



7 July 2015

NSW Department of Primary Industries  
Fisheries Legislation  
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SILVERWATER  
NSW 1811

BY EMAIL [legislation.consult@dpi.nsw.gov.au](mailto:legislation.consult@dpi.nsw.gov.au)

Dear Sir/Madam

**Response to Public Consultation Draft, Fisheries Management Amendment Bill 2015**

The Illawarra Legal Centre (ILC) is an independent Community Legal Centre, funded by State and Federal Governments to provide a comprehensive range of free legal services to residents of the Illawarra who experience social and economic disadvantage.

The Centre has a strong human rights and social justice focus and has worked closely with our local Aboriginal community for many years. Currently ILC is collaborating with a number of local Indigenous organisations on the issue of cultural fishing rights.

We have been asked to provide a broad response to this consultation process on behalf of the participants at a number of local fishing rights workshops the ILC has conducted as well as from feedback provided at the unprecedented gathering of members from the 13 clans of the Yuin Nation at Killalea on 26-28 June 2015 ('the Killalea Gathering').

Proposed changes to the *Fisheries Management Act 1994 (NSW)* ('the Act') relevant to Aboriginal fishing include, *inter alia*: the establishment of an Aboriginal fishing trust fund, the amendments to the permit provisions under section 37, fishing determinations for Total Allowable Catch and Total Allowable Effort and the reissue of forfeited and surrendered commercial fisheries shares.

The response of the participants of the Killalea Gathering is that all of these issues require proper ongoing and active consultation with traditional owners. Existing mechanisms have proven to be insufficient and have resulted in serious conflict and alienation that continues to be detrimental to all parties involved in the management and use of the NSW fishery.

For example, the proposed new section 37, under which the Minister is able to make an Order which could apply to groups of people is welcomed if it provides for a more practical and responsive approach to taking and possessing fish. As there is no detail regarding how the provision will take effect, it is submitted that the development of implementation procedures should be undertaken in collaboration with representative organisations.

## Consultation procedures

While the work of the Aboriginal Fishing Advisory Council (AFAC) is acknowledged, it should be more active, meeting more frequently and disseminating the issues it is dealing with via regular meetings and other interactive approaches, such as via Facebook.

There is also strong support for additional ongoing participation by Aboriginal representatives. There is a clearly expressed distrust of 'consultation' where the community feels it has little traction, with calls for a more robust and inclusive approach in which the views of the community are central to the decision making process.

The Killalea Gathering has decided on the creation of a working group, the South Coast Traditional Owners Group ('SCTOG'), with delegates from each community to come together on a regular basis to represent the Yuin Nation. This will be further explored in follow up meetings to be held in the near future.

The representation and decision making structure of such a group provides a clear demonstration of the protocols and procedures that could form the basis of far more effective and inclusive consultation on regulatory and policy matters which impact on the Aboriginal community.

The Yuin nation comprises 13 clans and it is proposed that there will be one male and one female representative from each clan forming the SCTOG. Central to the legitimacy of this group is that, while it is intended to provide a unified voice for the region, a member of one clan cannot make a decision which affects the country of another clan. For example, a saltwater person cannot speak for a freshwater person and vice versa.

The centrality of such protocols demonstrate the need for AFAC and any other consultative bodies to be complemented by much more localised structures whereby representatives are authorised as decision makers for their country.

It is also noted that the Ministerial Fisheries Advisory Council (MFAC) Strategy 2014-2017 refers to AFAC's activities including 'to develop culturally appropriate approaches to and regulations for the management of cultural fisheries' and that these are 'relevant to the strategies' set out in MFAC's plan. This indicates the need for traditional owners to be consulted in relation to the development and implementation of MFAC strategies and other activities applicable to Aboriginal fishing interests.

There has been a long history of consultation and input from the Aboriginal community and its representative bodies. For example, the 2002 Indigenous Fisheries Consultation. The *Indigenous Fisheries Strategy and Implementation Plan - December 2002* ('the 2002 Plan') highlights the four "key platforms" which the NSW Aboriginal Land Council has stated must be central to future NSW Fisheries planning.

- Respect: A philosophic and practical recognition of the traditional and cultural fishing heritage of Aboriginal people and communities, including their access to and use of the fisheries resource.
  - Engagement: Involvement of Aboriginal communities with management and custodianship of resources in keeping with their traditional cultural roles.
  - Social and Economic Development: Aboriginal people and communities having access to economic opportunities in established and emerging fishing industries.
  - Employment: Aboriginal people and communities accessing employment and training opportunities in resource management and in the fishing and aquaculture industries.
- Source: NSWALC submission to the Indigenous Fisheries Consultation, Aug 2002

The 2002 Plan sets out clear tasks, which centre on the goal: 'To involve Aboriginal communities in fishery and marine park management'. Given the existence of the 2002 Plan and its raft of tasks, which would promote active involvement of the Aboriginal community, it is submitted that the current work of MFAC and AFAC, along with the review of the Act, should look to existing policies and strategies and work in good faith towards their active and ongoing implementation.

The importance of fishing on a cultural, economic, health and social basis was continually stressed by participants of the Killalea Gathering. Access to those resources, on terms that accord with the views and interests of Aboriginal people, is crucial. The clear message from the Gathering was that the Aboriginal community continues to be excluded from its own resource but also that it is willing to work with government to achieve the key principles of respect, engagement and social and economic development.

If you require any further information please contact the undersigned by email at [linda\\_tucker@clc.net.au](mailto:linda_tucker@clc.net.au) or at 0242 754708.

Yours faithfully  
Illawarra Legal Centre

Linda Tucker  
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