

No. 469

PARLIAMENT OF NEW SOUTH WALES  
LEGISLATIVE COUNCIL

STANDING COMMITTEE ON  
STATE DEVELOPMENT

Report  
on

The Fisheries Management Amendment  
(Advisory Bodies) Act 1996

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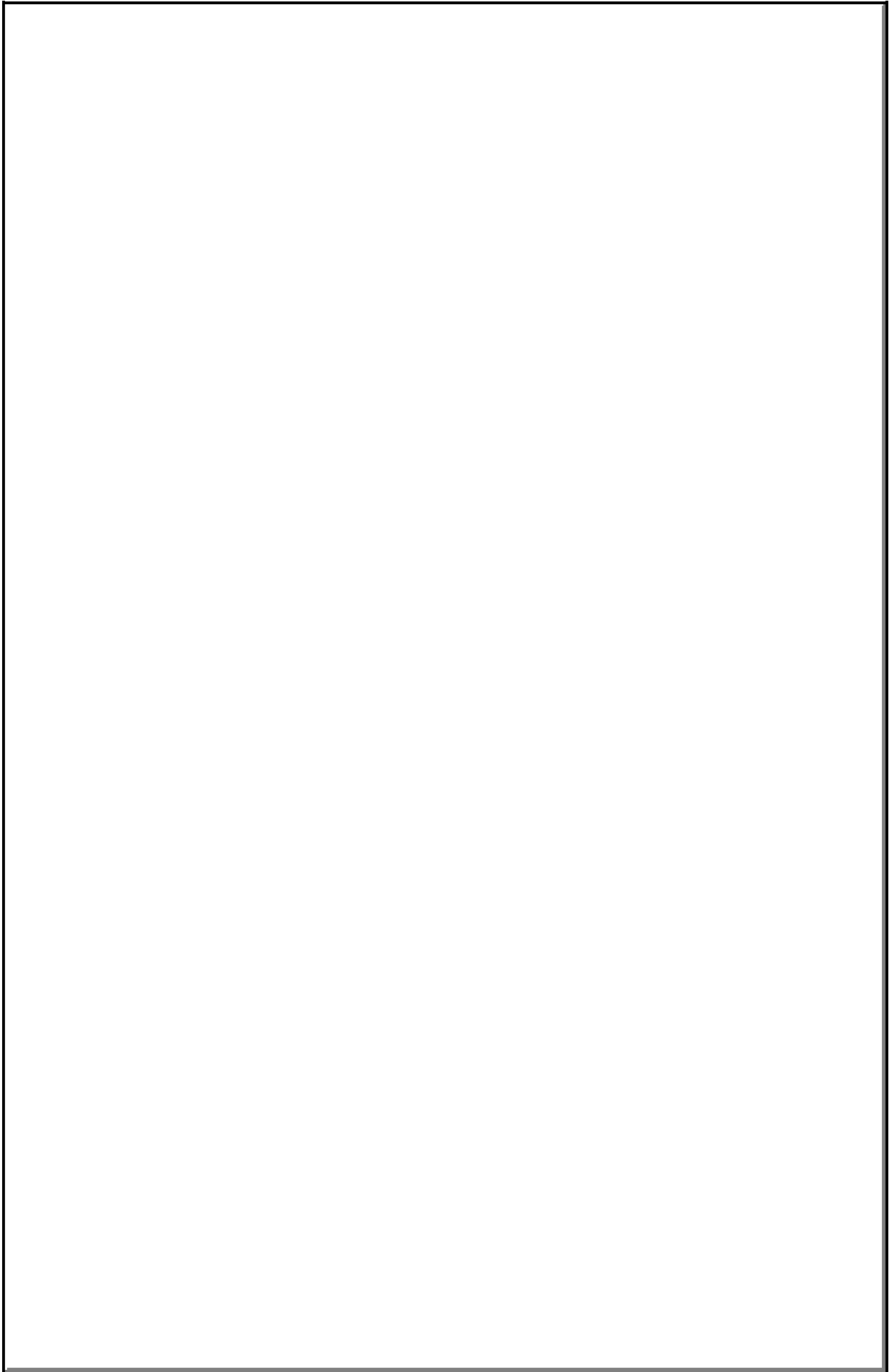
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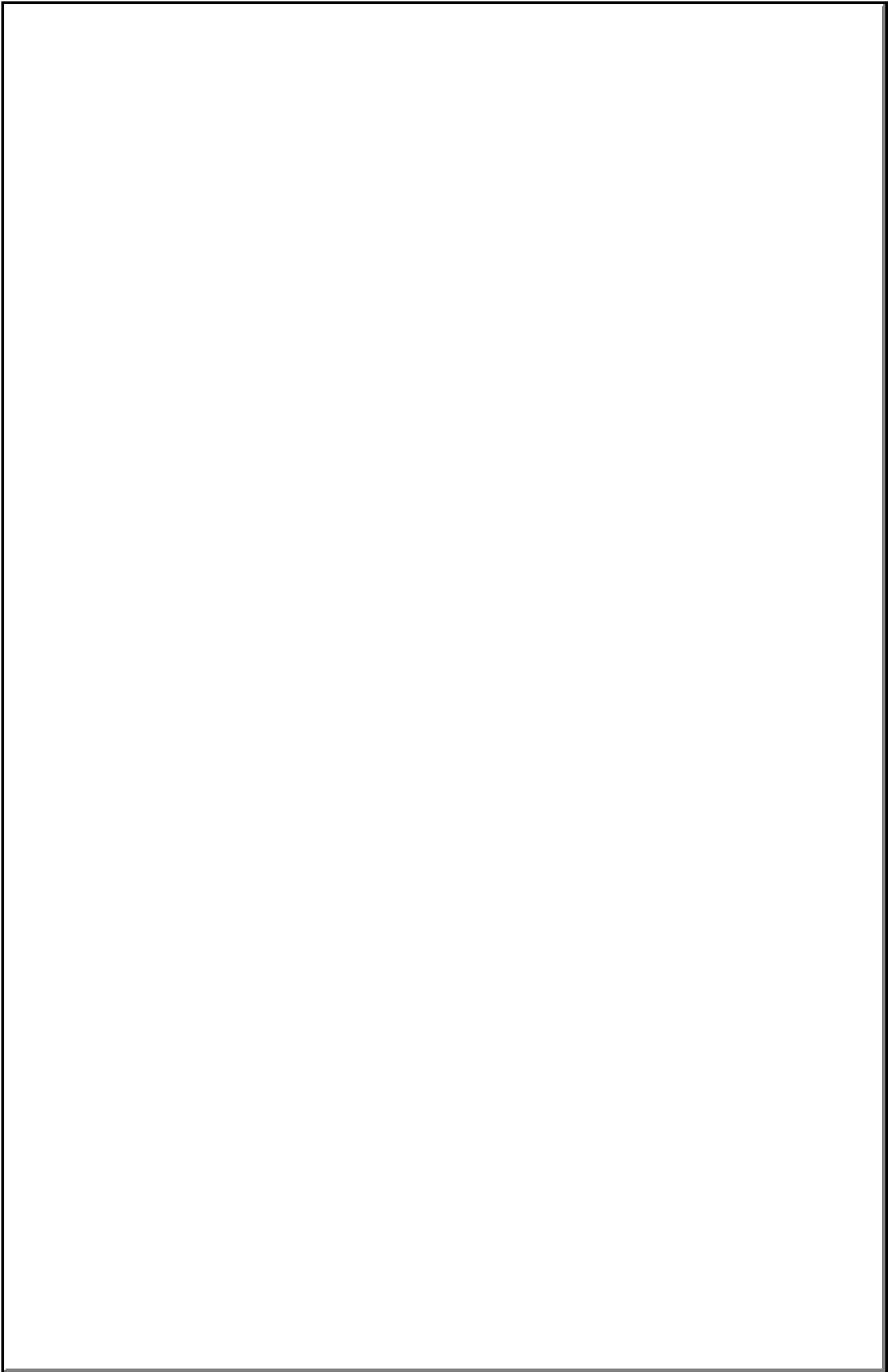
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Report No 16

July 1997

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## THE INQUIRY'S TERMS OF REFERENCE

### **Fisheries Management Advisory Bodies**

*(Reference Received 5 December 1996)*

That the Standing Committee on State Development inquire into and report on the Fisheries Management Amendment (Advisory Bodies) Bill 1996 with particular reference to:

- (a) the way in which advisory bodies are formed and administered;
- (b) the role and composition of advisory bodies in managing commercial, recreational, research and aquacultural sectors of the fishing industry through share management and restricted fisheries;
- (c) the role of conservation representatives on advisory bodies; and
- (d) any necessary amendments to the Fisheries Management (Advisory Bodies) Bill 1996 to better facilitate the role and participation of the stakeholders in the consultation process in the management of the fishing industry in New South Wales.

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## PREFACE

Due to the complicated nature of the numerous acts and regulations referred to in this report, the following short act and regulation names and notation will be used hereafter:

The *Fisheries Management Act 1994* will be referred to as the *Fisheries Management Act*.

The *Fisheries Management Amendment (Advisory Bodies) Act 1996* will be referred to as the *Advisory Bodies Act*.

The *Fisheries Management (General) Amendment (Management Advisory Committees) Regulation 1997* will be referred to as the *MAC Regulations*.

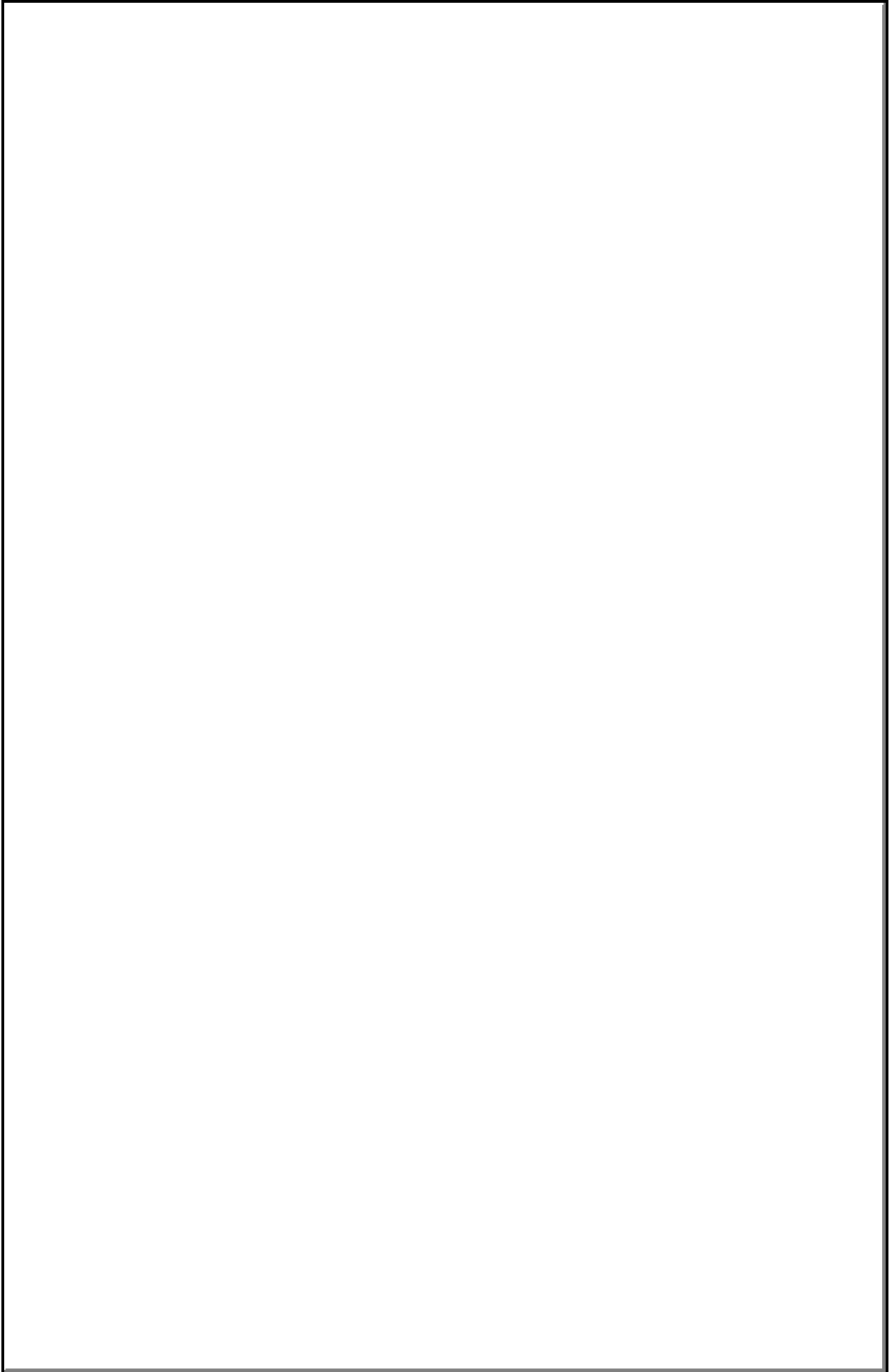
The draft *Fisheries Management (General) Amendment (Ministerial Advisory Councils) Regulation 1997* will be referred to as the draft *Advisory Council Regulations*.

All other acts and regulations will be named in full.

The notation s.# will be used when referring to sections of Acts.

References to regulation numbers will either be in the form reg.# or *Regulation Name #* (eg *MAC Regulation 230*)





## CHAIRMAN'S FOREWORD

The Standing Committee on State Development received the reference for the Advisory Bodies Inquiry on 5 December 1996. This reference brought the total number of references before the Standing Committee at that time to five. To ensure that the Advisory Bodies Inquiry could be given proper consideration, the Standing Committee resolved to form a Sub-committee to deal with the reference and report back to the full Standing Committee prior to tabling its findings.

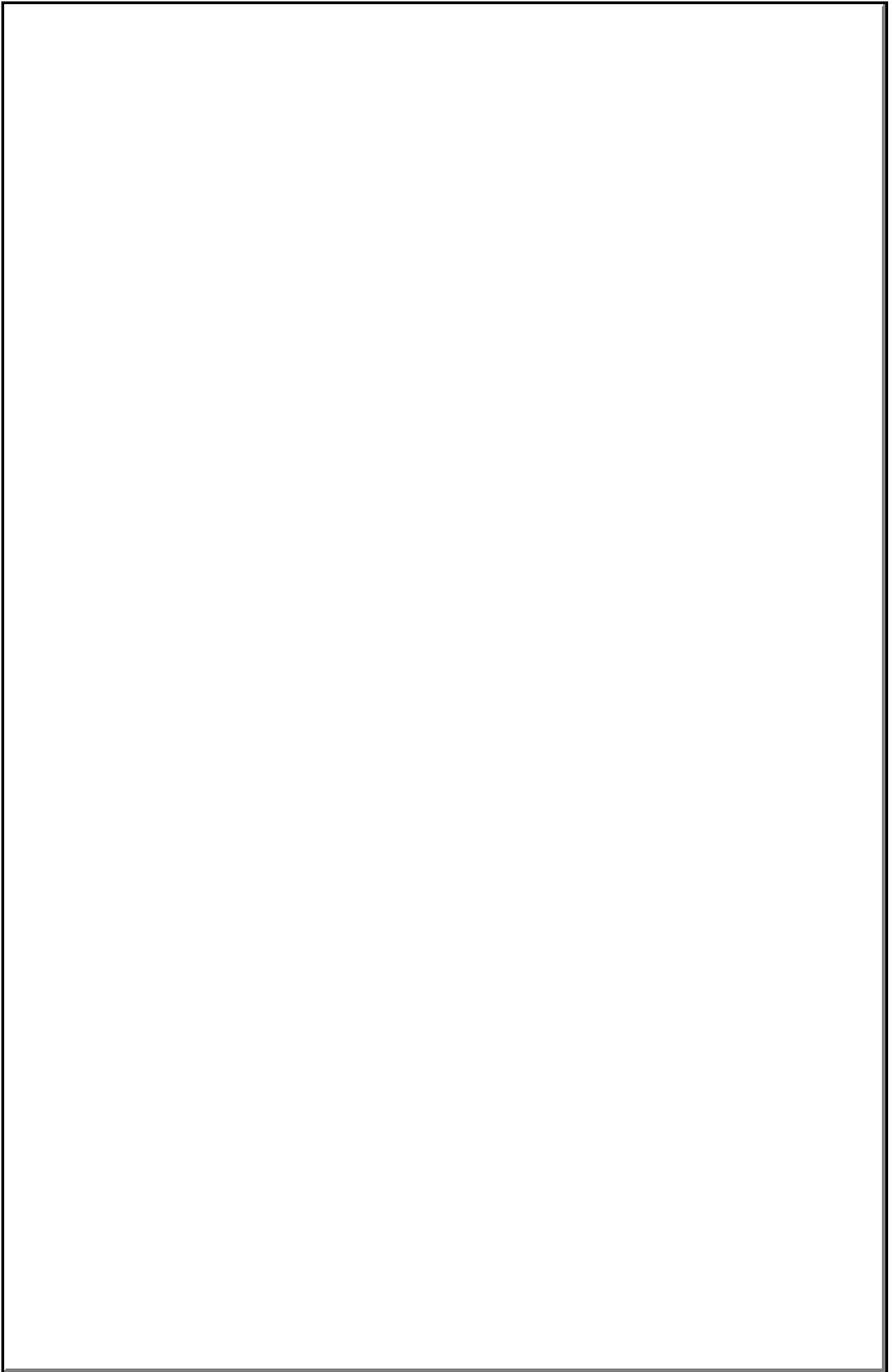
In late December 1996, the Committee advertised for public submissions. The Committee received a total of 29 submissions from recreational and commercial fishers, environmental groups, and NSW Fisheries. Evidence was also obtained from 16 witnesses during two public hearings held in February 1997.

Chapter One of this report provides background to the Inquiry, with a brief history of fisheries advisory bodies in New South Wales up to the introduction of the *Advisory Bodies Act* and evidence in relation to the role of advisory bodies. Chapter Two outlines the reasons for moving to the new advisory body system, including perceived problems with both the previous advisory bodies and the new structure. Chapter Three describes in detail the major provisions of the *Advisory Bodies Act* and associated Regulations. Chapter Four outlines the views of recreational and commercial fishers, environmental groups, and relevant Government authorities in relation to the composition of advisory bodies. Chapter Five provides a comparison of the various fisheries advisory structures within Australia, while Chapter Six sets out the Standing Committee's conclusions and recommendations arising from the Inquiry.

In my capacity as Chair and on behalf of the Members of the State Development Committee I would like to thank the Secretariat staff involved in the research and preparation of this report. Thanks must go to the Director, Stewart Webster, the Senior Project Officer, Michael Lowry, and the Committee Officer, Annie Marshall.

