court reporters to be more attentive to editing the grammar and phraseology of judges, lawyers and professional expert witnesses, while few in her study reported doing so for lay witnesses. She found speaker categorisation to be a predictor of the degree to which their speech is transcribed verbatim and identified such categories in the dichotomies of sworn/unsworn, educated/uneducated, expert/lay witness, ins (judges and lawyers)/outs (court reporters), employer (government department/law firm)/nonemployer (court reporters), liking/disliking the speaker, and sees transcript/doesn't see transcript (Walker, 1990: 233-4). Walker (1990: 204) demonstrated how speech had been 'cleaned up' in the transcripts by removing repeated words, false starts, garbled words, background discussions, and withdrawn statements. I found this to be the case in my review of the official ACAT recordings. In addition, discussions at the end of the day, which pertained to organising the following day's events, were removed, and slang such as "Yeah" was corrected. However, such discrepancies did not impact the content of the messages delivered. Given this, I concentrate more on whether Walker's 'obvious' discrepancies occurred in the data upon which I draw.

I compared three of the 43 audio recordings of the proceedings with the associated official transcript. I chose two days (8 and 9 July 2013) on which there was a reasonably even split of contributions from the applicant and the respondent, as well as one day (10 July 2013)

on which the ACAT panel members predominantly spoke as they delivered the reasons for the decisions they had made.

The sampled transcript contained examples of Walker's (1990: 203) discrepancies of 'something added' and 'a misidentified speaker'. In one instance, the transcript recorded that Mjadwesch answered a question in the affirmative, but no response is audible on the recording (compare ACAT, 2013a: 131, line 41 with 8/7/2013, Recording 2, 1:00:39-1:00:52). This is significant as the transcribers work in another area of the building (see Crebbin, 12/5/2009, Recording 2, 54:36-55:32) and, therefore, would not view any physical cues, such as nodding of the head.

Some brief omissions in the transcript were significant, such as the ACAT members voicing their support or disapproval as witnesses were delivering their evidence, often in yes/no comments. Key sources of information were omitted. For example, the transcript referenced a database but failed to include the clarification that it was the 'TAMS' [ACT Government Territory and Municipal Services] database. Of the recordings examined, one was cut short, thereby excluding a paragraph that appeared in the transcript (regarding Stefaniak et al., 2013b: 110, lines 15-22). This can be heard on other recordings, many of which occurred as the tribunal drew to a close for the day.

In other instances, the information quoted was incorrect, as with a population growth rate of 60% being quoted as 50% (compare ACAT, 2013a: 155, line 21 with 8/7/2013, Recording 3, 30:11-30:17) and Fletcher stating that 'you just can't get that kind of count *right*' when he actually said '*wrong*' (compare ACAT, 2013a: 163, line 27 with 8/7/2013, Recording 3, 53:00-53:03, emphasis added). The sampled transcript also misidentified the speaker. For example, two statements made by government ecologist Fletcher were wrongly attributed to Mjadwesch (compare ACAT, 2013a: 110, lines 35-44 with Recording 2, 0:10-0:48).

Walker's discrepancies of 'something missing' frequently occurred in the transcripts I sampled. Key information omitted from the transcript included instances where ACAT members briefly interjected to express their support or opposition to what was being said, as well as background noises and conversations. Sounds such as the flicking of papers and the

thumping of documents, for example, reflected the enormous amount of time that was required to organise the key documents. In some instances, the poor quality of the transcription rendered the text nonsensical. For example, the audio recording conveyed the following:

> DR FLETCHER: …So if there was a group of trees and you were estimating the density of trees, you'd get the tape measure and measure the perpendicular distance out at the trees…

However, the transcript reads:

> DR FLETCHER: …So if there were trees, in your estimated density of trees, you'd get the tape measure and measure the perpendicular distance out at the trees… (ACT Civil and Administrative Tribunal, 2013a: p127).

In this instance, Fletcher was explaining the 'DISTANCE' software, which he used to estimate kangaroo density. A critical aspect of this method is that groups, not individuals, are recorded. Thus, in his example of estimating tree density, it was critical for him to highlight that it was groups of trees that would be recorded.

The transcripts do not contain time stamps and, therefore, do not convey pauses, the length of time it took for statements to be delivered, or the time between statements. They also do not reflect how people spoke over top of each other, but transcribed their speech in whole blocks, a technique in court reporting Walker (1990: 226-7) identified as being designed to make the transcript more readable. Doing so fails to convey the pace and emotions associated with the discussions. This is particularly significant when power differentials exist between the speakers involved.

Walker's (1990: 203) 'garbled stretches of speech' appear in the transcripts as being 'inaudible' or 'indistinct'. Table 4 presents the results of a frequency analysis I conducted on the three sampled transcripts (8, 9 and 10 July) by speaker.

Group	Subgroup	Speaker	8 July 2013		9 July 2013		10 July 2013		Total 'inaudible'	Total 'indistinct'	Overall total	Combined overall total
Pages of script			109		157		14					
Type of omission			**'Inaudible'**	**'Indistinct'**	**'Inaudible'**	**'Indistinct'**	**'Inaudible'**	**'Indistinct'**				
Applicant	Legal counsel	Kennett	20	1	39	15	N/A	N/A	59	16	**75 (21%)**	**204 (56%)**
	Instructing solicitor	Smit	N/A	N/A	N/A	N/A	1	0	1	0	**1 (<1%)**	
	Witness	Mjadwesch	29	1	92	6	N/A	N/A	121	7	**128 (35%)**	
Respondent	Legal counsel	Katavic	0	0	25	6	0	1	25	7	**32 (9%)**	**136 (37%)**
	Witness	Fletcher	15	9	76	4	N/A	N/A	91	13	**104 (28%)**	
ACAT members	President	Stefaniak	5	1	9	3	0	1	14	5	**19 (5%)**	**25 (7%)**
	Senior Member	Anforth	0	0	5	1	0	0	5	1	**6 (2%)**	
Total	–	–	**69**	**12**	**246**	**35**	**1**	**2**	**316**	**49**	**365**	**365**

Table 4: Occurrences of 'inaudible' or 'indistinct' statements by speaker in the ACAT hearing 8 July 2013

Statements made in the ACAT hearing on 8 July 2013 were categorised in the official transcript as ‘inaudible’ or ‘indistinct’. Four of the seven people spoke throughout the day made statements which were categorised as ‘inaudible’, including Kennett and Mjadwesch for the applicant, Fletcher for the respondent, and President Stefaniak. Table 4 shows Mjadwesch as having the most ‘inaudible’ statements recorded (42%) followed by Kennett (29%), Fletcher (22%) and then Stefaniak (7%). When aggregated according to whether the speaker was presented by the applicant or the respondent, or were ACAT panel members, the speakers for the applicant were more likely to have their statements fall into these categories by a factor of eight (56%) when compared with those of the ACAT members (7%) and considerably higher than that of the speakers for the respondent (37%).

Quite long sections of statements by Kennett, legal counsel for the applicant, were categorised as ‘inaudible’. Some of the categorisations are valid, as Kennett and Mjadwesch spoke far less forcefully than Fletcher and Stefaniak. However, many of the ‘inaudible’ statements can be clearly heard on the recording and include ecological terms (such as antechinus, quadrat, threatened, exclosures, recruitment, and drive count), locations (such as Mount Painter), and names (such as Dr Ben-Ami). In contrast, when the tribunal delivered the reasons for its decision, which lasted almost 46 minutes on 10 July 2013, the three tribunal members spoke, as did the legal counsel for both the applicant and the respondent. Only one statement was inaudible and was categorised as such. The statements were delivered authoritatively in the manner of delivering a speech.

Appendix 2: Expert witnesses who appeared in the ACAT hearings

Table 5 lists the expert witnesses who appeared in the 2009, 2013 and 2014 ACAT hearings. In some instances, expert witnesses provided written statements but did not attend the hearings in person. The identities of these people and the contents of their witness statements were not discussed during the hearings. Only the statements of witnesses in attendance were discussed in the hearings.

Table 5: Expert witnesses who appeared in the ACAT hearings

Role	2009: AT 47/2009	2013: AT 40/2013	2014: AT14/28
Preliminary hearing			
Applicant 1: Preliminary hearing	Animal Liberation NSW.	Australian Society for Kangaroos.	Animal Liberation ACT.
Applicant 2: Preliminary hearing	N/A	Animal Liberation ACT.	N/A
Respondent: Preliminary hearing	ACT Conservator of Flora and Fauna.	ACT Conservator of Flora and Fauna.	ACT Conservator of Flora and Fauna.
Party joined to the proceedings	Department of Defence.	N/A	N/A
Applicant/s: Witness 1	Dr Dror Ben-Ami, consulting ecologist.	N/A	Mr Ray Mjadwesch, consulting ecologist.
Respondent: Witness	Dr Donald Fletcher, ACT Government senior ecologist.	Daniel Iglesias, ACT Government Director of Parks and Conservation Service.	Dr Donald Fletcher, ACT Government senior ecologist.
Party Joined: Witness	Major General Elizabeth Cossan, Head of Defence Support Operations (manager for all Defence training areas in Australia), Department of Defence.	N/A	N/A

Role	2009: AT 47/2009	2013: AT 40/2013	2014: AT14/28
Substantive hearing			
Applicant: Substantive hearing	Animal Liberation NSW.	Australian Society for Kangaroos.	Animal Liberation ACT.
Party joined: Substantive hearing	N/A	Daniel Iglesias, ACT Government Director of Territory and Municipal Services.	N/A
Applicant/s: Witness 1	Dr Dror Ben-Ami, consulting ecologist.	Mr Ray Mjadwesch, consulting ecologist.	Prof. Steve Garlick, macropod rescuer and rehabilitator and academic in economics and applied ethics.
Applicant: Witness 2	Dr Mark Drummond, lecturer at the Canberra Institute of Technical and Further Education, statistician.	N/A	Mr Marcus Fillinger, macropod rescuer, rehabilitator and translocator; instructor of firearms and the delivery of tranquiliser darts to wildlife.
Applicant: Witness 3	Dr Daniel Ramp, Conservation Biologist, research fellow at the University of New South Wales.	N/A	Dr Rosemary Austen, macropod rescuer and rehabilitator and general practitioner with postgraduate qualifications in biology.
Applicant: Witness 4	N/A	N/A	Mr Ray Mjadwesch, consulting ecologist.
Applicant: Witness 5	N/A	N/A	A/Prof. Bill Taylor, retired CSIRO Plant Scientist, A/Prof. Plant genetics Berkeley, USA.
Respondent: Witness 1	Dr Donald Fletcher, ACT Government senior ecologist.	Dr Donald Fletcher, ACT Government senior ecologist.	Dr Donald Fletcher, ACT Government ecologist.
Respondent: Witness 2	N/A	N/A	Prof. Graeme Coulson, Honorary Principal Fellow, Department of Zoology, University of Melbourne; Consulting zoologist.
Respondent: Witness 3	N/A	N/A	Prof. George Wilson, Adjunct Professor, Fenner School of Environment and Society, Australian National University; wildlife management and veterinary consultant.

Appendix 3: ACAT staff and legal representatives who appeared in the ACAT hearings

Table 6 lists the ACAT presidents and panel members, the court associate and the legal representatives of the respondent and the applicants in the 2009, 2013 and 2014 ACAT hearings. The name of the court associate, referred to as Madame Usher, who supported the hearings, was only mentioned during the substantive hearing in 2009. Only one party, the Commonwealth Department of Defence, acted as *amicus curiae*, or 'friend of the court', and this occurred in the substantive hearing in 2009.