I would also like to thank all of those individuals and organisations who gave of their time and expertise to lodge submissions and appear before the Committee.

**Hon Patricia Staunton, AM, MLC**  
**Chairman**







## GLOSSARY

TERM OR ACRONYM	DEFINITION
ACA	Advisory Council on Aquaculture
ACCF	Advisory Council on Commercial Fishing
ACFR	Advisory Council for Fisheries Research
ACoRF	Advisory Council on Recreational Fishing
AFMA	Australian Fisheries Management Authority
AMRAC	Aquaculture Management and Research Advisory Committee
CFAC	Commercial Fishing Advisory Council
CFRC	Commercial Fishers Representative Council
FCA	Fishing Council of Australia
FIRAC	Fisheries Industry Research Advisory Committee
FMCs	Fisheries Management Committee
FRDC	Fisheries Research and Development Corporation
MACs	Management Advisory Committees
NCC	Nature Conservation Council
NSWSIC	NSW Seafood Industry Council
OMAC	Oyster Management Advisory Committee
ORAC	Oyster Research Advisory Committee
QFMA	Queensland Fisheries Management Authority
RFAC	Recreational Fishing Advisory Council
RICs	Regional Industry Conveners
RLCRF	Regional Liaison Committees for Recreational Fishing
SARFAC	South Australian Recreational Fishing Advisory Council

<b>TERM OR ACRONYM</b>	<b>DEFINITION</b>
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TACC	Total Allowable Catch Committee
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ZACs	Zonal Advisory Committees
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## **ESTABLISHMENT AND FUNCTIONS OF THE STATE DEVELOPMENT COMMITTEE**

In June 1988, the Legislative Council of the New South Wales Parliament resolved to establish two Standing Committees, the Standing Committee on Social Issues and the Standing Committee on State Development. After the 1995 elections, a third Committee, the Standing Committee on Law and Justice, was established as well.

The Standing Committee on Privilege and Ethics, which does not have a Secretariat, was also reconstituted by resolution.

The functions of the State Development Committee, as set out in the Resolutions of the Legislative Council, are to inquire into, consider and report to the Council on:

- options for future policy directions and emerging issues to ensure that opportunities for sound growth and wise development for the benefit of the people in all areas of New South Wales are pursued;
- any proposal, matter or thing concerned with economics and finances, resources and energy, transportation, tourism, public administration, local government, the Olympics, primary industry, industrial and technological developments and environmental issues in New South Wales;
- employment practices, issues and conditions; and
- any proposal, matter or thing concerned with the problems or disadvantages uniquely or predominantly experienced in country areas, including the viability of cities and towns in those areas.



## **OPERATION OF THE COMMITTEE**

Matters for inquiry may be referred to the Committee by:

- resolution of the Legislative Council
- a Minister of the Crown
- way of relevant annual reports and petitions.

The Committee reports to the Legislative Council. The Committee's reports may include draft Bills designed to give effect to the report's recommendations. The Committee may publish papers and evidence taken in public, as it considers appropriate. In that connection the Committee may prepare and distribute discussion papers as aids to its inquiries.

Committee reports must be laid before the Legislative Council within ten days of their being adopted by the Committee. The reports are given precedence for debate during General Business.

The Leader of the Government in the Legislative Council is required to respond within six months to any recommendations for Government action that have been set out in Standing Committee reports.

In terms of the Legislative Council resolution establishing the Committee, the Committee may:

- summon witnesses
- make inspections
- call upon the services of government organisations and their staff, with the consent of the appropriate Minister

- accept written submissions concerning inquiries from any person or organisation
- conduct public hearings
- meet and make joint reports with other Committees of the legislatures of the Commonwealth and the States.

## PUBLICATIONS BY THE STATE DEVELOPMENT COMMITTEE

TYPE	DATE	TITLE
Discussion Paper 1	May1989	Public Sector Tendering & Contracting in New South Wales: A Survey
REPORT 1	August 1989	Public Sector Tendering & Contracting in New South Wales: Supply of Goods and Services
REPORT 2	October1989	Public Sector Tendering & Contracting in New South Wales: Local Government Tendering & Contracting
Discussion Paper 2	November1989	Coastal Development in New South Wales: Public Concerns & Government Processes
Discussion Paper 3	June 1990	Public Sector Tendering & Contracting in New South Wales: Capital Works Tendering & Contracting : Management Options
REPORT 3	April 1991	Public Sector Tendering & Contracting in New South Wales: Capital Works Tendering & Contracting: Volume A
REPORT4	September1991	Coastal Planning & Management in New South Wales: A Framework for the Future: Volume I
Supplement to 4	September 1991	An Alternative Dispute Resolution Primer
REPORT 5	December 1991	Public Sector Tendering & Contracting in New South Wales: Capital Works Tendering & Contracting: Volume B

REPORT 6	December 1991	Payroll Tax Concessions for Country Industries: Volume I
REPORT 7	June 1992	Public Sector Tendering & Contracting in New South Wales: Supply of Goods and Services: Follow Up Report
REPORT 8	October 1992	Coastal Planning & Management in New South Wales: the Process for the Future: Volume II
REPORT 9	April 1993	Public Sector Tendering & Contracting in New South Wales: Local Government Tendering & Contracting: Follow Up Report
Discussion Paper 4	August 1993	Regional Business Development in New South Wales: Trends, Policies and Issues
REPORT 10	May 1994	Regional Business Development in New South Wales: Achieving Sustainable Growth: Principles for Setting Policy, Volume I
REPORT 11	November 1994	Regional Business Development in New South Wales: Achieving Sustainable Growth: Initiatives for Setting Policy, Volume II
REPORT 12	August 1996	Rationales for Closing the Veterinary Laboratories At Armidale and Wagga Wagga and the Rydalmere Biological and Chemical Research Institute
REPORT 13	October 1996	Factors Influencing the Relocation Of Regional Headquarters of Australian And Overseas Corporations to New South Wales
REPORT 14	April 1997	Interim Report on The Fisheries Management Amendment (Advisory Bodies)

Act 1996

REPORT 15

April 1997

Waste Minimisation  
And Management

## RECOMMENDATIONS

### RECOMMENDATION 1

That subsection 229(1) of the Advisory Bodies Act be omitted and replaced with:

- 229(1) The Minister shall, subject to and in accordance with the regulations, establish the following Advisory Councils:
- (a) Advisory Council on Commercial Fishing;
  - (b) Advisory Council on Recreational Fishing;
  - (c) Advisory Council on Aquaculture;
  - (d) Advisory Council on Fisheries Conservation; and
  - (e) Advisory Council on Fisheries Research.

### RECOMMENDATION 2

That the Fisheries Management Act (as amended) be amended as follows:

- [1] Section 4 Definitions

Insert the following:

“peak industry body” means such body (whether incorporated or otherwise) representative generally of persons engaged in the industry as is prescribed for the purposes of this definition;

- [2] Section 43 Consultation with industry

Omit “consult relevant commercial fishing industry bodies” wherever occurring.

Insert instead “consult the Advisory Council on Commercial Fishing and the peak commercial fishing industry representative body” ...

- [3] Section 58 Public and industry consultation  
Section 63 Fisheries reviews - new plan

Omit “and any other relevant commercial or recreational fishing industry bodies” from sections 58(2) and 63(3).  
Insert instead “, and relevant Advisory Councils” ...

- [4] Section 70 Special endorsements to take fish in share management fishery

Omit “, and with any other relevant commercial or recreational fishing industry bodies” from section 70(2).  
Insert instead “and relevant Advisory Councils” ...

- [5] Section 83 Composition and procedure of Panel

Omit “on the nomination of such relevant commercial fishing industry bodies as the Minister determines” from 83(1)(c).  
Insert instead “on the nomination of the Advisory Council on Commercial Fishing” ...

- [6] Section 111 Declaration of restricted fisheries

Omit “consult relevant commercial or recreational fishing industry bodies” from section 111(3).  
Insert instead “consult all relevant Advisory Councils” ...

### **RECOMMENDATION 3**

That draft Advisory Council Regulations 229D (Membership of Advisory Council on Commercial Fishing) and 229H (Membership of Advisory Council on Fisheries Conservation) be amended prior to gazettal as follows:

Omit “within the time required by the Minister” from regulations 229D(4) and 229H(3).

Insert instead “within 30 days of the request being made in writing by the Minister” ...

#### **RECOMMENDATION 4**

That the draft Advisory Council Regulation 229D(5) be omitted prior to gazettal and replaced with:

229D(5) The Minister shall appoint to the Advisory Council one of two persons nominated by each of the following groups:

- (a) Nature Conservation Council;
- (b) NSW Aboriginal Lands Council; and
- (c) Master Fish Merchants Association.

#### **RECOMMENDATION 5**

That draft Advisory Council Regulations 229E(1), 229F(1), 229G(1), and 229H(4) be amended prior to gazettal as follows:

Omit wherever it occurs “the Minister considers to have”.  
Insert instead “is/are<sup>1</sup> recognised as having” ...

#### **RECOMMENDATION 6**

That draft Advisory Council Regulations 229D(6), 229E(2), 229F(2), 229G(2)(b), and 229H(4) be amended prior to gazettal as follows:

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<sup>1</sup> Whichever applies.



The Minister shall, by advertisement published in a newspaper circulating throughout the State, call for expressions of interest in membership of the Advisory Council and take any nomination that is duly made into account.

#### **RECOMMENDATION 7**

That draft Advisory Council Regulation 229L (Allowances for members) be omitted prior to gazettal and replaced with:

A member is entitled to be paid such allowances as the Premier's Department determines in respect of Advisory Council members.

#### **RECOMMENDATION 8**

That draft Advisory Council Regulation 229M(2) be omitted prior to gazettal and replaced with:

The Minister may remove a member from office after consulting with the Advisory Council concerned and not less than 30 days after giving notice in writing to the Advisory Council concerned.

#### **RECOMMENDATION 9**

That draft Advisory Council Regulation 229O(1) be amended prior to gazettal as follows:

Omit "no pecuniary interest".

Insert instead "no direct or indirect pecuniary interest"...

## **RECOMMENDATION 10**

That draft Advisory Council Regulation 229P (General procedure for calling and holding meetings of advisory council) be omitted prior to gazettal and replaced with:

1. The procedure for the calling and holding of meetings of an Advisory Council is to be determined by each Advisory Council at their first meeting.
2. An Advisory Council is to hold at least 4 meetings each calender year.
3. The date, time, and location of the first meeting of an Advisory Council is to set by the Minister.

## **RECOMMENDATION 11**

That draft Advisory Council Regulation 229Q (Quorum) be amended prior to gazettal as follows:

Omit "for the time being".  
Insert "as constituted".

## **RECOMMENDATION 12**

That subsection 230(1) of the Advisory Bodies Act be amended to read as follows:

- 230(1) The Director shall, subject to and in accordance with the regulations, establish a Management Advisory Committee for a share management fishery or restricted fishery, or any such proposed fishery.

## **RECOMMENDATION 13**

That the provision for elected industry representatives to the Management Advisory Committees be kept under review in any future amendment to the Fisheries Management Act.

#### **RECOMMENDATION 14**

That NSW Fisheries replace the current network of Regional Industry Conveners, Habitat Monitors, and Regional Liaison Committees for Recreational Fishing with Zonal Advisory Committees as outlined below.

#### **RECOMMENDATION 15**

That the *Fisheries Management Act* be amended to provide for the establishment of eight Zonal Advisory Committees, with one in each of the seven NSW Fisheries administrative fishing zones and one for inland New South Wales. The purpose of these Committees would be to advise NSW Fisheries on local issues relating to fisheries management, habitat, research, and enforcement, and to provide fisheries-related information and education to the public. The Terms of Reference for these Committees should be:

- a. to provide a forum for discussion of matters relevant to the management of regional fisheries and fish habitat;
- b. to enable a two-way flow of information between stakeholders in local fisheries issues;
- c. to provide a mechanism for the communication of management plans and to assist in the process of their development;
- d. to undertake an education and information role to increase public awareness on fisheries management; and
- e. to facilitate improved relations between fisheries stakeholders, NSW Fisheries, and other relevant bodies on fisheries issues at a regional level.

Zonal Advisory Committees should receive administrative support from NSW Fisheries, with members appointed by the Director of Fisheries on a part-time basis following a call for expressions of interest advertised in a newspaper

circulating throughout each zone. Every such Committee should be required to meet at least twice every calendar year, with provision for more meetings as required.

Each Zonal Advisory Committee should comprise at least six members, including at least one person recognised to have expertise in one or more of the following categories (so that each Committee collectively has the full range of expertise listed):

- habitat conservation;
- commercial fishing;
- recreational fishing; and
- aboriginal culture.

In addition, each Zonal Advisory Committee should have at least one representative of the wider local community and be Chaired by an officer of NSW Fisheries nominated by the Director.

#### **RECOMMENDATION 16**

That the Fishing Industry Research Advisory Council be wound up and the Advisory Council on Fisheries Research, as reconstituted below, act as the sole Fisheries Research Advisory Body in NSW.

#### **RECOMMENDATION 17**

That the Chairman of the Advisory Council on Fisheries Research be an independent person, with no direct or indirect pecuniary or other interest in fisheries.

#### **RECOMMENDATION 18**

That draft Advisory Council Regulation 229F(1) be deleted prior to gazettal and replaced with:

The persons appointed as members of the Advisory Council on Fisheries Research shall include the following:

- (a) an independent Chair (in accordance with recommendation 17);
- (b) the Director of Fisheries or his nominee;
- (c) 1 person who is recognised as having expertise in fisheries economics;
- (d) 1 person who is recognised as having expertise in commercial fishing;
- (e) 1 person who is recognised as having expertise in recreational fishing;
- (f) 1 person who is recognised as having expertise in aquaculture;
- (g) 1 person who is recognised as having expertise in fisheries habitat and conservation;
- (h) 2 persons who are nominated by the NSW Seafood Industry Council.

## 1 BACKGROUND

### 1.1 A History of NSW Advisory Bodies

Until relatively recently, there has been a general absence of interest groups representing commercial fishers. The widespread distribution and independent nature of the commercial fishing industry have been cited as reasons contributing to this general lack of organised representation. To facilitate liaison and consultation between itself and commercial fishers, the Commonwealth Government established fishermen's cooperatives in all States during the 1940s. Since this time, the Commonwealth Department of Primary Industry has also promoted the establishment of a succession of commercial fishing representative bodies, including the present Australian Seafood Industry Council.

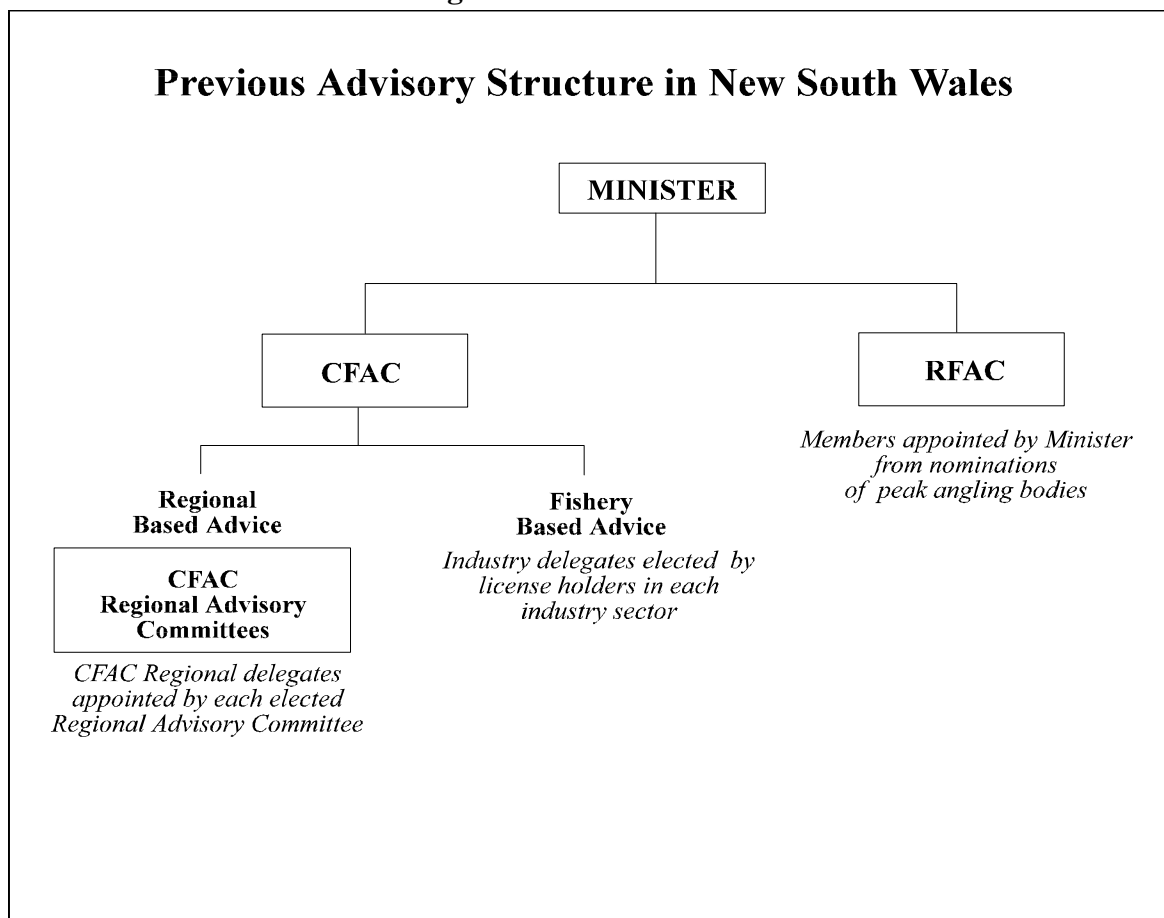
The trend away from smaller, regionally based, multi-method commercial fishing operations to larger species or method-specific fisheries has resulted in the formation of industry-specific associations on an ad hoc basis to represent and lobby on behalf of their particular industry. The South East Trawl Fishing Industry Association is an example of such groups. Increasing pressure on the State's fisheries and structural changes in the commercial industry have coincided with a growing insistence from the recreational fishing sector and the community in general to have a greater role in fisheries management.

Since the turn of the century a variety of interest groups have been formed to represent the interests of recreational fishers and to provide a mechanism for consultation between these groups and government. Angling clubs and trout acclimatisation societies are the earliest examples of these.

In recognition of the need for a formal advisory structure which could provide advice and consultation to assist in the sustainable management of New South Wales' fisheries, the Commercial Fishing Advisory Council (CFAC) and the Recreational Fishing Advisory Council (RFAC) were created by the *Fisheries and Oyster Farms Amendment Act (1989)* to provide a means of communication and advice to the Minister from recreational and commercial fishers.

The Commercial Fishing Advisory Council was supported by Regional Advisory Committees (RACs). The function of Regional Advisory Committees was to provide a forum for the discussion of regional fisheries issues and appoint representatives to the Commercial Fishing Advisory Council.

**Figure 1 - Old Structure**



In January 1996 a *Review of Fisheries Consultation in NSW* was completed by the Director of Fisheries, Dr John Glaister. The report claimed that the primary problem with the existing advisory structure was that there was a blurring of advisory and representative roles. For example, the *Review* found that the Commercial Fishing Advisory Council had “been unable to discern the difference

between the role of an adviser and that of a partisan advocate.”<sup>1</sup> The *Review* was also critical of the Recreational Fishing Advisory Council for not being representative of the recreational community.

The Review recommended in part:<sup>2</sup>

- 1 Advisory and representative functions are different and separate structures should be established for each. Advisory bodies should be expert and membership determined on the basis of experience and knowledge.
- 2 Industry interest groups, established to represent fishers and defend their interests, should be independent of government.
- 3 Consultation with fishers on the management of commercial fisheries should be the function of the fishery-specific Management Advisory Committees (in the case of share management fisheries) and similar committees to be established for restricted fisheries.
- 4 The Minister should be advised by the New South Wales Department of Fisheries (NSWF) and four specialised advisory councils, these councils to cover commercial fishing, recreational fishing, aquaculture and fisheries research.
- 5 The new Advisory Council on Commercial Fishing should assume the advisory responsibility for all matters relating to commercial fishing, other than those fishery specific management issues dealt with by Management Advisory Committees, and similar committees should be established for restricted fisheries.
- 6 The Recreational Fisheries Advisory Committee should be modified to ensure that it is also an effective adviser to the Minister. To recognise its revised form it should be known as the Advisory Council

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<sup>1</sup> Glaister, J. *Review of Fisheries Consultation in NSW*, NSW Fisheries, January 1996, p. 18.

<sup>2</sup> Glaister, J. *Review of Fisheries Consultation in NSW*, NSW Fisheries, January 1996, pp. 34-35.

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on Recreational Fishing and be composed of experts on specified fields drawn from the organisations now constituting the Recreational Fishing Advisory Council.

- 7 There should be an Advisory Council on Aquaculture in recognition of the particular nature of this growing industry. Its format and membership needs further study.
- 8 There should be an Advisory Council on Fisheries Research (ACFR) in recognition of the vital role that scientific and other analytical studies play in the management of fisheries resources. This Council should be skills based and include members with both research and industry experience. The Advisory Council on Fisheries Research should also fulfil the requirements of the Commonwealth Fishing Industry Research and Development Corporation in New South Wales now carried out by the Fisheries Industry Research Advisory Council. The Total Allowable Catch Committee should be authorised to advise the Advisory Council on Fisheries Research.
- 10 The New South Wales Seafood Industry Council (NSWSIC) should expand its membership to cover all components of the industry, in particular fishermen's cooperatives, seafood importers and seafood restaurateurs. Its commercial fishing sector should be the representative body for that community and defend and promote its interests.

The Minister accepted Dr Glaister's Report and the *Fisheries Management Amendment (Advisory Bodies) Act 1996* was enacted in December 1996. This Act abolished the Commercial Fishing Advisory Council and the Recreational Fishing Advisory Council and provided for the establishment of Ministerial Advisory Councils and Management Advisory Committees in accordance with the associated Regulations.

A degree of industry unrest, particularly in the commercial sector arising from the abolition of the Commercial Fishing Advisory Council, led to the reference from the Legislative Council for this inquiry into the newly created advisory bodies structure.

## 1.2 The Role of Advisory Bodies

### 1.2.1 Ministerial Responsibility to Consult Advisory Bodies

S. 58 of the *Fisheries Management Act* (as amended) sets out the responsibilities of the Minister for Fisheries regarding public and industry consultation as follows:

- 58(1) The Minister is required to give the public an opportunity to make submissions on any proposed management plan for a fishery (or proposed new plan) and to take any submission that is duly made into account.
- 58(2) The Minister is required to consult the Management Advisory Committee for a fishery, and any other relevant commercial or recreational fishing industry bodies, about any proposed management plan for a fishery (or proposed new plan).

The Standing Committee believes that it is the responsibility of the Minister to ensure that all user groups have an opportunity to provide input into the management of the resource, while it is the role of advisory bodies generally to provide objective advice based on expert opinion in order for government to develop and enact policies.

The quality of advice given to the Minister will be reliant on:

- (a) a clear understanding of the role of advisory bodies; and
- (b) the ability of advisory bodies to effectively consult at all levels.

### 1.2.2 Advisory versus Representative Role of Advisory Bodies

The 1996 *Review of Fisheries Consultation* emphasised the importance of defining the difference between advisory and consultative groups stating:

Reasons for the failure of Australian fishing industry groups to meet expectations can be found in a tendency to believe that one group can serve both purposes.<sup>3</sup>

Clearly defining the role of advisory and consultative groups will determine the most appropriate makeup of the committee, that is, experts versus representatives. This would help negate any potential feeling amongst members of the community that they are being denied adequate representation.

Dr John Glaister, Director, NSW Fisheries, reiterated this view to the Standing Committee:

One thing that has not been addressed is that in the consultation review there was an understanding that the different roles needed to be separated. The advisory role, which is embodied in the advisory councils and the management advisory committees, has been established or is in the process of being established. I am confident that will work. As to the other role, that of industry advocate of a peak body or a trade union, whatever description you would like, in any other primary industry, such as grain growers or meat producers, the body is established by the members. It is not a compulsory unionism with a collection of fees by Government departments. It is a body set up by the producers to act as an advocate on their behalf.

The Department has attempted to facilitate that process. The Minister and the Department have deliberately kept at arm's length from the process of establishing a body which will respond to the industry's wishes. The attempt that we

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<sup>3</sup> Glaister, J. *Review of Fisheries Consultation in NSW*, NSW Fisheries, January 1996, p.40

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have made is the Transitional Commercial Fisheries Council and that process has reached the stage where a constitution has been drafted and circulated to the industry for comment. A number of industry bodies, advocates if you like, have sprung up. ... It is inappropriate for the Department to be involved in that process, save for facilitating that to happen.<sup>4</sup>

Representatives of the commercial fishing industry offered differing views on the practicality of separating out the objective advisory and representative functions of advisory bodies. Mr William Baker, Chairman of the Interim Advisory Council on Commercial Fishing, supported the separation of functions:

I think the first thing I would need to get out of the road is the fact of the industry's perspective on advisory and/or lobby. They are two completely different things, as I see it. One of our major stumbling blocks all the way along has been the advisory capacity of a committee as against the lobby capacity of a committee.<sup>5</sup>

Mr Oleh Harasymiw, Chairman, Four Ports Management Committee and former member of the now abolished Commercial Fishing Advisory Council, expressed the opposite view.

Referring to the *Review of Fisheries Consultation*, Mr Harasymiw stated:

[Dr Glaister] felt—and this is the Minister's report by that stage—that the representation and advisory roles should be split. This, to me, is unrealistic to the point of really being laughable. If you accepted that there should be such a division of powers, if you want to call it, then every parliamentary member who, upon election, becomes a representative should technically be disqualified from giving the Government any advice. That includes Opposition people who may offer advice and Independents who may

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<sup>4</sup> Evidence of Dr Glaister, 13 February 1997, pp. 78-79.

<sup>5</sup> Evidence of Mr Baker, 13 February 1997, p. 40.

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wish to offer advice. So, in the parliamentary sphere, representation and advisory roles are together, and it is absolutely incredible that it should not be so in any representative organisation.<sup>6</sup>

The Standing Committee considers that advisory bodies must provide within their statutory framework requirements which ensure that appointments to such bodies are made at "arm's length" from the political forces which impact on the decision-making of government. The Standing Committee notes that the Commercial Fishing Advisory Council was funded and elected by commercial fishers and suggests that it is inevitable that the Council may act in a partisan way. It is the view of the Standing Committee that, while it is desirable to have within the industry separate bodies that have a clearly identified role to advise, consult and lobby on behalf of each sector, it is inevitable that to some degree there will be a blurring of these roles in that some members of these bodies may appear to be acting in a way which is not totally divorced from their commercial interests.

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<sup>6</sup> Evidence of Mr Harasymiw, 13 February 1997, p. 44.

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## INTRODUCTION

On 5 December 1996 the *Fisheries Management Amendment (Advisory Bodies) Bill* was passed by Parliament and on 20 December 1996 the *Fisheries Management Amendment (Advisory Bodies) Act* was proclaimed. This Act, in concert with the associated regulations, significantly altered the fisheries advisory body structure in New South Wales by abolishing both the Commercial Fishing Advisory Council and the Recreational Fishing Advisory Council and creating a system of four new Ministerial advisory councils and seven fishery-based management advisory committees. As a result of concerns raised in relation to the effect the *Advisory Bodies Act* would have on industry consultation, the Legislative Council resolved on 5 December 1996 that the Standing Committee on State Development inquire into and report on the *Advisory Bodies Act*. The Terms of Reference for the Advisory Bodies Inquiry are set out at the front of this report. This reference was in addition to the wide ranging Fisheries Management Inquiry previously referred to the Standing Committee.

The Committee began its inquiry in January 1997. Public submissions in relation to the Terms of Reference were sought by newspaper advertisement. 29 written submissions were received by the Committee. Public hearings exclusively in relation to this inquiry were held over two consecutive days beginning 13 February 1997. 16 witnesses appeared before the Committee on these days. Further evidence in relation to this inquiry was received during 13 public hearings held primarily for the Fisheries Management and Resource Allocation inquiry between January and May 1997.

The Committee found that, to properly consider the reference, it would require knowledge of the content of at least the draft Regulations associated with the *Advisory Bodies Act*. Neither the *Advisory Council Regulations* or the *Management Advisory Committee Regulations* had been gazetted or released for public comment by 13 February 1997. As a result, the Chairman corresponded on numerous occasions with the Minister to request information in relation to the likely content of the regulations. Draft *MAC Regulations* were received by the Committee in March, but preliminary draft *Advisory Council Regulations* were not received until 8 April 1997. The Committee found it could not complete its inquiry by the original reporting date of 11 April 1997 due to

## Introduction

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the prolonged delay in obtaining these Regulations, and tabled its *Interim Report on the Fisheries Management Amendment (Advisory Bodies) Act 1996* in the Legislative Council on 10 April 1997. The House granted a request for an extension of the reporting date to 19 June 1997.

On 12 June 1997 the Committee received an expanded version of the draft *Advisory Council Regulations*. This necessitated another request for a short extension of the reporting date to 4 July 1997.

## 2 THE MOVE TO THE NEW ADVISORY BODY SYSTEM

As stated in Chapter One, the precursors to the proposed Advisory Councils were the Commercial Fishing Advisory Council and the Recreational Fishing Advisory Council. This chapter outlines the criticisms expressed in relation to the abolition of these Councils and the move to the new advisory body structure, and includes the Departmental rebuttal of these criticisms.

### 2.1 Perceived Problems with Previous Advisory Bodies

#### 2.1.1 The Commercial Fishing Advisory Council

The Standing Committee received considerable evidence in relation to the abolition of the Commercial Fishing Advisory Council. NSW Fisheries claimed that the Council's structure was outdated and that the Council itself had lost the confidence of the industry.

The Director of Fisheries, Dr Glaister, referring to his 1996 *Review of Fisheries Consultation in NSW*, told the Standing Committee:

In that review I described the consultation processes in place at the time and, in particular, the shortfalls of the Commercial Fishing Advisory Council. CFAC was designed and established for a fisheries environment of the past. Whilst many of those involved in CFAC contributed much, the overall performance of the organisation was unsatisfactory. CFAC lost the confidence of those who paid for its activities and failed to meet its obligations to advise the Minister. The Council became unable to distinguish between its statutory role of adviser to the Minister and that of an industry lobbyist and, in part, as an advocate. Comments by the Auditor-General suggest that



the Council may not have operated in a cost-effective manner.<sup>1</sup>

Dr Glaister later reiterated the conflicting roles that the Commercial Fishing Advisory Council was attempting to play:

The whole problem identified with the existing structure is that the CFAC was acting both as an advisory body to the Minister and in a partisan political way.

... The problem with the way that CFAC had acted in the management of fisheries was such that, in terms of advice, vested interests quite often got in the way of sensible outcomes.<sup>2</sup>

Mr Harasymiw admitted that there were problems with the structure of the Commercial Fishing Advisory Council but stressed that the major problem was that a lack of funding prevented the Council's Regional Advisory Committees from performing effectively. Mr Harasymiw claimed that the Commercial Fishing Advisory Council had recognised this and was preparing to address the problem when it was abolished.<sup>3</sup>

In response to criticisms that the new advisory body system did not properly represent the commercial industry, Mr Stephen Dunn, Executive Officer, Policy Unit, NSW Fisheries, stated:

The Commercial Fishing Advisory Council was elected through the Electoral Commission [State Electoral Office]. The Council itself recognised that they were going to go through a fairly significant change in the not too distant future ...

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<sup>1</sup> Evidence of Dr Glaister, 13 February 1997, pp. 51-52.

<sup>2</sup> Evidence of Dr Glaister, 13 February 1997, p. 77.

<sup>3</sup> Evidence of Mr Harasymiw, 13 February 1997, p. 48.

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... This was a move away from generic fishery management consultation to a process which would rely on fishery specific consultation as we moved to a process of restricted and shared management fisheries. That means that the importance of having a central council—however that council was composed—would diminish, and that the responsibility would pass a lot more back on to Management Advisory Committees.<sup>4</sup>

A number of other witnesses criticised the abolition of the Commercial Fishing Advisory Council, claiming that the move to the Advisory Council on Commercial Fishing would seriously undermine the commercial fishing industry's representation and feeling of ownership over the management process. For example, Mr Snape stated:

For industry to have confidence in management we must have confidence in our elected representatives and in the structures, that they will be representing commercial fishermen's interests.<sup>5</sup>

One of the other criticisms concerning the abolition of the Commercial Fishing Advisory Council was the way in which the collection of industry levies to support the Council was stopped and the Council's assets allegedly seized by the Department. Dr Glaister was questioned in relation to the withdrawal of funding to the Council before it was legally abolished. In reply Dr Glaister stated that "the Minister withdrew the direction to collect funds to support it [the Council]" in early 1996. Following that, the Department assumed the financial commitments of CFAC until the legislation abolishing the Council was passed in December 1996.<sup>6</sup>

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<sup>4</sup> Evidence of Mr Dunn, 13 February 1997, pp. 65-66.

<sup>5</sup> Evidence of Mr Snape, 14 February 1997, pp. 12-13. See also evidence of Mr Harasymiw, 13 February 1997, p. 44.

<sup>6</sup> Evidence of Dr Glaister, 13 February 1997, pp. 73-74.

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Dr Glaister undertook to provide the Standing Committee with written information in relation these events but the resultant letter from Dr Glaister shed no further light on the matter.<sup>7</sup>

### 2.1.2 The Recreational Fishing Advisory Council

The move from the Recreational Fishing Advisory Council to the Advisory Council on Recreational Fishing appeared to be far less controversial than the changes to the commercial advisory bodies. The Standing Committee believes that this was largely due to the fact that, apart from the name change, little else changed in the recreational sector, whereas a significant number of decisions made by the Minister and NSW Fisheries impacted on the commercial sector in somewhat controversial circumstances.

Referring to his *Review of Fisheries Consultation in NSW*, Dr Glaister highlighted the relatively narrow advice emanating from the Recreational Fishing Advisory Council and the need to expand its membership as a means of ensuring that the views of the wider community were represented:

The shortfalls of the Recreational Fishing Advisory Council were also discussed. In particular, the structure of RFAC did not match the role of a body to advise the Minister and to act as a liaison body between recreational and commercial fishers. The structure was at risk of expressing the views of the particular bodies comprising the membership rather than the views of the angling public in general. Also, much of the agenda of RFAC concerned attempts to limit commercial fishing rather than dealing with angling issues. RFAC's principal concern appeared to be to get a bigger share of access to fish resources at the

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<sup>7</sup> A letter from Dr John Glaister, Director of Fisheries, to the Chairman, the Hon Patricia Staunton, MLC, dated 15 May 1997, stated only: "The regulation requiring collection of the CFAC levy was revoked and a certificate that the regulation could be legally made was signed by Mr Denis Murphy, Parliamentary Counsel."

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expense of the commercial sector, rather than dealing with the full range of matters of interest to anglers.<sup>8</sup>

Mr Bruce Schumacher, Chairman of the Interim Advisory Council on Recreational Fishing, said that he believed there was little difference between the old body and its proposed successor, other than a change in the appointment process that would allow the recreational fishing industry and non-aligned fishermen to nominate to be appointed by the Minister.<sup>9</sup>

### 2.1.3 Fisheries Research Advisory Bodies

The bulk of fisheries research in Australia is funded through the Commonwealth's Fisheries Research and Development Corporation (FRDC). To advise the Corporation on research priorities, each state has a designated Fisheries Research Advisory Body (FRAB).

The Fishing Industry Research Advisory Committee (FIRAC) was formed in 1993 specifically to act as NSW Fisheries' Research Advisory Body. The Committee, which was set up on a non-statutory basis as a sub-committee of the NSW Seafood Industry Council (NSWSIC), has a membership consisting of:

- an independent Chair - appointed by the NSW Seafood Industry Council;
- government members (2) - appointed by NSW Fisheries;
- fishing industry members (5) - appointed by the NSW Seafood Industry Council;
- independent members (3) - appointed by the NSW Seafood Industry Council; and
- observer members (3) - appointed by the NSW Seafood Industry Council.

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<sup>8</sup> Evidence of Dr Glaister, 13 February 1997, p. 52.

<sup>9</sup> Evidence of Mr Schumacher, 14 February 1997, pp. 26-27.

The *1996 Review on Fisheries Consultation in NSW* stated that the Fishing Industry Research Advisory Committee's role as the NSW Fisheries Research Advisory Body was untenable because "FIRAC is effectively setting the research agenda for NSW, almost in isolation from the NSW Minister for Fisheries."<sup>10</sup>

The *Advisory Body Act*, in conjunction with the draft *Advisory Council Regulations*, provides for the creation of the Advisory Council on Fisheries Research (ACFR). The Minister has withdrawn NSW Government recognition of the Fishing Industry Research Advisory Committee and determined that the Advisory Council on Fisheries Research will act as the NSW Fisheries Research Advisory Body.

The *Review of Fisheries Consultation in NSW* provided the following rationale for nominating the Advisory Council on Fisheries Research as the NSW Fisheries Research Advisory Body:

- under the Fishing Industry Research Advisory Committee, research funding was effectively being determined in isolation from the Minister and the research priorities established by the Fishing Industry Research Advisory Committee were not matching management needs;
- the Fishing Industry Research Advisory Committee structure did not have any process by which Management Advisory Committees could influence research priorities;
- the structure of the Advisory Council on Fisheries Research, composed of scientists and experts, is more responsive to strategic long term plans than the industry-based representation of the Fishing Industry Research Advisory Committee.