Table 6: ACAT members and legal representatives who appeared in the ACAT hearings

Role	2009: 47/2009	2013: AT 40/2013	2014: AT 14/28
Preliminary hearing			
Applicant 1: Preliminary hearing	Animal Liberation NSW.	Australian Society for Kangaroos.	Animal Liberation ACT.
Applicant 2: Preliminary hearing	N/A	Animal Liberation ACT.	N/A
Respondent: Preliminary hearing	ACT Conservator of Flora and Fauna.	ACT Conservator of Flora and Fauna.	ACT Conservator of Flora and Fauna.
Party joined to the proceedings	Commonwealth Department of Defence	N/A	N/A
ACAT president: Preliminary hearing	General President Linda Crebbin.	General President Linda Crebbin.	Appeals President Bill Stefaniak.
ACAT court associate	Ms Last.	Not mentioned.	Not mentioned.
Legal representative: Applicant 1	Dr Caulfield.	Ms Ramsay.	Tara Ward.
Instructing solicitor/s: Applicant 1	Martin L. Bennett.	Simone Mitchell. Jacob Smit.	Shelley Landmark.
Legal representative: Applicant 2	N/A	Tara Ward	N/A
Instructing solicitor: Applicant 2	N/A	N/A	N/A
Legal representative: Respondent	Dr Douglas Jarvis.	Kristy Katavic.	Dr Douglas Jarvis.
Instructing solicitor: Respondent	Kristy Katavic.	Miss Holly.	Madeleine Bayer.
Legal representative: Party joined	Matt Roser (Commonwealth Department of Defence).	N/A	N/A

Role	2009: 47/2009	2013: AT 40/2013	2014: AT 14/28
Substantive hearing			
Applicant: Substantive hearing	Animal Liberation NSW.	Australian Society for Kangaroos.	Animal Liberation ACT.
Respondent: Substantive hearing	ACT Conservator of Flora and Fauna.	ACT Conservator of Flora and Fauna.	ACT Conservator of Flora and Fauna.
Party joined: Substantive hearing	N/A	Daniel Iglesias, ACT Director of Territory and Municipal Services.	N/A
***Amicus curiae*: Substantive hearing**	Andrew Berger (Commonwealth Department of Defence).	N/A	N/A
ACAT president: Substantive hearing	Appeals President Bill Stefaniak.	Appeals President Bill Stefaniak.	Senior Member and presiding member Graeme Lunney.
Other ACAT Member	Senior Member Louise Donoghue.	Senior Member Allan Anforth.	Senior Member Adrian Davey.
Other ACAT Member	Senior Member John Ashe.	General Member Adrian Davey.	Community Member Peter Conway.
ACAT court associate	Not mentioned.	Not mentioned.	Not mentioned.
Barrister: Applicant	Martin L. Bennett.	Geoffrey Kennett.	Richard Arthur.
Instructing solicitor/s: Applicant	Dr Malcolm Caulfield.	Miss Bosniac. Jacob Smit.	Tara Ward. Shelley Landmark.
Barrister: Respondent	Dr Douglas Jarvis.	Kristy Katavic.	Dr Douglas Jarvis.
Instructing solicitor: Respondent	Kristy Katavic.	Miss Holly.	Madeleine Bayer.
Instructing solicitor: Party joined	N/A	N/A	N/A

Appendix 4: ACT Civil and Administrative Tribunal (Expert Witness Code of Conduct) Procedural Directions 2009

Application of code

1. This code of conduct applies to any expert engaged to: (a) provide a report as to his or her opinion for use as evidence in proceedings or proposed proceedings; or (b) give opinion evidence in proceedings or proposed proceedings.

General duty to the Tribunal

2. An expert witness has an overriding duty to assist the Tribunal impartially on matters relevant to the expert's area of expertise.

3. An expert witness' paramount duty is to the Tribunal and not to the person retaining the expert.

4. An expert witness is not an advocate for a party.

The form of expert reports

5. A report by an expert witness must (in the body of the report or in an annexure) specify:

   (a) the person's qualifications as an expert;

   (b) the facts, matters and assumptions on which the opinions in the report are based (a letter of instructions may be annexed);

   (c) reasons for each opinion expressed;

   (d) if applicable – that a particular question or issue falls outside his or her field of expertise;

   (e) any literature or other materials utilised in support of the opinions; and

   (f) any examinations, tests or other investigations on which he or she has relied and identify, and give details of the qualifications of, the person who carried them out.

6. If an expert witness who prepares a report believes that it may be incomplete or

inaccurate without some qualification, that qualification must be stated in the report.

7. If an expert witness considers that his or her opinion is not a concluded opinion because of insufficient research or insufficient data or for any other reason, this must be stated when the opinion is expressed.

8. An expert witness who, after communicating an opinion to the party engaging him or her (or that party's legal representative), changes his or her opinion on a material matter shall forthwith provide the engaging party (or that party's legal representative) with a supplementary report to that effect which shall contain such of the information referred to in 5(b), (c), (d), (e) and (f) as is appropriate.

9. Where an expert witness is appointed by the Tribunal, the preceding paragraph applies as if the Tribunal were the engaging party.

Experts' conference

10. An expert witness must abide by any direction of the Tribunal to: (a) confer with any other expert witness; (b) endeavour to reach agreement on material matters for expert opinion; and (c) provide the Tribunal with a joint report specifying matters agreed and matters not agreed and the reasons for any non-agreement.

11. An expert witness must exercise his or her independent, professional judgment in relation to such a conference and joint report, and must not act on any instruction or request to withhold or avoid agreement.

Appendix 5: The draft and final versions of the ACT Kangaroo Management Plan

Chapter 3 of the 'public consultation' draft and final versions of the *ACT Kangaroo Management Plan* (ACT KMP) focused on 'Kangaroo populations and impacts', with one section focusing on 'Conservation of grassy ecological communities and species'. One subsection explored 'Herbivores and grassland habitat', which included a table that, amongst other things, reported on the impacts of kangaroo grazing on threatened species in the ACT (Frawley, 2009: 43-47; 2010: 46-50). I have reproduced a composite of the draft and final versions of that subsection below.

I have highlighted the changes in the transition from the 2009 draft to the final report in 2010. The areas highlighted in yellow indicate text from the draft version that was removed in the final document, while areas highlighted in blue reflect text that had been added to the final copy. The only omission I have made is the column headers in the final report, which erroneously categorised the last seven animal species as plant species (see Frawley, 2010: 49-50). The reports cited in the excerpt below can be found in the reference section of my thesis (including Braby & Dunford, 2006; Braid et al., 2008; Dunford et al., 2004; Dunford et al., 2005; Jarman & Phillips, 1989; Lintermans et al., 2007; Lunt, 2005; McIvor, 2002).

Chapter 3 Kangaroo populations and impacts

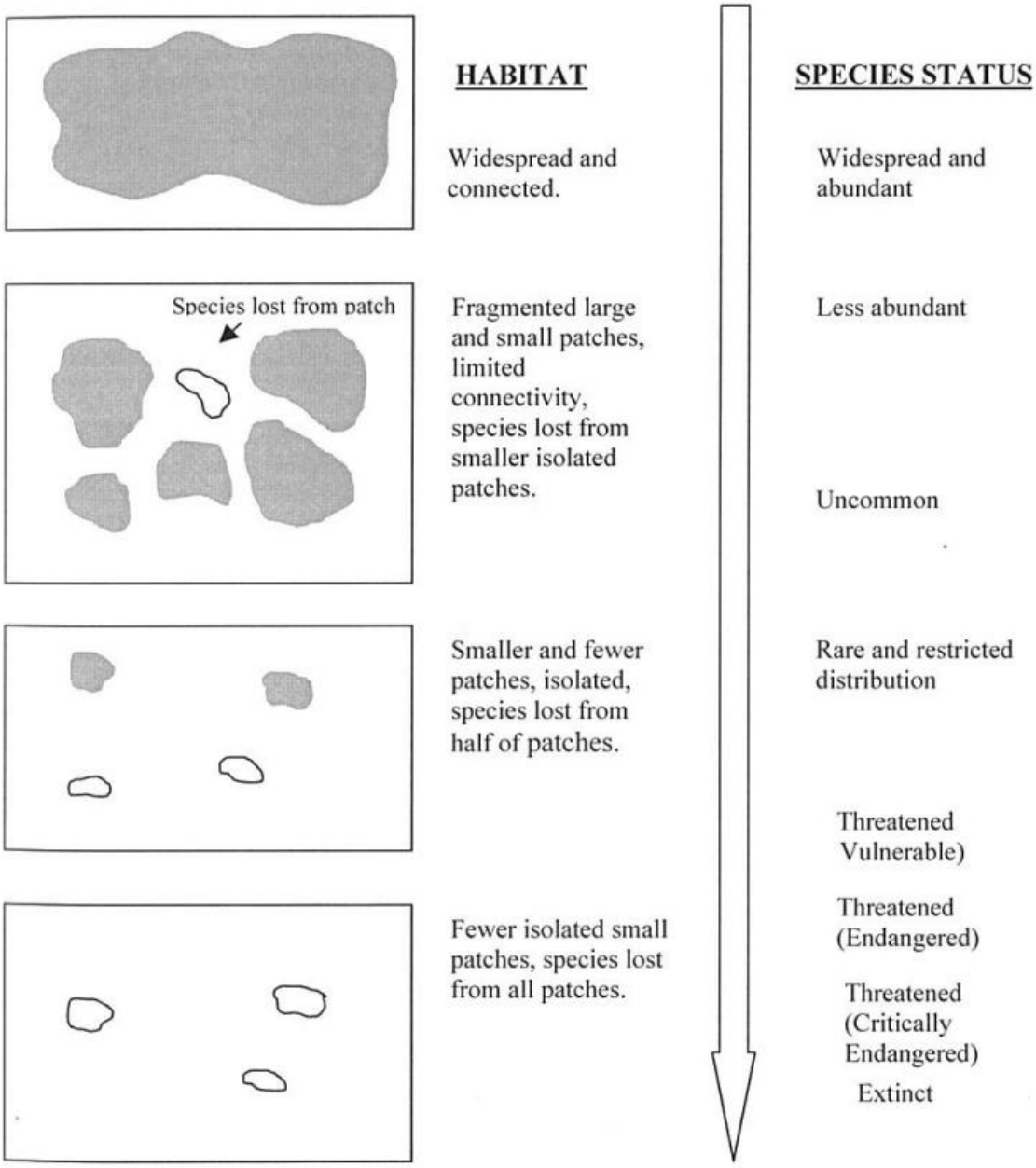
3.6 (2009)/ 3.8 (2010) Conservation of grassy ecological communities and species

3.6.3 (2009)/ 3.8.3 (2010) Herbivores and grassland habitat

There are a number of factors to be considered in the conservation management of native grasslands (Eddy 2002). Defoliation and fauna habitat management are the main concerns for this kangaroo management plan. ACT grassy ecosystems evolved under the influence of grazing herbivores, macropods in particular. The population size of grazing animals is determined largely by the seasonal abundance of the grassland food source. In turn, species composition and abundance of grassland

vegetation are affected by the population size of grazers (grazing intensity) and seasonal conditions (rainfall and temperature). Thus, grazers and grasslands are linked in a feedback loop driven by the weather.

Figure 3.2 Diagram of the fragmentation process of species extinction



The diet of eastern grey kangaroos is 99% grass (Jarman and Phillips 1989), and they graze both the native and introduced species that occur in ACT lowland areas. This general grass diet compares with the habitat requirements of many other grassland species that are now rare and/or threatened, which

are found only or mainly in native grassland and are wholly dependent on this vegetation community and intact grass tussock structure for their survival. The relationships between the habitat requirements of ACT threatened species and kangaroo grazing are summarised in Table 3.3.

Table 3.4 (2009)/ 3.3 (2010) Habitat requirements for threatened species in ACT native grassy ecosystems and significance of kangaroo impacts

For most of the species listed below, specific kangaroo impacts have not been studied; therefore, a precautionary approach is an appropriate management response. Grazing impacts from all herbivores, as well as other potential threats, are considered in managing habitat for these species. Assessment of the significance of kangaroo grazing impacts derives from knowledge of grazing impacts generally, current understanding of the habitat requirements of grassland species, data collected for some species, and field observations as part of surveys, monitoring and research undertaken by ecologists within ACT Parks, Conservation and Lands and by researchers from other institutions. For threatened species reliant on grassland or grassy understorey, the precautionary management response is to avoid overgrazing from any source. In ACT reserves where there is no grazing by domestic stock (or limited stock grazing in particular locations for fire fuel reduction) overgrazing is mainly by kangaroos and rabbits.