The membership of the Advisory Council on Fisheries Research is to consist of:

- 1 person who has expertise in fisheries economics;

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<sup>10</sup> Glaister, J. *Review of Fisheries Consultation in NSW*, NSW Fisheries, January 1996, p. 29.

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- 2 persons who have an interest in commercial fishing;
- 2 persons who have an interest in recreational fishing;
- 1 person who has an interest in aquaculture;
- 2 persons who have an interest in fisheries habitat and conservation;
- 1 person who has an interest in seafood marketing; and
- 2 persons representing NSW Fisheries.

The Commonwealth's Fisheries Research and Development Corporation has recognised the Advisory Council on Fisheries Research while continuing to recognise the Fishing Industry Research Advisory Committee, but has called for a speedy resolution to the duplication and confusion arising from NSW having two Fisheries Research Advisory Bodies.

The Standing Committee heard divergent views on which body would best serve NSW as its Fisheries Research Advisory Body.

The NSW Seafood Industry Council submission claims that the Minister had been critical of the Fisheries Industry Research Advisory Committee, quoting the Minister as saying:

... FIRAC did not adequately represent the views of industry or Government and its membership lacked the expertise to provide a balanced assessment of research priorities . . .<sup>11</sup>

The Chairman of the NSW Seafood Industry Council, Mr Richard Roberts, rejected this criticism, suggesting another reason for the Minister's and the Department's attitude towards the Fisheries Industry Research Advisory Committee:

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<sup>11</sup> Submission 26, NSW Seafood Industry Council, p. 4.

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The Hon I Cohen asked why the disagreement occurred. I can only think that it is to enable Dr Glaister or the Department to ensure that most of the money is used to fund projects within New South Wales Fisheries. I have commented before that I believe Fisheries look on some of these external funding sources as maintaining full employment, not increasing the commercial viability of the habitat or whatever the issue is, which the industry believes are the key issues.<sup>12</sup>

Mr Roberts provided the Standing Committee with a specific example where the Department had missed out on some oyster research funding and, as a result, had resolved to bypass the Fisheries Industry Research Advisory Committee system. Mr Roberts also claimed that the Department was attempting to undermine the Fisheries Industry Research Advisory Committee by negotiating a memorandum of understanding between itself and the FRDC, using levy funds collected by the Department as bargaining chips.<sup>13</sup>

Concerns were also raised regarding the Ministerial appointments to the Advisory Council for Fisheries Research and the Director of Fisheries' chairmanship of the Advisory Council for Fisheries Research. Mr Snape suggested that Ministerial appointments to a body that has some power over research funding may allow the Department to influence research application outcomes in its own favour:

The corruption that we were concerned about is that we have universities and other groups seeking research funds. So long as this research advisory committee had ministerial appointees on it, we were concerned that they would not look at other research organisations, universities and the like, in the same light as they would look at projects coming from Fisheries. There is only a certain amount of research dollars available and we were worried that Fisheries would get the lion's share, when there could be

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<sup>12</sup> Evidence of Mr Roberts, 13 February 1997, p. 9.

<sup>13</sup> Evidence of Mr Roberts, 13 February 1997, p. 9.

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an equally good project coming from a university. We thought that this had the potential of being corrupt.<sup>14</sup>

In response to suggestions that the Chairmanship by the Director of Fisheries of the Advisory Council on Fisheries Research may create any actual or perceived conflicts of interest, Dr Glaister replied:

No, I do not see that as inconsistent. Some of the similar bodies that are set up in other States are chaired by departmental people and some have independent chairs. The chairman of the Victorian equivalent, for example, is the director of research. The reason is that the fisheries departments are generally the major providers of fisheries research. Some States have opted for independent chairs; others have stayed with departmental people. It is simply a question of what has happened in particular areas, but I do not see an inconsistency.<sup>15</sup>

When pressed by the Chair on whether external observers or participants might perceive the Advisory Council on Fisheries Research as not being objective and impartial if the Director of Fisheries were also the Chairman of the Council, Dr Glaister stated "You may be right."<sup>16</sup>

However, Dr Peter Young, former Chief, Division of Fisheries, CSIRO and inaugural Australian Fisheries Management Authority Board member, was comfortable with the Director of Fisheries chairing the Advisory Council for Fisheries Research.

Dr Young stated:

I do not see any conflict of interest whatsoever. In fact, I do not really have a problem there. ... I think it is critical that the managers have a deep and intimate involvement

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<sup>14</sup> Evidence of Mr Snape, 14 February 1997, p. 19.

<sup>15</sup> Evidence of Dr Glaister, 13 February 1997, p. 80.

<sup>16</sup> Evidence of Dr Glaister, 13 February 1997, p. 80.



with the research. I could go on for hours, but for the six years that I was chief of the CSIRO Division of Fisheries my aim was to make the research relevant to the needs of the fishing industry, and the managers who are managing that industry are the principal users of the research. If you exclude them from those areas of advice the researcher is always under the risk of following up what he finds personally interesting which is perhaps irrelevant to the industry and the needs of the manager.<sup>17</sup>

Dr Young later qualified this by adding:

In as much as it may influence the thinking of FRDC when it makes allocations in support or otherwise of proposals, I can see that there could potentially be a conflict of interest. Nevertheless—and this comes up time and time again—if you exclude everybody with an interest in the matters that are under hand you effectively exclude everybody who knows anything about the subject matter. Those conflict of interest issues must be dealt with on a one by one basis.<sup>18</sup>

The Standing Committee believes that the current impasse in relation to research advisory bodies in NSW should not continue as the existence of two recognised NSW Fisheries Research Advisory Bodies can only result in the duplication of effort and resources. The Standing Committee considers that the present problems are due in part to strongly held personal views and an apparent inability on both sides to compromise. The Standing Committee supports the view that the State's Fisheries Research Advisory Body should have a formal statutory basis and believes it would be in the best interests of fisheries research in NSW if the draft *Advisory Council Regulations* were altered prior to their gazettal to reflect the recommendations contained in Chapter Six of this report.

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<sup>17</sup> Evidence of Dr Young, 14 February 1997, p. 46.

<sup>18</sup> Evidence of Dr Young, 14 February 1997, p. 47.

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## 2.2 Perceived Problems with the New Advisory Body Structure

The Standing Committee also heard a number of general criticisms in relation to the new advisory body system. These centred around the perception that there would be a lack of opportunity for stakeholder input into the fisheries management following the introduction of the new advisory bodies system.

The majority of such criticisms came from members and representatives of the commercial fishing industry. For example, Mr Ronald Snape, former Chairman, Commercial Fishing Advisory Council, was critical of the number of advisory bodies being set up, and stated:

There is nothing incumbent upon these new advisory committees to have port meetings or to disseminate information to the fishermen, or, most importantly, to have the fishermen's will taken up with management. There is absolutely no way of fishermen getting their ideas through to management. At present it is a top-heavy bureaucracy, instead of fishermen's ideas coming in.<sup>19</sup>

This view was supported by Mr John Conner, representing the Nature Conservation Council, who suggested that a single advisory body encompassing all interests would allow better advice to flow to fisheries managers.

Mr Conner stated:

The Nature Conservation Council is concerned that a rather fragmented and cumbersome management structure for advice has been established by this Act. The Council would prefer that there be a more inclusive whole group, which brings the interests together, and that from that group a number of subgroups could be established.<sup>20</sup>

Members of the commercial fishing industry also criticised the new advisory body system for not having better provision for regional input, suggesting that

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<sup>19</sup> Evidence of Mr Snape, 14 February 1997, p. 16.

<sup>20</sup> Evidence of Mr Conner, 13 February 1997, p. 21.

fishing activities are diverse and, without effective regional consultation, management decisions may not reflect local conditions or methods used<sup>21</sup>. When these concerns were raised with Mr William Baker, Chair of the Interim Advisory Council on Commercial Fishing, Mr Baker agreed that the lack of regional input was a shortcoming of the new advisory body system, stating:

I am aware of the criticism. I cannot see how it will represent regional interests because there is no structure that allows it to represent regional interests.<sup>22</sup>

Mr Baker added:

I believe the committee [ACCF] needs to come from a regionalised basis. It does not worry me if it is three regions or ten regions. It needs to come from some regionalised body which would then, to my way of thinking, appoint one of its personnel to move up to some State body to advise the Minister. I feel it is the only way to get some grass roots participation going through to an advisory body to the Minister.

... I think it is of paramount importance that we get the information from the grass roots up. To that extent I think there should be some form of regional council.<sup>23</sup>

Mr Richard Roberts, President, Oyster Farmers Association of NSW and Chairman, NSW Seafood Industry Council, stressed the need for industry "to have some form of ownership in the decision-making process as to what is to occur in whatever committee or council has been formed."<sup>24</sup>

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<sup>21</sup> See evidence of Mr Harasymiw, 13 February 1997, p. 47 and Mr Snape, 14 February 1997, p. 22.

<sup>22</sup> Evidence of Mr Baker, 13 February 1997, p. 33.

<sup>23</sup> Evidence of Mr Baker, 13 February 1997, p. 40.

<sup>24</sup> Evidence of Mr Roberts, 13 February 1997, p. 3.

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Mr John Roach, President, Master Fish Merchants Association of NSW, claimed that industry confidence in the new advisory body system was at present very low, and stated:

The only way to regain that confidence is to set down ground rules, whether it be by setting up non-biased advisory committees to be part of the decision-making process or to give the participants in the industry, which is part of their everyday life, a say about their future so that they have confidence to go on with further investment and further participation.<sup>25</sup>

NSW Fisheries defended the new advisory body system and rejected suggestions that its consultation with stakeholders was deficient. With respect to consultation generally, Dr Glaister stated:

The Executive and staff of New South Wales Fisheries are totally committed to consultation.<sup>26</sup>

... I am not immediately aware of any case where the Department has failed to meet our statutory obligations. ... Our major external clients, which traditionally have been commercial fishermen, recreational fishermen and aquaculturalists, are the primary focus of this inquiry into consultation. As well, the Department is now developing and implementing strategies to actively consult with conservationists, indigenous fishers and the broader community.<sup>27</sup>

In relation to the need to move to a new advisory body system, Dr Glaister said:

It is extremely difficult, if not impossible, to consult with each and every user and stakeholder. As a result, the

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<sup>25</sup> Evidence of Mr Roach, 13 February 1997, pp. 4-5.

<sup>26</sup> Evidence of Dr Glaister, 13 February 1997, p. 50.

<sup>27</sup> Evidence of Dr Glaister, 13 February 1997, p. 51.

Minister and the Department have to rely on the formal and informal consultative structures and the advice of representatives of key industry and community groups. It is essential that these structures and processes be periodically reviewed to ensure that they are both effective and appropriate.<sup>28</sup>

Dr Glaister disagreed with the notion of having just one Advisory Council, as suggested by the Nature Conservation Council, explaining his opposition thus:

It relates back to an experience in Queensland, where I was working with another statutory authority, the Queensland Fisheries Management Authority. It had a single committee of about 26 people. There were enormous disruptions at every meeting. It was chaired by the Minister. It was spectacularly unsuccessful, and still is. What we need to do in New South Wales is go through a process in which commercial fishermen, recreational fishermen, aquaculturalists, and any other interest groups get to a stage of maturity where they are able to debate the issues and not go into partisan political stances straight away. Having a single committee that comprised all those people would be a recipe for disaster.<sup>29</sup>

The Department also saw distinct disadvantages with a regionalised approach to forming advisory bodies. Dr Glaister stated:

... the role of the Minister's Advisory Council [ACCF] is to range across the whole industry. Its members are made up of representatives of each of the main Management Advisory Committees and the issue of regional management is always going to be contentious in fisheries where you have people who are willing to make a local arrangement that impacts right across the State. Getting into the regional management process I think holds dangers

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<sup>28</sup> Evidence of Dr Glaister, 13 February 1997, p. 61.

<sup>29</sup> Evidence of Dr Glaister, 13 February 1997, pp. 83-84.

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for managing the fisheries overall. For example, with a fishery such as the ocean haul fishery that is zoned, the most likely outcome would be a management plan for the ocean haul fishery that would go across the State and then there may be specific local management arrangements that are added on to that generic management plan. That is just my view of how it might work. The idea of having regional management is not unique to New South Wales, it is a view certainly strongly held in Queensland. The danger in it is that you have locally-based fishermen who seek to make rules that will discriminate against fishermen who do not live in that particular area.<sup>30</sup>

During the course of the Inquiry it became evident to the Standing Committee that the ability of the *Advisory Bodies Act* to be properly implemented required the gazettal of the necessary Regulations. At the time public hearings were held in relation to this Inquiry these Regulations had not been gazetted, nor were they available for the Standing Committee to consider. As advised in the *Interim Report on the Fisheries Management Amendment (Advisory Bodies) Act 1996*, the Standing Committee was concerned to know if any further consultation was to take place with the industry prior to gazettal of the relevant Regulations. In response, Dr Glaister provided the following evidence:

**Dr GLAISTER:** The regulations for the management advisory committees have been drafted or are being drafted. The regulations for the advisory councils have not yet been drafted. ...

**CHAIRMAN:** How long will this state of limbo continue, given the legal and practical difficulties that it is clearly creating?

**Dr GLAISTER:** I understand that the management advisory committee regulations will be available Friday week.

**CHAIRMAN:** With consultation or to be gazetted?

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<sup>30</sup> Evidence of Dr Glaister, 13 February 1997, p. 62.

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**Dr GLAISTER:** For gazettal.

**CHAIRMAN:** So there is not to be any consultation about the regulations before they are gazetted, given your long standing commitment to consultation.

**Dr GLAISTER:** No. It is necessary to get the management advisory committee regulations in place so that the elections for the management advisory committees can occur as soon as possible. The intent of the regulations is to allow for the preparation of management plans for each of those fisheries as soon as possible.<sup>31</sup>

Following the receipt of this evidence, the draft *MAC Regulations* were released for public comment before being gazetted on 2 May 1997. As of 4 July 1997 the *Advisory Council Regulations* had not been gazetted.

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<sup>31</sup> Evidence of Dr Glaister, 13 February 1997, p. 55.

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### **3 THE FISHERIES MANAGEMENT AMENDMENT (ADVISORY BODIES) ACT 1996**

#### **3.1 The Role of Advisory Councils and Management Advisory Committees as defined by the *Fisheries Management Amendment (Advisory Bodies) Act 1996***

The *Advisory Bodies Act* defines the role for the proposed Ministerial Advisory Councils and Management Advisory Committees as follows.

##### **3.1.1 Ministerial Advisory Councils**

The function of the proposed Ministerial Advisory Councils is described by s. 229 as:

- to advise the Minister on any matter that is referred to it by the Minister; and
- to advise the Minister on any other matter it considers relevant to the fishing industry sector for which it is established.

##### **3.1.2 Management Advisory Committees (MACs)**

The functions of a Management Advisory Committee for a fishery are outlined under s. 230 as:

- to advise the Minister on the preparation of any management plan or regulations for the fishery;
- to monitor whether the objectives of the management plan or those regulations are being attained;
- to assist in a fishery review in connection with any new management plan or regulations; and

- to advise on any other matter relating to the fishery.

### **3.2 The New Advisory Body Structure**

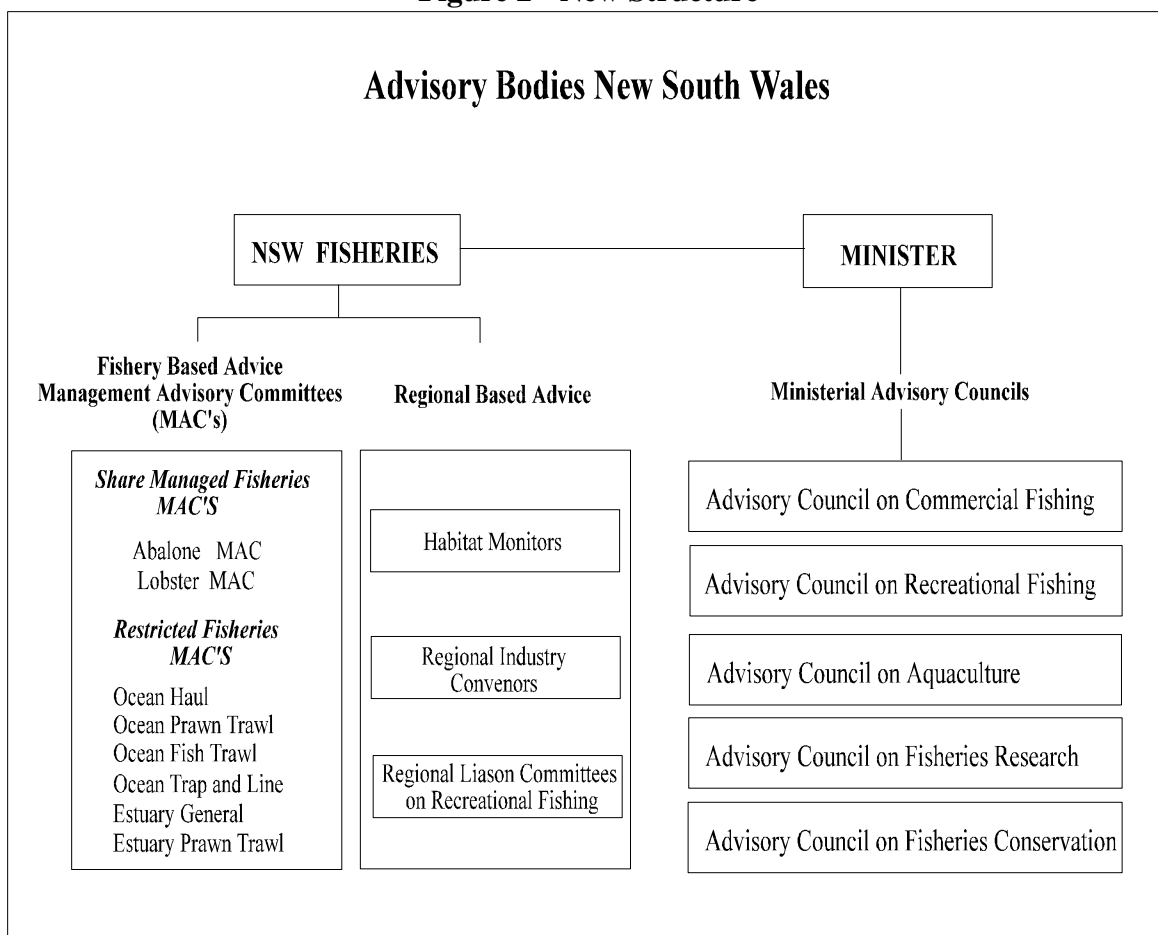
The *Advisory Bodies Act* aims to create a two tiered advisory body structure. S. 229 provides for the creation of expertise-based Ministerial Advisory Councils with members appointed by the Minister in accordance with the associated regulations. The draft *Advisory Council Regulations* received by the Standing Committee on 12 June 1997 provide for five Ministerial Advisory Councils to advise the Minister on commercial fishing, recreational fishing, fisheries research, aquaculture, and fisheries conservation. S. 230 of the *Advisory Bodies Act* seeks to establish eight fishery-based Management Advisory Committees composed of commercial fishers, elected by licence holders within the fishery, and members from other interest groups determined by the Minister in accordance with the regulations.