(See Table 2.1 for threatened status under ACT and/or Commonwealth legislation)

Threatened Plant Species in the ACT Native Grassy Ecosystems		
Species	**Habitat Requirements**	**Significance of Kangaroo Grazing Impacts**
Tarengo Leek Orchid (*Prasophyllum petilum*) (ACT Woodland Strategy, pp. 31–32)	Native grassland/grassy woodland on moister sites. ACT and NSW distribution suggests the species does not survive under constant stock grazing.	Hall Cemetery contains the only ACT Tarengo Leek Orchid population. This is not currently threatened by kangaroo grazing.
Small Purple Pea (*Swainsona recta*) (ACT Woodland Strategy, pp. 32–33)	Open grassy woodland. Species appears to not survive under heavy or constant stock grazing pressure.	There is no evidence that the ACT populations have been threatened by kangaroo grazing pressure, but studies are lacking. Indirect impacts possible (e.g. overgrazing facilitating weed invasion). A

		potential impact of high kangaroo density (e.g. Mt Taylor) is kangaroos resting on the remaining plants.
Austral Toadflax (*Thesium australe*) (ACT Woodland Strategy, pp. 33–34)	Strongly associated with kangaroo grass dominated herbaceous understorey. ACT populations should be managed to retain an open vegetation structure (e.g. limiting tree/shrub cover).	Heavy grazing pressure (stock, rabbits, kangaroos, grasshoppers) is a threat to species. Indirect impacts (e.g. overgrazing facilitating weed invasion) also possible.
Hoary Sunray (*Leucochrysum albicans var. tricolor*) (ACT Woodland Strategy, pp. 34)	Open areas in grassy woodland, large numbers sometimes colonise disturbed sites. Usually found in ungrazed or lightly grazed areas. Appears to tolerate mowing	Species appears to be very sensitive to grazing, but responds to disturbance as a colonizer [sic]. Studies are lacking to estimate the threat posed by kangaroo grazing pressure
Canberra Spider Orchid (*Arachnorchis actensis*)	Species occurs in transition zone between grassy woodland and open forest, amidst grasses, forbs and low shrubs.	It is not known if kangaroo grazing has a deleterious impact in some circumstances. Studies are lacking. Fencing is proposed for the remaining orchid populations.
Button Wrinklewort (*Rutidosis leptorrhynchoides*) (ACT Grassland Strategy, pp. 24–27)	Occurs on margins of open grassy woodland with ground layer of native grasses and forbs. Prefers open habitat and is poor competitor amongst dense sward-forming grasses. The species is a tall palatable herb that is lost under stock grazing.	There is no evidence that the ACT populations have been threatened by kangaroo grazing, but studies are lacking. Low to medium intensity kangaroo grazing is likely to be beneficial in helping to maintain an open grass cover. This needs to be considered in terms of total grazing pressure.
Ginninderra Peppercress (*Lepidium ginninderrense*) (ACT Grassland Strategy, pp. 28–29)	At the one site where species occurs, it grows well where competing grass tussocks are short and open. The species appears to be susceptible to overgrazing as well as competition from other plant species.	Limited kangaroo grazing may be beneficial in removing competitive growth of grass species; however, heavy kangaroo grazing is likely to have deleterious impact. Site is protected by a fence.
Golden Moths (*Diuris pedunculata*) (ACT Grassland Strategy, pp. 24)	Occur on moist grassy slopes or flats on peaty shale or fine granite and among boulders.	There is no evidence that the ACT populations have been threatened by kangaroo grazing pressures, but studies are lacking.
Tuggeranong Lignum (*Muehlenbeckia tuggeranong*) (ACT Riparian Strategy, pp. 40–42)	Known only from a very small population near the Murrumbidgee River. Current habitat is highly disturbed and weed invaded riparian shrubby woodland.	It is not known whether grazing animals such as kangaroos pose a threat to the survival of remaining plants or whether such grazing may benefit the species by keeping competing grass tussocks and other plant growth open and short.
Threatened Animal Species in the ACT Native Grassy Ecosystems		

Species	Habitat Requirements	Significance of Kangaroo Grazing Impacts
Grassland Earless Dragon (*Tympanocryptis pinguicolla*) (ACT Grassland Strategy, pp. 38–39)	Key habitat for the three remaining populations is well drained and relatively undisturbed natural temperate grassland dominated by Danthonia and Stipa spp. The species shelters within grass tussocks and in arthropod burrows. The rocks used for shelter in other areas are not a characteristic of ACT sites.	The species and its habitat appear to be maintained under stock and/or kangaroo grazing at low intensities. Heavy grazing pressure by stock, kangaroos and/or rabbits reduces and/or degrades this habitat. Kangaroo grazing pressure (exacerbated by drought conditions), with resultant loss of tussock grassland structure, has impacted on the dragon population. Three of the populations are now within kangaroo exclusion fences.
Striped Legless Lizard (*Delma impar*) (ACT Grassland Strategy, pp. 39–40)	Key habitat is native grassland dominated by kangaroo grass, spear grasses and wallaby grasses. Species is also found in adjacent areas dominated by exotic grasses. An important habitat characteristic appears to be tussock structure, though little is known about how the habitat is used. Soils with moderate to high clay content, often producing cracks in summer are another habitat feature.	The species and its habitat appear to be maintained under stock and/or kangaroo grazing at low intensities. Grass tussock structure, important for this species, is lost under heavy grazing pressure by stock, kangaroos and/or rabbits.
Golden Sun Moth (*Synemon plana*) (ACT Grassland Strategy, pp. 40–41)	On current knowledge, this species appears to be dependent on a narrow range of native grasses (commonly a wallaby grass Austrodanthonia carphoides in the ACT), but has been found to utilise the introduced Chilean needle grass (Nassella neesiana) when native grasses have been significantly depleted (Braby and Dunford 2006). Austrodanthonia is low growing with tussocks usually separated by bare ground.	Native grasslands that support golden sun moth populations in the ACT are subject to low intensity management activities that apparently benefit low growing wallaby grasses and hence maintain habitat quality for the species. These activities include light grazing by stock and/or kangaroos. Such light grazing may have increased areas of native grassland dominated by wallaby grasses.
Perunga Grasshopper (*Perunga ochracea*) (ACT Grassland Strategy, pp. 41–42)	Key habitat appears to be natural temperate grassland dominated by wallaby, kangaroo and spear grasses with forb food plants located in the inter-tussock spaces. Species also occurs in open woodland with a grassy understorey. Grass tussocks appear to be essential habitat, being used to escape predators and shelter from wind, low temperatures and	The species persists in lightly grazed areas where tussock structure remains. When it has been recorded from heavily grazed areas, it was still associated with nearby grass tussocks. Observations to date suggest that heavy grazing pressure by stock, kangaroos and/or rabbits have the potential to reduce and/or degrade the habitat of this species.

	frost.	
Pink-tailed Worm Lizard (*Aprasia parapulchella*) (ACT Riparian Strategy, pp. 56–59)	Habitat in ACT is native grassland usually dominated by kangaroo grass, with numerous partially embedded rocks. Likelihood of occurrence of the lizard increases with increasing cover of kangaroo grass and decreases with increasing cover of other species that are indicative of disturbance	Livestock grazing and agriculture have probably had the most impact on this species through loss and degradation of habitat. Kangaroo grazing has not been specifically identified as a threat but could contribute to loss of habitat, in the context of total grazing pressure.
Hooded Robin (*Melanodryas cucullata*) (ACT Woodland Strategy, pp. 43–54)	Woodland understorey of tall tussock grasses, low shrubs and fallen logs, which support insects and other invertebrates on which the species feeds, is critical habitat. Intensive grazing which reduces the complexity of understorey habitat is a threat.	Kangaroo grazing has not been specifically identified as a threat, but could contribute to loss of habitat complexity and food supply (in particular, reduction of tall grass tussocks) in the context of total grazing pressure. Intensive grazing which reduces the complexity of understorey habitat is a threat and in some important ACT woodlands (e.g. Mulligans Flat) this grazing is mainly by kangaroos. Rabbits are also important in some areas.
Brown Treecreeper (*Climacteris picumnus*) (ACT Woodland Strategy, pp. 43–54)	Critical habitat is relatively undisturbed grassy woodland with native understorey, especially grasses.	Kangaroo grazing has not been specifically identified as a threat, but could contribute to loss of habitat complexity and food supply (in particular, reduction of tall grass tussocks) in the context of total grazing pressure. Intensive grazing which reduces the complexity of understorey habitat is a threat and in some important ACT woodlands (e.g. Mulligans Flat) this grazing is mainly by kangaroos. Rabbits are also important in some areas. Areas with short grass are also favoured by the species and its precise habitat requirements remain uncertain.
White-winged Triller (*Lalage sueurii*) (ACT Woodland Strategy, pp. 43–54)	Critical habitat in the ACT is grassy woodland, with intact grassy understorey and fallen timber that support insects and other invertebrates on which the species feeds.	Kangaroo grazing has not been specifically identified as a threat, but could contribute to loss of habitat complexity and food supply (in particular, reduction of tall grass tussocks) in the context of total grazing pressure. Intensive grazing which reduces the complexity of understorey habitat is a threat and in some important ACT woodlands (e.g. Mulligans Flat) this

		grazing is mainly by kangaroos. Rabbits are important in some areas.
Superb Parrot (*Polytelis swainsonii*) (ACT Woodland Strategy, pp. 43–54)	Main habitat in the ACT region is box woodlands. Species prefers to feed on ground on seeds of grasses and herbaceous plants associated with yellow box –red gum grassy woodland.	Intensive grazing of understorey of box woodland with loss of structure and diversity is identified as a threat to the species. Such grazing pressure could derive from stock, kangaroos and/or rabbits.

The sustainable management of native grassland requires sufficient plant material be maintained to provide habitat for the range of species associated with it. This plant material provides food for herbivores ranging from large grazers to invertebrates, the latter in turn providing a food source for other organisms in the grassland food web. The grass sward protects the soil surface and provides the physical structure necessary for the shelter, foraging and breeding requirements of all grassland species (Braid et al. 2008). Grassland structure is influenced by the grazing effects of large herbivores. Plant species composition varies under different grazing pressures because plants exhibit a range of grazing tolerances (McIvor 2002a). The animals and uncommon plants living in the grass sward also vary in their requirements, and variation in grassland structure provides a means by which the maximum number of species can persist. Little or no grazing allows for the accumulation of herbage mass and results in dominance by tall-growing grazing-intolerant plant species (e.g. kangaroo grass *Themeda triandra*). Moderate grazing allows herbivores to graze selectively, and in native grasslands, this creates patchiness with areas of both tall and short grass swards. Heavy grazing pressure results in non-selective grazing, so the herbivores eat virtually all plants on offer and the resulting grass sward is very short and lawn like. Under these 'marsupial lawn' conditions, bare ground is exposed, especially in drought conditions. Plants that become dominant under heavy grazing pressure (e.g. wallaby grass *Austrodanthonia carphoides*, windmill grass Chloris truncate, red-leg grass *Bothriochloa macra*) are grazing-tolerant and short growing, even when ungrazed (Braid et al. 2008; McIvor 2002a).

Management of herbivore grazing pressure is an important factor in efforts to rehabilitate areas in poor condition due to past land uses. An example is Mt Painter Nature Reserve where high densities of kangaroos, as well as rabbits and hares, are hindering rehabilitation work. It is sometimes suggested that grazing in conservation reserves should be undertaken using native herbivores (e.g. eastern grey

kangaroos) rather than grazing stock. The practicality of native herbivore management varies greatly, largely according to reserve size and location. Kangaroo and grassland conservation might be seen as complementary; however, kangaroos are particularly difficult to control in small, isolated grassland and woodland remnants, especially in urban areas. Stock can be easily moved or sold when not needed. Kangaroos are difficult to muster, and culling is often not socially acceptable. With few constraints on population growth, kangaroo numbers in a grassland remnant may increase to a point where the density of the population is limited by food availability ('ecological carrying capacity', s. 3.7.2(c)). Regardless of differences in grazing behaviour, the key difference between grazing with stock and with kangaroos, from a management perspective, is that stock grazing can be controlled to achieve desired ecological outcomes, whereas this cannot be done easily with kangaroos (Lunt 2005).

Appendix 6: The *ACT Protection of Public Participation Act 2008*

I have reproduced section 7 of the *ACT Protection of Public Participation Act 2008* below as it appears in the original document, including bolding and italics.