### 3.2.1 Management Advisory Committees (MACs)

MAC Regulation 231 provides for the establishment of Management Advisory Committees for each share-managed or restricted fishery. These fisheries are as follows:

- an abalone share management fishery;
- a lobster share management fishery;

Figure 2 - New Structure



- an ocean prawn trawl restricted fishery;
- an ocean fish trawl restricted fishery;
- an ocean trap and line restricted fishery;
- an estuary general restricted fishery;
- an estuary prawn trawl restricted fishery; and
- an ocean hauling restricted fishery.

The composition of Management Advisory Committees is set down under s. 231 of the *Advisory Bodies Act*. Management Advisory Committees are to include elected shareholders (for share-managed fisheries) or elected licence holders (for restricted fisheries). Additional members are to be appointed to Management Advisory Committees by the Minister from the following interested groups in accordance with *MAC Regulation 261*:

- NSW Fisheries;
- groups representing recreational fishers;
- the Nature Conservation Council;
- groups representing indigenous Australians; and
- such other groups as the Minister considers appropriate.

The *MAC Regulations* also stipulate:

261(2) The number of non-elected members appointed to a MAC is to be less than the number of industry members of the MAC.

261(3) At least one of the non-elected members appointed to each MAC is to be a person selected from a panel of nominees of the Nature Conservation Council.

### 3.2.2 Ministerial Advisory Councils

The following Ministerial Advisory Councils are to be set up in accordance with s. 229 of the *Advisory Bodies Act*:

- the Advisory Council on Commercial Fishing (ACCF);
- the Advisory Council on Recreational Fishing (ACoRF);
- the Advisory Council on Fisheries Research (ACFR);
- the Advisory Council on Aquaculture (ACA); and
- the Advisory Council on Fisheries Conservation (ACFC).

The draft *Advisory Council Regulations* (as of 12 June 1997) provide for the establishment of these Councils. Aspects common to all proposed Ministerial Advisory Councils include that:

- appointments to Advisory Councils are for a period not exceeding three years, although some of the first members may be appointed for a shorter period to ensure continuity of membership;
- the Director of Fisheries, or his nominee, is to be appointed as a member;
- the Minister may remove a member from office at any time after consultation with the Advisory Council concerned;
- the Minister is to appoint a person who has no pecuniary interest in a fishery to chair meetings of an Advisory Council;
- the procedure for the calling and holding of meetings is to be determined by the Minister;<sup>1</sup>

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<sup>1</sup> The draft *Advisory Council Regulation 229P(2)*, however, states that “an Advisory Council is to hold at least 2 meetings each calendar year, unless the Council otherwise determines.”

- members are obliged to disclose to the Chair the nature of any pecuniary interest that they may have in relation to a matter being considered by the Advisory Council; and
- the Minister may call for expressions of interest in membership of an Advisory Council by advertisement published in a newspaper circulating throughout the State.

The draft *Advisory Council Regulations* also set out the composition of each Ministerial Advisory Council as follows.

#### **3.2.2.1 Advisory Council on Commercial Fishing**

The membership of the Advisory Council on Commercial Fishing is to include one person representing the eight share-managed or restricted fisheries. The draft *Advisory Council Regulations* provide for these members to be appointed in the following manner:

- 229D(2) The Minister is to request the Management Advisory Committees for each of those fisheries to nominate 2 commercial fishers as candidates for appointment to the Advisory Council.
- 229D(3) One of the commercial fishers nominated by each Management Advisory Committee is to be appointed as a member of the Advisory Council.

The draft *Advisory Council Regulations* also include broad provision for additional appointments by the Minister as follows:

- 229D(5) Other members of the Advisory Council may be appointed from persons nominated by any group that the Minister considers to have an interest in the fishery (for example,

groups with an interest in conservation, fish marketing and aboriginal culture).

### **3.2.2.2 Advisory Council on Recreational Fishing**

The draft *Advisory Council Regulations* provide for membership of the Advisory Council on Recreational Fishing as follows:

- 229E            The persons appointed as members of the Advisory Council on Recreational Fishing are to include persons who the Minister considers to have expertise in one or more of the following areas:
- a.        estuary fishing;
  - b.        offshore fishing;
  - c.        freshwater fishing;
  - d.        underwater fishing;
  - e.        sale of fishing tackle;
  - f.        the media (reporting on fishing);
  - g.        charter boat fishing;
  - h.        conservation; and
  - i.        Aboriginal culture.

### **3.2.2.3 The Advisory Council on Fisheries Research**

The draft *Advisory Council Regulation 229F* lists the proposed membership of the Advisory Council for Fisheries Research as:

- a. one person who the Minister considers to have expertise in fisheries economics;
- b. two persons who the Minister considers to have an interest in commercial fishing;
- c. two persons who the Minister considers to have an interest in recreational fishing;
- d. one person who the Minister considers to have an interest in aquaculture;
- e. two persons who the Minister considers to have an interest in fisheries habitat and conservation; and
- f. one person who the Minister considers to have an interest in seafood marketing.

#### **3.2.2.4 The Advisory Council on Aquaculture**

The draft *Advisory Council Regulations* provide for the membership of the Advisory Council on Aquaculture as follows:

- 229G(1) The persons appointed as members of the Advisory Council on Aquaculture are to include persons who the Minister considers to have expertise in one or more of the following areas:
- (a) oyster farming;
  - (b) freshwater crayfish;
  - (c) marine shellfish;
  - (d) freshwater finfish;
  - (e) marine finfish;



- (f) hatchery operations; or
- (g) processing and marketing.

In addition, the draft *Advisory Council Regulation 229G(2)* allows the Minister to request any relevant advisory committee to nominate a person for membership of the Advisory Council.

### **3.2.2.5 The Advisory Council on Fisheries Conservation**

The proposed membership of the Advisory Council on Fisheries Conservation is outlined by draft *Advisory Council Regulation 229H*. This states that the Advisory Council is to include one member from each of the following Advisory Councils:

- the Advisory Council on Commercial Fishing;
- the Advisory Council on Recreational Fishing; and
- the Advisory Council on Aquaculture.

In addition, the Advisory Council is to include three persons who the Minister considers to have expertise in one or more of the following areas:

- fisheries habitat;
- parks and reserves;
- threatened species;
- marine ecology; and
- freshwater ecology.

### **3.2.3 Additional Non-statutory Advisory and/or Representative Bodies**

A number of non-statutory advisory bodies and structures have been put in place by NSW Fisheries to support the advisory body system created under the *Advisory Bodies Act*. This section briefly outlines their structure and their proposed role in the advisory body system.

### **3.2.3.1 The Commercial Fishers Representative Council (CFRC)**

The Commercial Fishers Representative Council (CFRC) is a non-statutory body composed of elected members from each of the commercial sectors. NSW Fisheries promoted the creation of the Council as part of its attempt to separate the advisory and representative roles of advisory bodies from that of a partisan lobby group<sup>2</sup>. It is predominantly for that reason, that is, that the Council is seen as a creature of NSW Fisheries and not that a truly independent representative body of commercial fishers, that there appears to be a degree of lingering suspicion as to the ability of the Council to be a truly independent lobbying organisation.

The Council's primary role is to act as a lobby group for commercial fishing interests. The Council's constitution lists its objectives as follows:

- to unite the industry under one peak body;
- to promote the industry;
- to act as an intermediary between government and industry protecting the interests of commercial fishers; and
- to consider the recommendations of the various fisheries advisory bodies.

The funding for the establishment of the Council was provided by NSW Fisheries. The Council is now financed by individual subscriptions from its members. The nine member Commercial Fishers Representative Council Executive Committee is elected by the entire membership.

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<sup>2</sup> See evidence of Dr Glaister, 13 February 1997, pp. 78-79.

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As a result of some dissatisfaction with the role of, and representation provided by, the Commercial Fishers Representative Council, the Professional Fishers Association of NSW (“Profish”) has also been formed to represent the industry.

### **3.2.3.2 Regional Industry Conveners**

Regional consultation between the commercial fishing industry and the Department is provided by nine Regional Industry Conveners (RICs). Regional Industry Conveners are individuals who, on a part-time basis, are responsible for coordinating local industry meetings and providing a link between the industry and Department at a regional level. The Director of Fisheries appoints Regional Industry Conveners after advertising for nominations from commercial fishers. The Department pays Conveners a retainer to cover the cost of communicating with fishers throughout their region.

### **3.2.3.3 Habitat Monitors**

Regional Industry Conveners are supported by Habitat Monitors, who are also appointed by the Director of Fisheries after advertising for nominations from commercial fishers. Habitat Monitors are individuals who, on a part-time basis, disseminate habitat-related information and record and inform NSW Fisheries of incidents such as fish kills or point source pollution that will require immediate action from the Department and/or other relevant authorities. The Department pays Habitat Monitors a small retainer to cover costs incurred in the fulfilment of their duties.

### **3.2.3.4 Regional Liaison Committees for Recreational Fishing**

Seven Regional Liaison Committees for Recreational Fishing (RLCRFs) have been established along the NSW coast to provide regional consultation and communication with NSW Fisheries. Committee members are appointed by the Director of Fisheries after consultation with peak angling bodies and the Advisory Council on Recreational Fishing (ACoRF). In addition to representatives of angling bodies and unaligned recreational fishers, these Committees are required to have a representative of the fishing tackle industry, the angling media, and the recreational charter boat industry. The Department attends

Committee meetings to discuss recommendations and matters of concern at least four times per year.



## 5 A COMPARISON OF THE FISHERIES ADVISORY STRUCTURES WITHIN AUSTRALIA

Fisheries management Australia-wide has been undergoing a period of transition over the last five years with a recognition of the importance of broader community involvement in the management process. New fisheries management legislation has been enacted in New South Wales, Tasmania, Victoria and Western Australia in the past two years, all of which involved changes to the existing advisory body regimes. This Chapter provides a brief summary of Australian fisheries advisory body structures.

### 5.1 Commonwealth

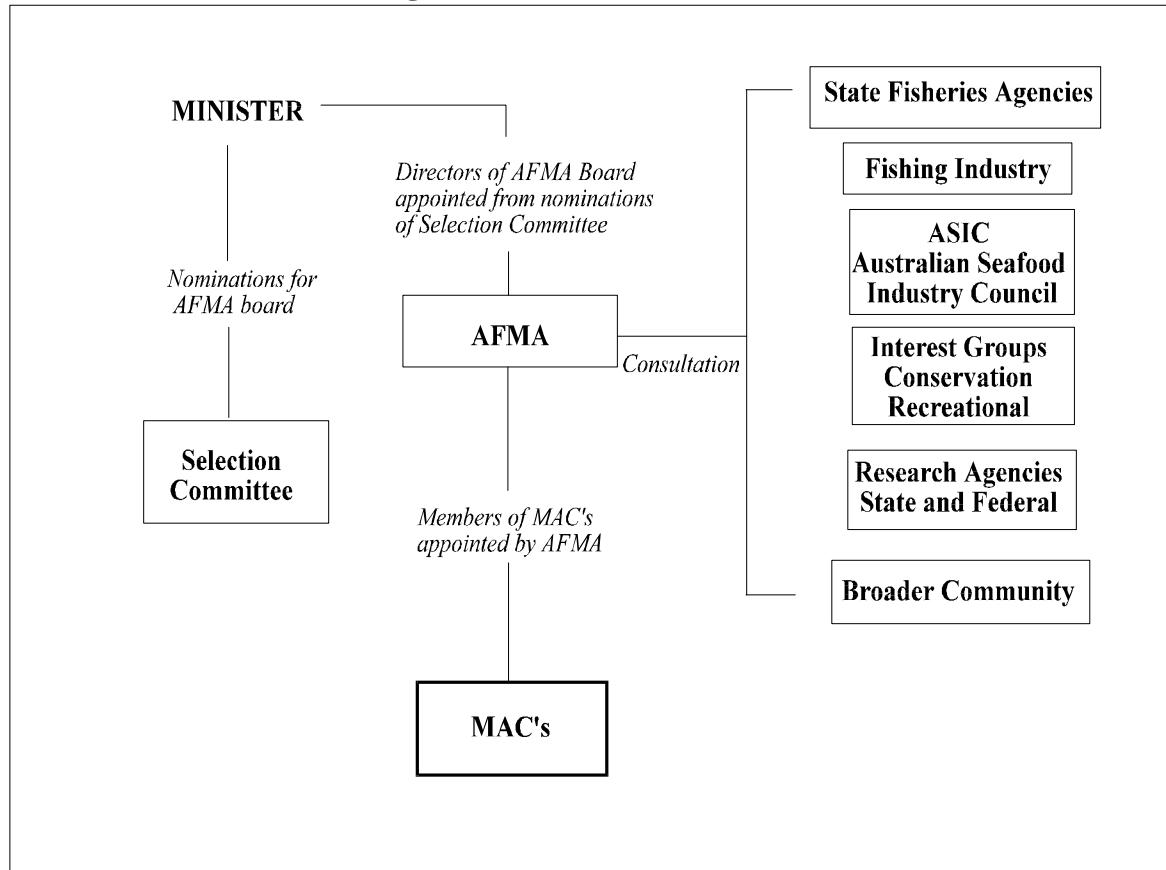
The Australian Fisheries Management Authority's governing legislation, the *Fisheries Administration Act 1991*, gives it the responsibility for managing Commonwealth fisheries on behalf of the Federal Government. The Minister, while not involved in the day to day operation of the Australian Fisheries Management Authority, oversees the Authority's activities through accountability provisions within the legislation. These provisions require the Minister to approve the Authority's corporate plan and annual operational plan. The Minister must also formally accept each fisheries management plan before it comes into effect.

The Australian Fisheries Management Authority model is specifically designed to depoliticise the management of Commonwealth Fisheries by denying the Minister any direct control over the appointment of Directors on the Authority's board.

Directors are appointed by the Minister from the nominations of a Selection Committee which consists of:

- the Presiding Member (appointed by the Minister);
- two members determined by the Minister, one of whom has knowledge of environmental issues;
- two members nominated by the peak industry body (the Australian Seafood Industry Council); and
- a member nominated by the Australian Fisheries Council.

**Figure 3 - The Commonwealth**



Under s. 30(1) of the Act, the Selection Committee is limited to nominating persons for appointment as Directors to people who have expertise in one or more of the following fields:

- commercial fishing;
- fishing industry operations, other than commercial fishing;
- fisheries science;
- natural resource management;
- marine ecology;
- economics;
- business management; and
- such other fields (if any) as are prescribed.

In selecting the Board the Selection Committee must ensure that collectively the members of the the Australian Fisheries Management Authority Board possess expertise in all of these areas. Nominations may be rejected by the Minister resulting in an additional nomination by the Selection Committee.

The Authority consists of:

- a Chair (determined by the Selection Committee);
- a Government Director, (determined by the Selection Committee);
- a Managing Director (determined by the the Australian Fisheries Management Authority Board); and
- five nominated Directors (determined by the Selection Committee).

Commonwealth Management Advisory Committees (MACs) have been established under the *Fisheries Administration Act 1991* to provide a forum where issues relating to each of the Commonwealth fisheries can be discussed.

The Australian Fisheries Management Authority Board *may* establish Management Advisory Committees under s. 57-58 of the Act:

to assist it in the performance of its functions and the exercise of its powers in relation to the fishery.

Management Advisory Committees are expertise-based, advisory in nature and make recommendations to the Australian Fisheries Management Authority Board on management and operational issues. Management Advisory Committees provide the main point of contact between the Australian Fisheries Management Authority and each of fishery and consist of:

- a Chairman;
- the Australian Fisheries Management Authority officer responsible for the management of the fishery; and
- up to seven other Members determined by the Australian Fisheries Management Authority after consultation.

The need for a particular Management Advisory Committee is determined after consultation between the Australian Fisheries Management Authority, the industry, the States and Territories, and persons engaged in research who, in the opinion of the Authority, have an interest in matters in relation to which the Committee is to be established. Conservation representation would normally



be included in each Management Advisory Committee. The Australian Fisheries Management Authority Board decides on a fishery-by-fishery basis the need to include representation from wider community interests such as recreational fishers or Aboriginals.

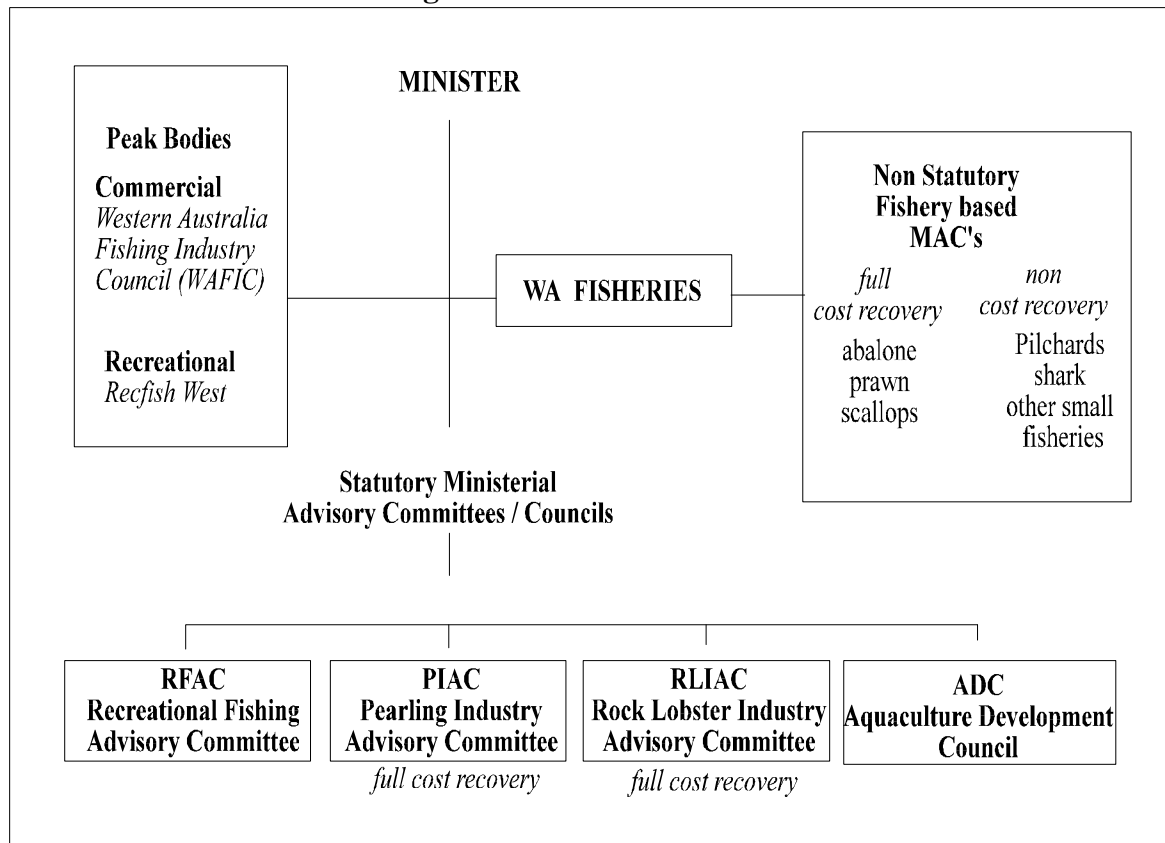
The Australian Fisheries Management Authority encourages a cooperative approach to decision making within Management Advisory Committees and does not encourage voting as a means of achieving outcomes. Where views are polarised the members are encouraged to reconsider or seek further information before making a recommendation.

### **5.2 Western Australia**

Fisheries advisory structures in Western Australia are established under part 4 of the *Fish Resources Management Act 1994* and under part 6 of the *Pearling Act 1990*. This legislation aims to implement cost recovery, where possible, for fisheries management, including the advisory body structure.

The *Fish Resources Management Act 1994* has established:

**Figure 4 - Western Australia**



- the Rock Lobster Industry Advisory Committee and
- the Aquaculture Development Council.

The *Pearling Act 1990* has established:

- the Pearling Industry Advisory Committee.

Management Advisory Committees are established either directly by the Acts or by the Minister under the authority of the *Fish Resources Management Act*. The Western Australian model provides Management Advisory Committees with a wide variety of responsibilities, including finance, compliance and service agreements with external providers. In recognition of the capacity of each fishery to generate the funding needed to implement effective management,

Management Advisory Committees are further defined as those which are regarded as cost recovery or non cost recovery. Each Management Advisory Committee has an independent Chairman and includes a Departmental officer whose role is to ensure that the members of the Management Advisory Committee are aware of relevant legislation and Departmental policy which may have a bearing on discussions. Members of the Management Advisory Committee are appointed by the Minister in consultation with the relevant peak bodies.

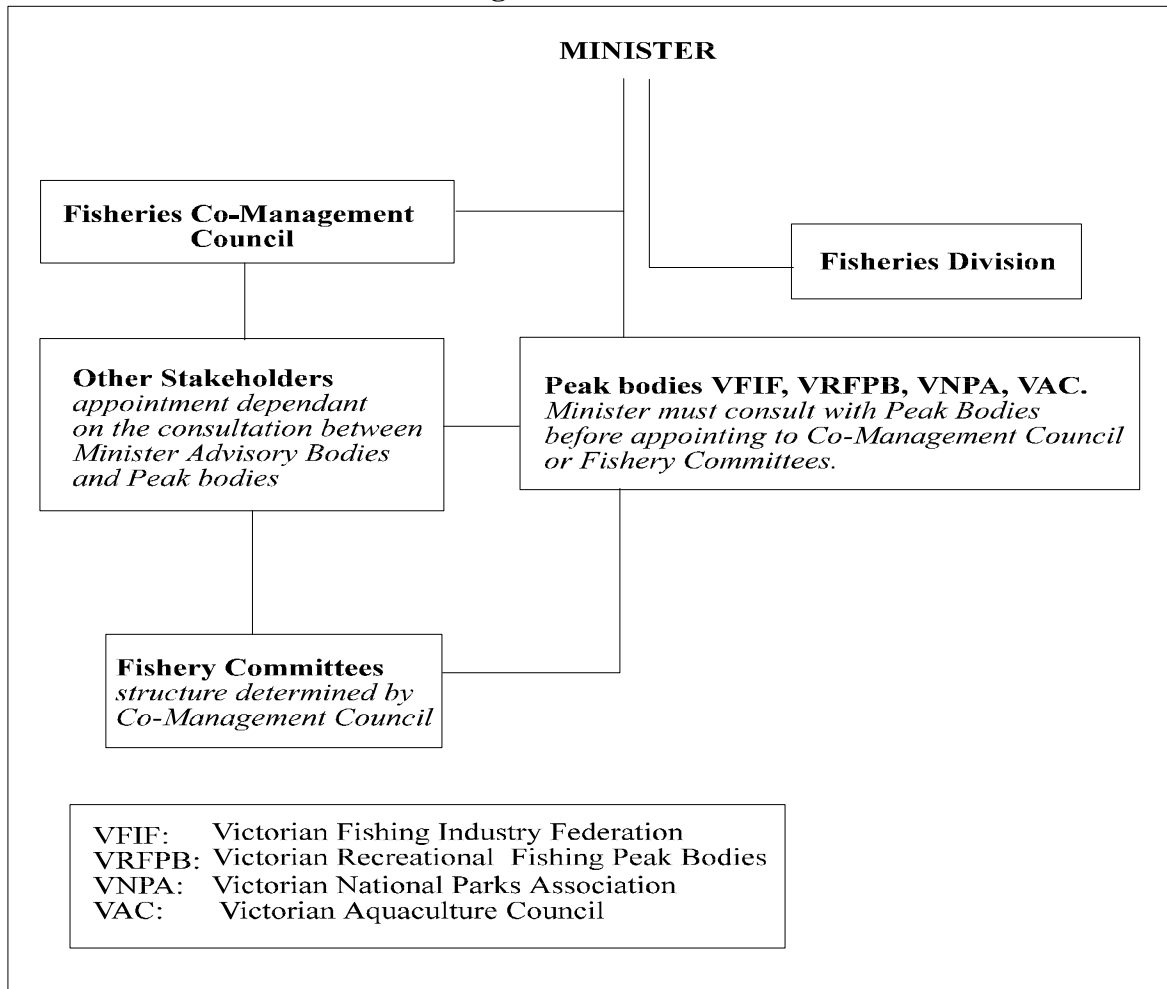
### **5.3 Victoria**

Fisheries Victoria introduced major amendments to the *Fisheries Act 1995* in 1996, providing for the establishment of a Co-Management Council and the appointment of Fishery Committees in 1997. The emphasis of the Co-Management structure is to include all relevant sectors in the management process. The Co-Management Council is composed of not more than 11 members who are appointed by the Governor in Council on the recommendation of the Minister.

The functions of the Co-Management Council are primarily to:

- (a) promote co-management of fisheries;
- (b) oversee the preparation of management plans; and
- (c) advise the Minister on state-wide priorities.

Figure 5 - Victoria

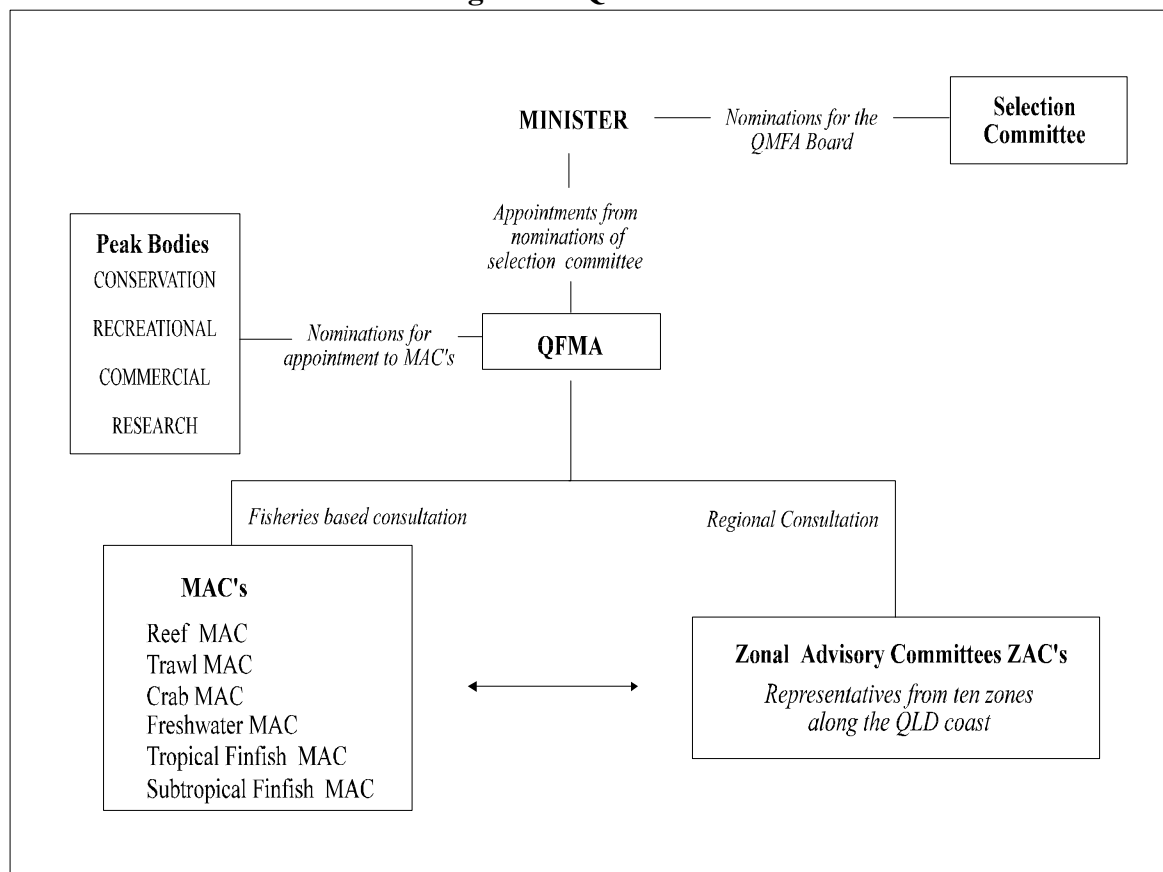


The Act requires the council to submit a yearly report on the progress of the Co-Management Council in carrying out its functions. Appointments to the Council are made after extensive consultation between all interest groups. The *Fisheries Act 1995* (as amended) requires the Minister to identify and consult with peak organisations in relation to appointments to the Council. The Council is then responsible for the formation of fisheries-based Fishery Committees. Fishery Committees are analogous to the NSW Management Advisory Committees. They have the responsibility of advising the Minister upon request in relation to any matter relevant to the fishery and to advise the Fisheries Co-Management Council in respect of the preparation of the management plan for the fishery.

## 5.4 Queensland

A Queensland Government inquiry in 1993 resulted in a management approach that was at arm's length from the commercial sector and sought to involve other interest groups and the broader community in the management of the State's fisheries. The new legislation, the *Fisheries Act 1994*, established a Policy Council and the Queensland Fisheries Management Authority (QFMA). The Queensland structure is similar to the Commonwealth Australian Fisheries Management Authority model.

**Figure 6 - Queensland**



The Queensland Fisheries Management Authority is an expertise-based statutory authority with its members appointed by the Minister from recommendations of the Selection Committee.

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Under s. 212 of the Act:

the Authority may establish committees made up of persons it considers appropriate.

The established advisory bodies consist of six Management Advisory Committees (MACs) and ten Zonal Advisory Committees (ZACs). Management Advisory Committee members are appointed by the Authority in consultation with the peak commercial, recreational research, and conservation bodies. Membership of Zonal Advisory Committees is sought by a public advertisement process. Members are then appointed by the Queensland Fisheries Management Authority on a voluntary basis.

ZACs provide a forum for discussion on regional fisheries and fisheries habitat and a vital two-way flow between fisheries managers and the community. ZAC's advise on local issues relating to fisheries management, research needs, enforcement and the environment.<sup>1</sup>

In recognition of the need to balance fisheries-based advice with adequate regional consultation, the Queensland Fisheries Management Authority receives advice from Management Advisory Committees on fisheries-based issues and regional advice from the relevant Zonal Advisory Committee in the drafting of each management plan.

The development of a discussion paper is the first step in a three step programme to develop management plans. Stakeholders and the wider community are encouraged to contribute to the management plan process through questionnaires attached to the discussion paper, which are made readily available in public libraries and in local government offices. Consultation for each management plan is carried out over a 3 month period before a draft management plan is put forward for public comment prior to submission to the Queensland Fisheries Management Authority and the drafting of legislation.

## 5.5 Tasmania

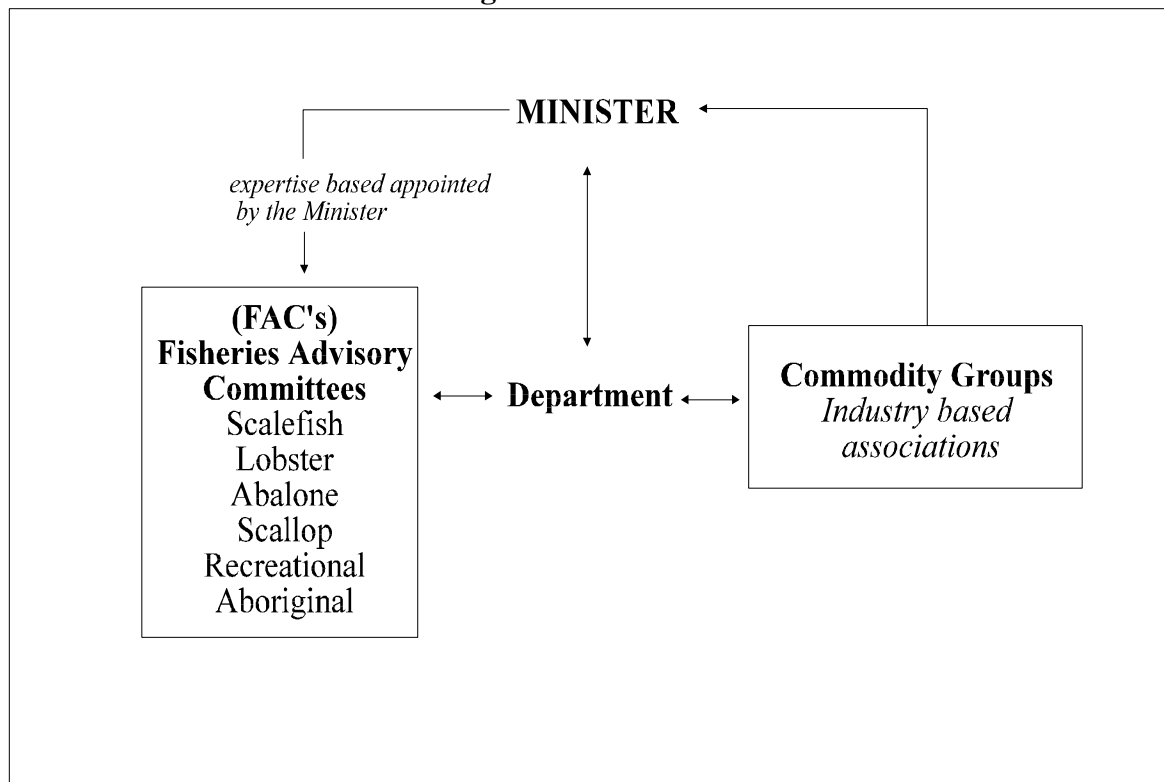
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<sup>1</sup> QFMA handbook

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Tasmania has direct Ministerial appointments to Fisheries Advisory Committees (FACs). Fisheries Advisory Committees provide representation to each of the major fisheries with separate committees concerned with recreational and Aboriginal issues. An additional feature of the Tasmanian management structure is Commodity Groups. Commodity Groups are industry associations who consult with the Department and Minister on the possible effects of proposed management strategies on the representative industry. In recognition of the importance of aquaculture as an industry in Tasmania, the management of the aquaculture industry is regulated by a separate Act.

**Figure 7 - Tasmania**

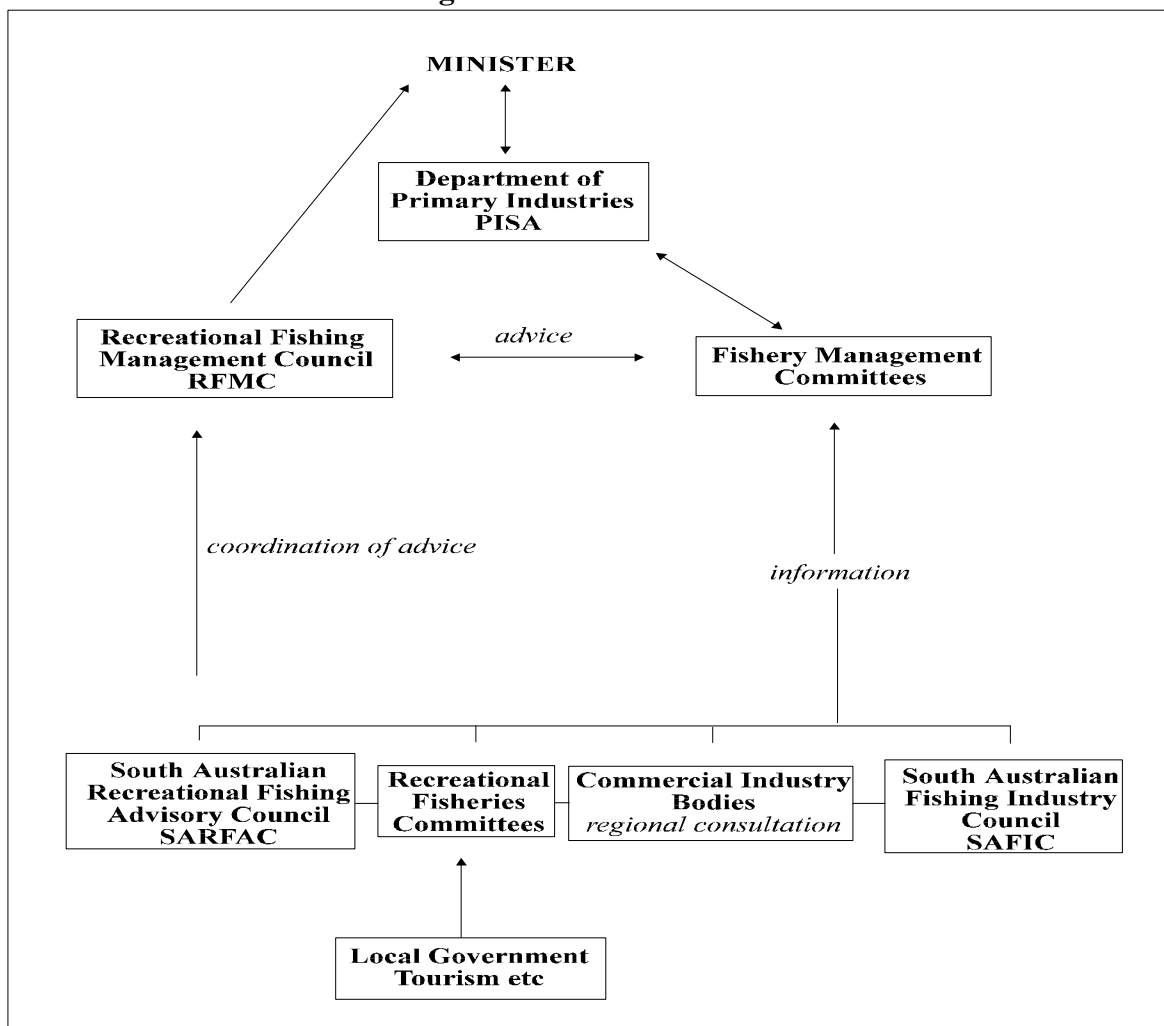


## 5.6 South Australia

South Australia employs a co-management strategy similar to the Victorian approach where user groups are encouraged to join with Government and Primary Industries South Australia - Fisheries in the formulation of policy. Regulations that provide the framework for running the Fisheries Management

Committees (FMCs) were not introduced until late 1995. Members are appointed to these Committees by the Minister in consultation with peak bodies. Fisheries Management Committees are analogous to NSW fishery-based Management Advisory Committees and provide the basis for consultation with each of the seven major fisheries.