7 Meaning of public participation

(1) In this Act:

public participation means conduct that a reasonable person would consider is intended (in whole or part) to influence public opinion, or promote or further action by the public, a corporation or government entity in relation to an issue of public interest.

(2) However, ***public participation*** does not include conduct—

(a) that contravenes a court order or constitutes contempt of court; or

(b) that constitutes unlawful vilification under the *Discrimination Act 1991*, section 67A; or

(c) that constitutes an offence against the Criminal Code, section 750 (Serious vilification); or

(d) that causes, or is reasonably likely to cause, physical injury or damage to property; or

(e) that constitutes unlawful entry at residential premises; or

(f) that constitutes an offence punishable by imprisonment for longer than 12 months; or

(g) if—

(i) the conduct is communication by a party to an industrial dispute between an employer and employee, former employee, contractor or agent; and

(ii) the communication relates to the subject matter of the dispute; or

(h) that constitutes the advertising of goods or services for commercial purposes; or

(i) that incites others to engage in conduct mentioned in paragraphs (a), (b), (c), (d), (e) or (f).

(3) Subsection (2) applies in relation to a person's conduct whether or not the person has been convicted or found guilty of an offence for the conduct

Appendix 7: The *ACT Nature Conservation Act 2014*

I have reproduced section 6 of the *ACT Nature Conservation Act 2014* below as it appears in the original document, including bolding and italics.

Nature Conservation Act 2014

A2014-59

Republication No 1

Effective: 11 June 2015 – 9 July 2015.

Republication date: 11 June 2015

6 Objects of Act

(1) The main object of this Act is to protect, conserve and enhance the biodiversity of the ACT.

(2) This is to be achieved particularly by—

(a) protecting, conserving, enhancing, restoring and improving nature conservation, including—

(i) native species of animals and plants and their habitats; and

(ii) ecological communities; and

(iii) biological diversity at the community, species and genetic levels; and

(iv) ecosystems, and ecosystem processes and functions; and

Examples—processes and functions

1 decomposition and production of plant matter

2 energy and nutrient exchanges

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(v) ecological connectivity; and

Example—connectivity

the movement of organisms from one place to another

(vi) landforms of natural significance, including geological and geomorphological features and processes; and

(vii) landscapes of natural significance; and

(b) promoting and supporting the management, maintenance and

enhancement of biodiversity of local, regional and national significance; and

(c) promoting the involvement of, and cooperation between, Aboriginal and Torres Strait Islander people, landholders, other community members and governments in conserving, protecting, enhancing, restoring and improving biodiversity; and

(d) encouraging public appreciation, understanding and enjoyment of biodiversity; and

(e) recognising and promoting Aboriginal and Torres Strait Islander peoples' role in, and knowledge of, the conservation and ecologically sustainable use of biodiversity; and

(f) recognising the significant stewardship role that landholders have in managing the natural assets on their land; and

(g) ensuring that members of the public have—

(i) access to reliable and relevant information in appropriate forms to facilitate a good understanding of nature conservation issues; and

(ii) opportunities to participate in policy development, nature conservation planning and conservation work; and

Example

ACT ParkCare

(h) promoting the principles of ecologically sustainable development mentioned in the *Environment Protection Act 1997*, section 2 (2).

(3) In exercising a function under this Act, the Minister must have regard to the objects of this Act.

Glossary

Below are definitions of the institutional ethnography terms I have used in my thesis. For extended glossaries on terms commonly used in IE, please refer to Smith (2005b) and Bisaillon (2012).

Accountability circuit

Griffith and Smith (2014a: 340) defined an 'accountability circuit' as a particular kind of institutional circuit that aims to render workers' performance or outcomes accountable in terms of institutional objectives'. Smith and Turner (2014b: 10) positioned 'institutional circuits' as:

> … locat[ing] sequences of text-coordinated action making people's actualities representable and hence actionable within the institutional frames that authorize institutional action. In institutional circuits, institutional work comprises mining actualities selectively to identify aspects, features, measures, and so on that fit the governing frame (sometimes called a "boss text").

Actuality

Dorothy Smith (2005b: 223) used 'actual' and 'actuality' as 'always pointing to the outside-the-text … to the world to be explored by the ethnographer'.

Authorisation

While 'authorise' and allied terms appear prolifically in the IE literature, their meanings remain ill-defined. In the context of my research, I draw on Smith's work to define 'authorise' as empowering or sanctioning a person, document, act or course of action to direct activities in order to coordinate the local processes and practices of the social relations of ruling (Smith, 2001; Smith & Griffith, 2022).

Bibliopolitics

Montcher (2017: 206, 207) used the term 'bibliopolitics' to an 'interpersonal system of political communication' and explored how learned communication assisted the development and continuation

of such communication.

Boss or governing text

Smith used the term ‘boss text’ to refer to specific texts which, through institutional procedures, have been imbued with a governing frame that directs specific people to conduct specified acts (unpublished work by Smith (2010) as cited by Bisaillon, 2012: 610; Griffith & Smith, 2014b).

Contrast structure

In developing IE, Dorothy Smith (1974) illuminated processes that produced institutionally coordinated social exclusion, initially focusing on the treatment of women. Smith (1993b: 27) defined ‘contrast structures’ as being a situation ‘where a description of … behavior is preceded by a statement which supplies the instructions for how to see that behavior as anomalous’. Contrast structures may be used to identify a social rule that provides instructions as to how to select the ‘appropriate’ characteristics, behaviours, and so on. (Smith, 1993b: 26).

‘Cutting-out’ procedure

Dorothy Smith (1978: 47) explained how ‘cutting out’ is conducted by creating a rule and a description or observation of a situation such that the description does not provide for the rule. Relating the nonconforming observation back to the rule reiterates that the rule is not met by that which has been considered.

Disjuncture

A ‘disjuncture’ is a way of knowing from a ruling perspective differs from how it is experienced in everyday life (D. E. Smith, 1990d: 99-100). It involves contradictions between ‘standard and standardizing texts of ruling’ and the actualities of people’s lived experiences (Griffith & Smith, 2014b: 18; Smith & Griffith, 2022: 58).