**Figure 8 - South Australia**



The South Australian system applies a flexible method of appointment to Fisheries Management Committees based on the degree of segmentation within the industry and recognises the need to balance industry input whilst not alienating any one sector of the fishery. In some fisheries, such as the Abalone



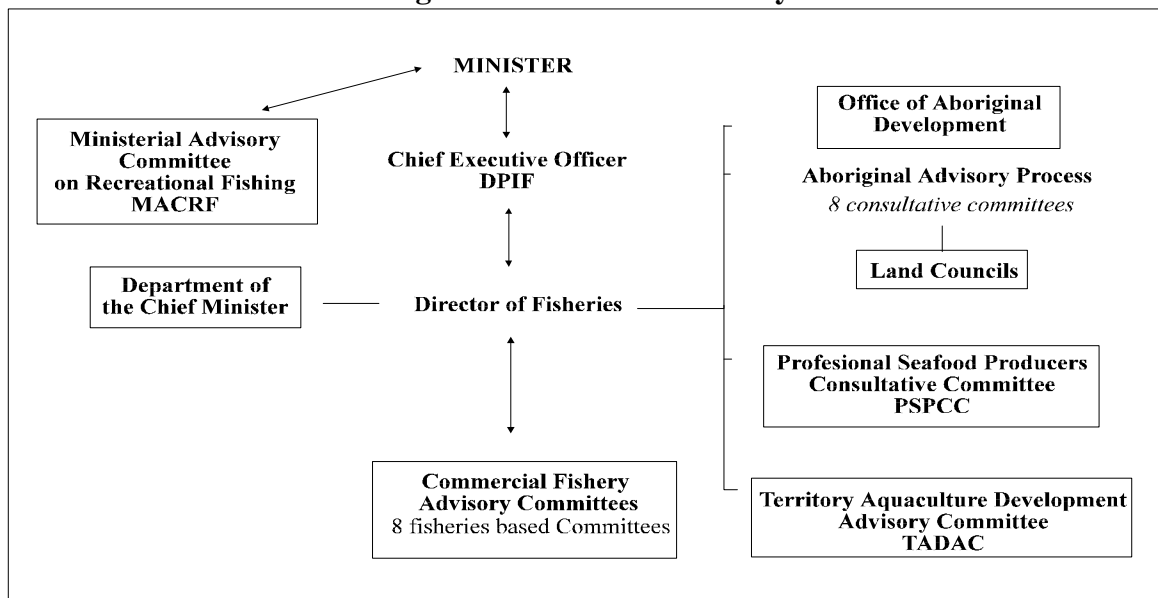
and Spencer Gulf prawn fishery, the relevant association will represent close to 100% of the fishers and determine the structure and organisation of the relevant Fisheries Management Committee. Alternatively, representation in the scale fin fishery is divided amongst a variety of organisations (commercial, recreational and non-extractive).

The Chairperson of each Fisheries Management Committee is to be independent and appointed by the Minister. The remaining Committee membership is filled where appropriate by representatives from the recreational, processing and research sectors. Recreational representation is drawn from the peak recreational body South Australian Recreational Fishing Advisory Council. A Primary Industries South Australia - Fisheries representative will be a member of each of the Committees and the Director remains an ex officio member of all Committees. Committees have a statutory responsibility to provide the Minister with a five year plan and a yearly report

### **5.7 Northern Territory**

Under Northern Territory law approximately 85% of the Northern Territory coastline is owned by the Aboriginal people. Under the *Aboriginal Lands Act* traditional owners are entitled to claim the adjacent two kilometres of sea. The Northern Territory management structure emphasises the importance of involving the relevant Aboriginal groups in the development of the existing commercial sector and the rapidly developing recreational and aquaculture sectors.

**Figure 9 - Northern Territory**



Aboriginal consultation is carried out through eight regionally-based Consultative Committees. Members of these Committees are chosen by the members of the Aboriginal community. Negotiations with the Department are carried out in conjunction with the Office of Aboriginal Development and Land Councils. Commercial consultation is carried out through fisheries-based, Ministerially-appointed, Commercial Fishery Advisory Committees and the elected industry-based Professional Seafood Producers Consultative Committee (PSPCC). A similar advisory structure has been created to promote the development of aquaculture. The Territory Aquaculture Development Advisory Committee (TADAC) is appointed by the Minister from nominations. Recreational consultation is carried out directly with the Minister via the Ministerially appointed Ministerial Advisory Committee on Recreational Fishing (MACRF).

## **4 THE COMPOSITION OF ADVISORY BODIES**

The importance of the composition of statutory fisheries advisory bodies and the method of appointment to such bodies received considerable attention during the Inquiry. This chapter outlines evidence received in relation to the method used to appoint advisory body members and the importance of ensuring that interests other than those of commercial or recreational fishers are represented in the new advisory body system.

### **4.1 Representation of Non-extractive Users on Advisory Bodies**

The Standing Committee received evidence supporting the notion that the composition of advisory bodies must reflect the public nature of the resource and the role determined for the relevant body defined by legislation. For example, Dr Young stated:

... fisheries management cannot be narrow, and consider only a particular species in my territory to make sure that it is all right. You have got to encompass those larger issues, such as how do you share between recreational and commercial fishing; how do you look after nursery areas; how do you get that broader issue? That concomitantly means that the stakeholders who are going to be represented on the committees will have to be broadened accordingly.<sup>1</sup>

This section presents evidence in support of the inclusion of conservation, aboriginal, tackle industry and fishing media representatives within the advisory body system.

#### **4.1.1 Conservation Representatives**

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<sup>1</sup> Evidence of Dr Young, 14 February 1997, p. 43.

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*MAC Regulation 261(3)* requires the appointment of at least one conservation representative from a panel nominated by the Nature Conservation Council. The draft *Advisory Council Regulations* generally provide the Minister with *discretionary* power to appoint conservation representatives to Advisory Councils.

Mr John Conner, Executive Officer, Nature Conservation Council, expressed concern with the effectiveness of token conservation representatives comprising a minority on advisory bodies. Mr Conner suggested that a single Advisory Council, from which issue-specific sub-committees could be formed, would allow conservation interests more equal input into the advisory process. Mr Conner stated:

Often it is the case that conservation representatives are in the minority on many committees—a single voice as opposed to many others. ... A more efficient way would be with subgroups working on various issues, which may be conservation or habitat protection and sustainable fisheries targets, for example, where there would be better representation and more equivalent representation on those sorts of adequately resourced subgroups.<sup>2</sup>

Despite this concern, Mr Conner admitted that the fishing industry is relatively open to environmentalist input:

... In my experience the commercial fishing industry has been far more open to constructive dialogue with the environment movement than many other extractive resource industries I have come across. It recognises that the most important elements are habitat protection areas and that if we cannot work together on that, the fishing industry has no future and no sustainable base from which that resource emanates. Of course, there are conflicts when it comes to actual setting of fishing targets and

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<sup>2</sup> Evidence of Mr Conner, 13 February 1997, p. 22.

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practices. I expect those discussions to continue to be robust.<sup>3</sup>

The inclusion of conservation representation in the advisory body system received support from Mr Baker:

I believe that there is a need for conservation representatives on these advisory bodies. I believe quite strongly that we need someone there but at the same time I believe that the person representing the conservation side of it needs to know a lot about Australian fish and fish populations because it is different to most other fish populations throughout the world.<sup>4</sup>

Dr Young recommended that advisory bodies should include as members individuals with conservation management skills rather than those with extreme views. When asked to elaborate, Dr Young stated:

... it would be better to have a qualified natural resource conservation manager who is familiar and in touch with all of those issues than someone such as a paid professional lobbyist from an extreme conservation group.<sup>5</sup>

The Department of Land and Water Conservation expressed interest in being represented in the advisory body system. Mr Michael Geary, Acting Director, Coastal, Floodplain and Riverine Resources, stated:

My concern with this from a Departmental standpoint would be that Land and Water Conservation is meant to be the State's natural resource manager. ... We are, therefore, concerned about the activities of the fishing industry, and the Department of Fisheries and its relationship with the fishing industry, because they are one—and I make the

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<sup>3</sup> Evidence of Mr Conner, 13 February 1997, p. 22.

<sup>4</sup> Evidence of Mr Baker, 13 February 1997, p. 41.

<sup>5</sup> Evidence of Dr Young, 14 February 1997, p. 43.

point that they are only one—of the users of those natural resources. That is why my organisation has an interest.<sup>6</sup>

Mr Geary also shared Mr Conner's concern in relation to nominal conservation representation within the advisory body system:

My experience, ... and times are changing, tends to be that a nominal environmentalist can be put on a group so that you can believe you have had some environmental input. In fact, you do not really get any, because the nominal environmentalist can be as loud as it likes but its advice does not get through. That is why I am saying it might be preferable to look at a separate group that gave ecologically and sustainability-focused advice.<sup>7</sup>

#### 4.1.2 Aboriginal Representation

*MAC Regulation 261* provides for the appointment of persons representing indigenous Australians to each Management Advisory Committee while the draft *Advisory Council Regulations* give the Minister a discretionary power to appoint aboriginal representatives to Advisory Councils.

The involvement of aboriginal representatives in the advisory body system received support from a number of industry representatives, such as Mr Snape, who suggested that the present lack of such representation has resulted in management decisions adverse to aboriginal interests<sup>8</sup>.

NSW Fisheries are in the process of developing an Indigenous Fishing Strategy. Dr Glaister said this would :

... lead to a better understanding of Aboriginal fishing interests in New South Wales and, conceivably, to the

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<sup>6</sup> Evidence of Mr Geary, 13 February 1997, p. 15.

<sup>7</sup> Evidence of Mr Geary, 13 February 1997, p. 19.

<sup>8</sup> Evidence of Mr Snape, 14 February 1997, pp. 23-24.

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development of specific rules for Aboriginal fishing which recognise their historic and cultural interests in our fisheries resources.<sup>9</sup>

When questioned about the Department's efforts to ensure aboriginal representation in the proposed advisory body system, Dr Glaister described some of the difficulties encountered in this process:

Soon after I was appointed as Director of Fisheries I had a meeting with Aden Ridgeway, the Chairman of the New South Wales Aboriginal Land Council. His advice was that the New South Wales Aboriginal Land Council would not be appropriate as a body to consult with, given that only a few of the members were from coastal New South Wales and did not have a lot of interest in fisheries matters. I asked him about the regional land councils as being a potential source. Again he said that because of the way the boundaries of the regional land councils were established, he did not know whether they would be consistent with fishery areas. For example, the ocean haul fishery or estuary fisheries were not consistent with particular regional land council boundaries. He said that we would probably need to negotiate on a local basis. We are attempting at the moment, with the cooperation of the Department of Aboriginal Affairs and some other groups that have been set up by other departments, to see if we can come up with a consultative mechanism that will suit us.<sup>10</sup>

The Standing Committee sought from NSW Fisheries, both in writing and verbally, copies of the aforementioned Indigenous Fishing Strategy and associated correspondence between the Minister for Fisheries and the Minister

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<sup>9</sup> Evidence of Dr Glaister, 13 February 1997, p. 51.

<sup>10</sup> Evidence of Dr Glaister, 13 February 1997, pp. 61-62.

for Aboriginal Affairs. As of 4 July 1997 the Standing Committee had not received a response<sup>11</sup>.

### 4.1.3 Recreational Interest Groups

*MAC Regulation 261* provides for the appointment of persons from “such other groups as the Minister considers appropriate”. The draft *Advisory Council Regulation 229E* provides for representation on the Advisory Council on Recreational Fishing of non-fisher groups with pecuniary interests in recreational fishing activity. These groups are the recreational fishing tackle industry, the fishing media, and the charter boat industry. When asked why representatives of the fishing tackle industry should be included in the membership of the Advisory Council, Mr Bruce Schumacher, Chairman of the proposed Advisory Council on Recreational Fishing, replied:

The industry can have a lot of input as it sees trends that are not perceived by others... [recreational fishers] are not fishing so much in salt water but in fresh water, they are not taking as many fish because they are adopting more catch-and-release practices, and there is even a perceived fear of pollution, that the fish they catch may not be able to be eaten. There is a change in the way that people are fishing. That information has come from the tackle industry because it knows what is being sold, what people are buying and what tackle people are using. The boating industry does the same types of surveys: there has been a change in the types of boats that are being used—there are more fresh water boats than salt water boats. It is important to have that input.<sup>12</sup>

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<sup>11</sup> The Standing Committee received a package of such correspondence from NSW Fisheries on 10 July 1997. This did not contain either the actual or draft Indigenous Fishing Strategy.

<sup>12</sup> Evidence of Mr Schumacher, 14 February 1997, p. 29.

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When asked why media representatives should be included in the Advisory Council, Mr Schumacher suggested that they could also be of use to fisheries managers through their access to the vast number of recreational fishers:

... we have a problem, particularly with the recreational fishing industry, because we have no funds and we have a lot of difficulty getting our information to the public. I refer to decisions that are made by ACRF, the advisory council. I know that the Minister has his own publicity people, but it is not good enough to get to 2.75 million anglers. Using the media can be a good way of getting those decisions publicised.<sup>13</sup>

## 4.2 Method of Appointment

The mechanism for appointing members of advisory bodies proved to be a contentious issue during the inquiry. The *Advisory Bodies Act* provides for the majority of Management Advisory Committee members to be elected with the remainder being appointed by the Director of Fisheries, whereas all members of the proposed Ministerial Advisory Councils are to be appointed by the Minister. The Standing Committee heard many views expressed in relation to a number of methods of appointing advisory body members, particularly direct appointment by the Minister or Director, appointment by selection panel, statutory appointment of persons nominated by specified groups, and direct election.

### 4.2.1 Direct Appointment by the Minister or Director

Criticisms of Ministerial appointments to the proposed Advisory Councils centred around the possibility of members being appointed for political reasons rather than their ability or knowledge. The most vocal opposition to Ministerial appointments came from within the commercial fishing industry. For example, Mr Snape stated:

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<sup>13</sup> Evidence of Mr Schumacher, 14 February 1997, p. 29.

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The objection is once again that they are ministerial appointees and you must have the confidence of industry. It is very easy for a Minister to appoint someone and that person then has allegiances to the Minister and not to industry. Industry must appoint their own delegates and their own representatives.<sup>14</sup>

The Nature Conservation Council also expressed concern about the opportunity for politicisation of the selection process through Ministerial appointments.

Mr Conner stated:

... I am concerned about a simple clause that gives the Minister total discretion as to the appointment of other people or interest groups, but it is not transparent and I do not think that it provides the best people. In fact, unfettered discretionary appointments would more likely result in the selection of individuals who are least able to give the solid, robust and independent advice that these structures need so much.<sup>15</sup>

Despite this criticism, there was some support for Ministerial appointments. Mr Schumacher, referring to the proposed Advisory Council on Recreational Fishing, argued that the Minister should be able to seek advice from whoever he wishes, adding "if the Minister makes a mistake then it is his fault, his problem"<sup>16</sup>. Mr Schumacher also pointed out:

... I do not believe the Minister is there to manage the industry, he is there to manage the resource, and they are totally different things. The industry can have one point of view whereas the Government that is supposed to be maintaining that resource for everybody, not just the users, can have a totally different point of view. I believe if the

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<sup>14</sup> Evidence of Mr Snape, 14 February 1997, p. 20.

<sup>15</sup> Evidence of Mr Conner, 13 February 1997, pp. 28-29.

<sup>16</sup> Evidence of Mr Schumacher, 14 February 1997, p. 27.

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Minister does not select his committee and if the committee is selected by the industry, it can be a very biased committee that is presenting the Minister with advice.<sup>17</sup>

Dr Glaister also supported the right of the Minister to select the people from which he will take advice in the management of the fishery, stating:

... at the end of the day the Minister is the one who needs to decide on how a fishery is to be managed. That is the basis of the Westminster system. As I understand it, the buck stops at the Minister.<sup>18</sup>

#### **4.2.2 Appointment by Selection Panel**

Supporters of appointment by an independent selection panel generally argued that this would ensure that advisory body members would be appointed at "arm's length" from the Minister as a result of their expertise, not their political leanings or popularity.

Mr Roberts supported the method of selection used by the Commonwealth to appoint individuals to the Fisheries Research and Development Corporation (FRDC). Mr Roberts claimed that this selection method had been very successful in providing stability to the membership of the FRDC and explained the system thus:

A couple of key organisations in the various commodities nominate people to an interview panel. That interview panel advertises throughout Australia. People who are interested in being appointed to those committees or councils apply. The interview panel goes through the normal interview process and recommendations are made to the Minister.<sup>19</sup>

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<sup>17</sup> Evidence of Mr Schumacher, 14 February 1997, p. 27.

<sup>18</sup> Evidence of Dr Glaister, 13 February 1997, p. 77.

<sup>19</sup> Evidence of Mr Roberts, 13 February 1997, p. 4.

Mr Roberts also expressed support for the Ministerial right of veto over recommended appointees provided within the FRDC system, stating:

In the period that I have observed the Fisheries Research and Development Corporation only once in a period of 10 to 15 years has the Minister rejected the nomination from the interview panel. That person was rejected because he was under investigation by the Federal police on a matter entirely unrelated. The interview panel had absolutely no idea of that at the time of its nomination to the Minister.<sup>20</sup>

#### **4.2.3 Statutory Appointment of Persons Nominated by Specified Groups**

Statutory appointments to advisory bodies also received support during the Inquiry, generally as a method of ensuring representation of key stakeholders.