Institutions

Dororthy D. E. Smith (1988b: 160) mobilised the term ‘institution’ to refer not to a fixed or specific form of social organisation, but to a ‘complex of relations forming part of the ruling apparatus, organized around a distinctive function’ such as law, education or wildlife management. She noted that her use of ‘institutions’ identifies:

> … the intersection and coordination of more than one relational mode of the ruling apparatus. … We might imagine institutions as nodes or knots in the relations of the ruling apparatus to class, coordinating multiple strands of action into a functional complex. Integral to the coordinating process are ideologies systematically developed to provide categories and concepts expressing the relation of local courses of action to the institutional function…, providing currency or currencies enabling interchange between different specialized parts of the complex and a common conceptual organization coordinating its diverse sites. (D. E. Smith, 1988b: 160)

The 'institution' of interest is not unitary organisations but 'complexes of cultural rules that [are] increasingly rationalized through the actions of professions, nation-states, and the mass media and that hence [support] the development of more types of organizations' (Scott, 2001: 3, 161).

Institutional capture

Dorothy Smith (2005b: 119) refers to instances where the institutional discourse invalidates and reassembles the worker's words and writing as 'institutional capture'.

Intertextuality

Smith (2005a: 226) borrowed the term 'intertextuality' from literary theory and employed it in IE to highlight how institutional texts are interdependent and form a hierarchy in which 'higher level texts establish the frames and concepts that control and shape lower-level texts'.

Intertextual hierarchy

Smith (2006b: 67-68) argued that 'texts should not be analyzed in abstraction from how they enter into and coordinate sequences of action'. She saw such coordinated action as occurring in two ways: by coordinating action sequences and creating a regulatory hierarchy of texts, which she called an 'intertextual hierarchy'. Intertextual hierarchies are apparent where the 'higher level texts establish the frames and concepts that control and shape lower-level texts' (Smith, 2005b: 226).

Negotiation erasure

Kameo and Whalen (2015: 226) employed the term 'negotiation erasure' to describe a process in which organisations strip off the descriptions and negotiations that led to the production of a document. Investigating the omissions and inclusions of the final document helps to understand how it may or may not reflect more organisationally acceptable categories. This explains the persistence of such documents and resistance to organisational change.

Organisational consciousness

Dorothy Smith (1990d: 214) positioned 'organisational consciousness' as:

> constructing 'knowledge, judgement, and will' in a textual mode and transposing what were formerly individual judgements, hunches, guesses, and so on, into formulae for analyzing data or making assessments. Such practices render organizational judgement, feedback, information, or coordination into objectified textual rather than subjective processes.

Problematic

Smith (1987: 91) used problematics to 'direct a possible set of questions that may not have been posed or set of puzzles that do not yet exist in the form of puzzles but are "latent" in the actualities of the experienced world'. A problematic may arise through the identification of a 'disjuncture' in which a way of knowing from a ruling perspective differs from how it is experienced in everyday life (D. E. Smith, 1990d: 99-100).

Rule

The construction of rules or definitions of situations is central to the cutting-out process, as they provide instructions as to how to select the 'appropriate' characteristics (Smith, 1993b: 26). Failure to satisfy the rule or situation is the precursor to the cutting-out process.

Ruling relations

In mobilising the term 'ruling relations', Smith (2005b: 227) 'directs attention to the distinctive translocal forms of social organization and social relations mediated by texts of all kinds (print, film,

television, computer, and so on)'. She went on to position ruling relations as being 'objectified forms of consciousness and organization, constituted externally to particular people and places, creating and relying on textually based realities' (Smith, 2005b: 227). Wright and Rocco (2018: 117) positioned ruling relations as being the complex web of associations enabled through texts that create and continue power relations in multiple locations. Exploring these relations brings to light 'the ideological and social processes that produce experiences of subordination' (DeVault & McCoy, 2001: 741). The key areas of focus are understanding how a particular experience happens and how the associated social relations have been organised (Campbell & Gregor, 2004: 7).

Standpoint

In IE, standpoint is the point from which a study commences and must, therefore, be considered in the design of a research project (Smith, 2005b: 228). Smith (2005b: 228) positioned the establishment of such a subject position in contradistinction to the 'objectified subject of knowledge of social scientific discourse'. When viewed from this position, ruling relations are illuminated (Smith, 2005b: 228). Commencing with the 'everyday/everynight' world of the 'knowing subject', the study explores what that person does not know in terms of the ruling relations which are 'pervading her or his word but invisible in it' (Smith, 1999: 4-5).

Text

Smith (2005b: 228; 2006b: 66) defines 'texts' as being words, images or sounds whose material and replicable form enables them to extend across different times and places and, importantly, across many places at once. This enables us to explore how they 'connect us to translocal social relations', thereby 'produc[ing] stability or replicability of organization or institution' (Smith, 2005b: 228). DeVault and McCoy (2001: 765) liken textual process to a central nervous system 'running through and coordinating different sites'.

Text–reader conversation

Smith (2005b: 228) used the term 'text–reader conversation' to position the reading of a text as 'an actual interchange between a reader's activating of the text and her or his responses to it'. She highlighted that how texts are activated 'helps us escape our experience of them as inert, enabling us

to see them as embedded in social relations and, hence, as being in action' (Smith, 2005b: 228). Following French post-structuralist Roland Barthes, Smith noted that 'a text only becomes what it is in the reading, the text is never the same' (Smith, interviewed by Widerberg, 2004)

Textual time

Dorothy Smith (1990c: 74) used the term 'textual time' to refer to a point when an account had become fully worked up and the traces of its construction (early drafts, tracked changes, etc.) were removed. It is presented as 'an autonomous statement representing the actuality of which it speaks' that can make new statements provided key attributes are preserved, such as the original conceptual structure and the order of space and time (D. E. Smith, 1990c: 74). It is at this stage that Smith (1990c: 74) positioned the text as having become stabilised.

Work

Smith (2005b: 228) defined 'work' in what she referred to as a 'generous sense', extending the term to 'anything done by people that takes time and effort, that they mean to do, that is done under definite conditions and with whatever means and tools, and that they have to think about'. Smith (2002) noted that 'work' relies 'on definite resources, and is organised to coordinate in some way with the work of others similarly defined'.