Dr Young suggested that for each Advisory Council there should be a mix of statutory appointments and other appointments made through a specified selection process. Dr Young suggested that the statutory appointments should include the Director of Fisheries and other key stakeholders relevant to each Council, while other processes should be employed to appoint persons with particular expertise in areas such as commercial fishing, processing, fisheries law, and fisheries research<sup>21</sup>.

While concerned with discretionary Ministerial appointments, the Nature Conservation Council supported merit nominations from recognised peak bodies. Mr Conner stated:

The NCC supports the accommodation of merit nominations and also nominations from recognised industry and community groups to such an advisory council. Of course, the council puts itself forward as one of those organisations, as it has done for a number of other similar committees.

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<sup>20</sup> Evidence of Mr Roberts, 13 February 1997, p. 4.

<sup>21</sup> Evidence of Dr Young, 14 February 1997, p. 45.

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With regard to specific merit nomination processes, Mr Conner gave a number of examples:

There are a number of ways in which that can be done. ... I think the *Threatened Species Act* provides for an independent scientific committee, representatives for which are selected from various scientific organisations. ... For a number of organisations such as the EPA board, to which I referred, the process provides for three nominees to be put forward by the Nature Conservation Council and the board selects two.<sup>22</sup>

#### 4.2.4 Direct Election

The direct election of advisory body members received strongest support from the commercial fishing industry. For example, Mr Harasymiw stated:

In the same way as any industry organisations, or any organisations whatsoever, fishermen want to be able to democratically elect their spokespeople, and these people should be able to represent all their views—whether they be representative, advisory or just invitations to tea parties. These are the people that they have confidence in, and these are the people who should be allowed to voice opinions on the industry's behalf. In terms of advice, the Minister has many avenues of advice. Naturally, the most important one, from the Minister's point of view, is his department.<sup>23</sup>

Despite this support from some in the commercial fishing industry, the direct election of advisory body members received considerable criticism. Dr Young stated:

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<sup>22</sup> Evidence of Mr Conner, 13 February 1997, p. 29.

<sup>23</sup> Evidence of Mr Harasymiw, 13 February 1997, p. 44.

I am afraid my experience is that Fisheries cannot be managed by a democracy because you will get the lowest common denominator and no-one will be making the tough decisions under those circumstances. Consequently, it is critical to get the very best people around that table. Therefore, one has to have appointments. One can have nominations, of course, but the skills for getting elected to various bodies are not necessarily those that are the best for acting as a manager.<sup>24</sup>

Mr Roberts also rejected the notion of elected representatives on advisory bodies. Referring to Management Advisory Committees, Mr Roberts said:

The philosophy put forward in our submission is that quite simply a democratic process is not needed for the representatives on MACs. If you want the best people to represent the industry, you do not hold a popularity contest or a democratic process. The model that has occurred at national level and has worked is an interview situation where the best people come through. They may not be the most popular people, but that is the major difference. So I would challenge the philosophy of even wanting democratic participation. The democratic participation occurs by a person's capacity to apply to be on a particular council. It is a democratic right to apply. What happens after that point is another process.<sup>25</sup>

Mr Roberts later described what he believed to be the major distinction between the suitability of electing members to advisory bodies and electing members of representative bodies. Referring to the oyster industry, Mr Roberts stated:

... the Fisheries Management Act at the moment has two specific committees formed under it. One is the Oyster Research Committee and the other is the New South Wales Quality Assurance Program Committee. Both of them are

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<sup>24</sup> Evidence of Dr Young, 14 February 1997, pp. 43.

<sup>25</sup> Evidence of Mr Roberts, 13 February 1997, p. 6.

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appointed by the Minister following interviews by a selection committee. The difference is that they have specific terms of reference whereas the Oyster Farmers Association is in the business of industry politics. These particular advisory committees and other committees are not in the business of carrying out industry politics. The difference between the two is reflected in the position of appointments.

... The people who you want on those working committees, which are the key bodies, are the people who are the most qualified.<sup>26</sup>

#### **4.2.5 Method of Appointment in Other States**

A variety of approaches to the appointment of advisory body members have been adopted by the Commonwealth and other states. The primary method of appointment employed in these jurisdictions include independent selection panel by the Commonwealth and Queensland, and direct Ministerial appointment after calling for expressions of interest in Western Australia, Victoria, Tasmania, South Australia, and the Northern Territory. Chapter Five provides a description of the advisory body structures of the Commonwealth, each state, and the Northern Territory.

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<sup>26</sup> Evidence of Mr Roberts, 13 February 1997, p. 11.





## 6 CONCLUSIONS AND RECOMMENDATIONS

The Standing Committee experienced difficulty in completing this Inquiry as a result of delays in the drafting and gazetting of the necessary Regulations associated with the *Advisory Bodies Act*. This delay was highlighted in the *Interim Report on the Fisheries Management Amendment (Advisory Bodies) Act 1996*, which is reproduced in Appendix 3. The final batch of draft Regulations in relation to Advisory Councils were not made available to the Standing Committee until 12 June 1997.

While the proposed advisory body structure is a step in the right direction, the Standing Committee considers that it would be improved by the following recommendations.

### 6.1 Advisory Councils

The Standing Committee believes that it is essential for the Minister to have access to unbiased expert advice upon which the Government's fisheries management decisions can be based. Equally, it is important for stakeholders in the fishery to be involved in the management process.

#### 6.1.1 Establishment of Advisory Councils

The Standing Committee notes that the *Advisory Bodies Act* and draft *Advisory Council Regulations* provides for the exercise of Ministerial discretion as to whether or not any or all of the proposed Advisory Councils will in fact be established. The Standing Committee considers that it would be in the best interests of fisheries management in NSW if the Minister for Fisheries had a clear statutory responsibility to establish specific Advisory Councils. Accordingly, the Standing Committee recommends that the discretionary *may* be replaced by the obligatory *shall* in the *Advisory Bodies Act* as follows:

### Recommendation 1

That subsection 229(1) of the *Advisory Bodies Act* be omitted and replaced with:

229(1) The Minister *shall*, subject to and in accordance with the regulations, establish the following Advisory Councils:

- (a) Advisory Council on Commercial Fishing;
- (b) Advisory Council on Recreational Fishing;
- (c) Advisory Council on Aquaculture;
- (d) Advisory Council on Fisheries Conservation; and
- (e) Advisory Council on Fisheries Research.

### 6.1.2 Ministerial Responsibility to Consult Advisory Bodies

The Standing Committee considers that amendments five, six, eight, nine, ten, and eleven made to the *Fisheries Management Act* by the *Advisory Bodies Act* render the amended sections ambiguous with regard to the bodies the Minister and Director are required to consult in relation to the subject matter of these sections. The Standing Committee recommends:

### Recommendation 2

That the *Fisheries Management Act* (as amended) be amended as follows:

[1] Section 4 Definitions

Insert the following:

**“peak industry body” means such body (whether incorporated or otherwise) representative generally of persons engaged in the industry as is prescribed for the purposes of this definition;**

**[2] Section 43 Consultation with industry**

**Omit “consult relevant commercial fishing industry bodies” wherever occurring.**

**Insert instead “consult the Advisory Council on Commercial Fishing and the peak commercial fishing industry representative body”...**

**[3] Section 58 Public and industry consultation  
Section 63 Fisheries reviews - new plan**

**Omit “and any other relevant commercial or recreational fishing industry bodies” from sections 58(2) and 63(3).**

**Insert instead “, and relevant Advisory Councils”...**

**[4] Section 70 Special endorsements to take fish in share management fishery**

**Omit “, and with any other relevant commercial or recreational fishing industry bodies” from section 70(2).**

**Insert instead “and relevant Advisory Councils”...**

**[5] Section 83 Composition and procedure of Panel**

**Omit “on the nomination of such relevant commercial fishing industry bodies as the Minister determines” from 83(1)(c).**

**Insert instead “on the nomination of the Advisory Council on Commercial Fishing”...**

**[6] Section 111 Declaration of restricted fisheries**

**Omit “consult relevant commercial or recreational fishing industry bodies” from section 111(3).**

**Insert instead “consult all relevant Advisory Councils”...**

### 6.1.3 Appointments to Advisory Councils

The Standing Committee is concerned that all appointments to Ministerial advisory bodies be made at arm's length from the Minister in a way that is transparent and has the widespread support of stakeholders. This would help ensure the independence of such advisory bodies and minimise the opportunity for appointments to be perceived as political. Therefore, the Standing Committee recommends:

#### Recommendation 3

That draft *Advisory Council Regulations 229D (Membership of Advisory Council on Commercial Fishing)* and *229H (Membership of Advisory Council on Fisheries Conservation)* be amended prior to gazettal as follows:

Omit "within the time required by the Minister" from regulations 229D(4) and 229H(3).

Insert instead "within 30 days of the request being made in writing by the Minister"...

#### Recommendation 4

That the draft *Advisory Council Regulation 229D(5)* be omitted prior to gazettal and replaced with:

229D(5) The Minister shall appoint to the Advisory Council one of two persons nominated by each of the following groups:

- (a) Nature Conservation Council;
- (b) NSW Aboriginal Lands Council; and
- (c) Master Fish Merchants Association.

#### Recommendation 5

That draft *Advisory Council Regulations* 229E(1), 229F(1), 229G(1), and 229H(4) be amended prior to gazettal as follows:

Omit wherever it occurs “the Minister considers to have”.  
Insert instead “is/are<sup>1</sup> recognised as having”...

#### Recommendation 6

That draft *Advisory Council Regulations* 229D(6), 229E(2), 229F(2), 229G(2)(b), and 229H(4) be amended prior to gazettal as follows:

The Minister *shall*, by advertisement published in a newspaper circulating throughout the State, call for expressions of interest in membership of the Advisory Council and take any nomination that is duly made into account.

#### 6.1.4 Provisions Relating to Meetings and Procedure of Advisory Councils

The Standing Committee considers that the draft *Advisory Council Regulations* in relation to meetings and procedure of Advisory Councils are at times ambiguous. The standing Committee believes that transparent guidelines for the operation of the proposed Advisory Councils are essential for the general acceptance of the new advisory body structure and therefore recommends:

#### Recommendation 7

That draft *Advisory Council Regulation* 229L (Allowances for members) be omitted prior to gazettal and replaced with:

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<sup>1</sup> Whichever applies.

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A member is entitled to be paid such allowances as the Premier's Department determines in respect of Advisory Council members.

#### Recommendation 8

That draft *Advisory Council Regulation 229M(2)* be omitted prior to gazettal and replaced with:

The Minister may remove a member from office after consulting with the Advisory Council concerned and not less than 30 days after giving notice in writing to the Advisory Council concerned.

#### Recommendation 9

That draft *Advisory Council Regulation 229O(1)* be amended prior to gazettal as follows:

Omit "no pecuniary interest".  
Insert instead "no direct or indirect pecuniary interest"...

#### Recommendation 10

That draft *Advisory Council Regulation 229P* (General procedure for calling and holding meetings of advisory council) be omitted prior to gazettal and replaced with:

1. The procedure for the calling and holding of meetings of an Advisory Council is to be determined by each Advisory Council at their first meeting.
2. An Advisory Council is to hold at least 4 meetings each calender year.

3. The date, time, and location of the first meeting of an Advisory Council is to set by the Minister.

#### Recommendation 11

That draft *Advisory Council Regulation 229Q (Quorum)* be amended prior to gazettal as follows:

Omit "for the time being".  
Insert "as constituted".

### 6.2 Management Advisory Committees

#### 6.2.1 Establishment of Management Advisory Committees

The Standing Committee considers that the *Advisory Bodies Act* provides for the exercise of Directorial discretion as to whether or not any or all of the proposed Management Advisory Committees will in fact be established. For this reason the Standing Committee recommends that the discretionary *may* be replaced by the obligatory *shall* in the *Advisory Bodies Act* as follows:

#### Recommendation 12

That subsection 230(1) of the *Advisory Bodies Act* be amended to read as follows:

- 230(1) The Director *shall*, subject to and in accordance with the regulations, establish a Management Advisory Committee for a share management fishery or restricted fishery, or any such proposed fishery.

#### 6.2.2 Appointment of Management Advisory Committee Members

It must be stated that the Standing Committee has a number of concerns regarding the election of industry representatives to Management Advisory Committees. It is the Standing Committee's view that the purpose of such Committees is to advise and assist the Department in the management of the fishery with the best quality advice - not lobby the Minister and Department on behalf of the commercial fishing sector as would be the case with elected members. Given the Department's efforts to establish the Commercial Fishers Representative Council as the elected lobby group representing the commercial industry, the Standing Committee is surprised that the Department decided to have elected commercial fishing representatives on Management Advisory Committees. The Standing Committee believes that the planned Management Advisory Committee postal ballots are bureaucratically cumbersome, time consuming, expensive given the small number of eligible voters, and, as with all voluntary postal ballots, capable of being rorted. Notwithstanding those concerns, the Standing Committee accepts that the industry, by and large, perceives the election of industry representatives as an intrinsic part of the representative structure for the commercial fishing sector. Accordingly the Standing Committee recommends:

### **Recommendation 13**

**That the provision for elected industry representatives to the Management Advisory Committees be kept under review in any future amendment to the *Fisheries Management Act*.**

### **6.3 Zonal Advisory Committees**

The Standing Committee considers current mechanisms for regional advice and input to the Department, namely Regional Industry Conveners, Habitat Monitors and Regional Liaison Committees for Recreational Fishing, to be inadequate. These groups do not appear to be formalised in the Departmental structure but rather are used on an ad hoc basis without regular meetings between themselves or with the Department. The Standing Committee believes that a system of Zonal Advisory Committees, based on the committees of the same name in Queensland, would enable more effective regionally-based advice and

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input to reach the Department. Accordingly, the Standing Committee recommends:

**Recommendation 14**

**That NSW Fisheries replace the current network of Regional Industry Conveners, Habitat Monitors, and Regional Liaison Committees for Recreational Fishing with Zonal Advisory Committees as outlined below.**

**Recommendation 15**

**That the *Fisheries Management Act* be amended to provide for the establishment of eight Zonal Advisory Committees, with one in each of the seven NSW Fisheries administrative fishing zones and one for inland New South Wales. The purpose of these Committees would be to advise NSW Fisheries on local issues relating to fisheries management, habitat, research, and enforcement, and to provide fisheries-related information and education to the public. The Terms of Reference for these Committees should be:**

- a. to provide a forum for discussion of matters relevant to the management of regional fisheries and fish habitat;
- b. to enable a two-way flow of information between stakeholders in local fisheries issues;
- c. to provide a mechanism for the communication of management plans and to assist in the process of their development;
- d. to undertake an education and information role to increase public awareness on fisheries management; and
- e. to facilitate improved relations between fisheries stakeholders, NSW Fisheries, and other relevant bodies on fisheries issues at a regional level.

Zonal Advisory Committees should receive administrative support from NSW Fisheries, with members appointed by the Director of Fisheries on a part-time basis following a call for expressions of interest advertised in a newspaper circulating throughout each zone. Every such Committee should be required to meet at least twice every calendar year, with provision for more meetings as required.

Each Zonal Advisory Committee should comprise at least six members, including at least one person recognised to have expertise in one or more of the following categories (so that each Committee collectively has the full range of expertise listed):

- habitat conservation;
- commercial fishing;
- recreational fishing; and
- aboriginal culture.

In addition, each Zonal Advisory Committee should have at least one representative of the wider local community and be Chaired by an officer of NSW Fisheries nominated by the Director.

#### **6.4 NSW Fisheries Research Advisory Body**

The Standing Committee believes that the current impasse in relation to research advisory bodies in NSW should not continue as the existence of two recognised NSW Fisheries Research Advisory Bodies can only result in the duplication of effort and resources. The Standing Committee considers that the present problems are due in part to strongly held personal views and an apparent inability on both sides to compromise. The Standing Committee supports the view that the State's Fisheries Research Advisory Body should have a formal statutory basis as provided for under the current draft *Advisory Council Regulations*. It would be in the best interests of fisheries research in NSW if these draft Regulations were altered prior to their gazettal to reflect the following recommendations:

**Recommendation 16**

**That the Fishing Industry Research Advisory Council be wound up and the Advisory Council on Fisheries Research, as reconstituted below, act as the sole Fisheries Research Advisory Body in NSW.**

**Recommendation 17**

**That the Chairman of the Advisory Council on Fisheries Research be an independent person, with no direct or indirect pecuniary or other interest in fisheries.**

**Recommendation 18**

**That draft *Advisory Council Regulation 229F(1)* be deleted prior to gazettal and replaced with:**

**The persons appointed as members of the Advisory Council on Fisheries Research shall include the following:**

- (a) an independent Chair (in accordance with recommendation 17);**
- (b) the Director of Fisheries or his nominee;**
- (c) 1 person who is recognised as having expertise in fisheries economics;**
- (d) 1 person who is recognised as having expertise in commercial fishing;**
- (e) 1 person who is recognised as having expertise in recreational fishing;**
- (f) 1 person who is recognised as having expertise in aquaculture;**
- (g) 1 person who is recognised as having expertise in fisheries habitat and conservation;**

- (h) 2 persons who are nominated by the NSW Seafood Industry Council.

## WITNESSES AT HEARINGS

Thursday 13 February 1997

Richard Copeland Roberts,  
President,  
Oyster Farmers' Association of NSW

John Joseph Roach,  
President,  
Master Fish Merchants Association of  
New South Wales

Michael Geary,  
Director - Coastal & Flood Plain Riverine  
Resources,  
Department of Land and Water  
Conservation

John Andrew Connor,  
Executive Officer,  
Nature Conservation Council

William Donald (George) Baker,  
Chairman,  
Advisory Council on Commercial Fishing

Oleh Volodymir Harasymiw,  
Chairman,  
Four Ports Management Committee

John Glaister,  
Director of Fisheries,  
NSW Fisheries

Paul Francis O'Connor,  
Director, Fisheries Management,

NSW Fisheries

John Henry Diplock,  
Principal Fisheries Manager, Commercial,  
NSW Fisheries

Deannea Joy McElligott,  
Manager, Commercial Consultation,  
NSW Fisheries

Stephen Paul Dunn,  
Executive Officer, Policy Unit,  
NSW Fisheries

Friday 14 February 1997

Paul Thurstan Smith,  
President,  
Jervis Bay Mariculture Association

Ronald Phillip Snape,  
Chairman,  
CFAC

Keith Walter Sewell,  
Commercial Fisherman

Bruce Alan Schumacher,  
Chair,  
Advisory Council on Recreational Fishing

Peter Colin Young PhD BSc ARCS,  
Special Research Fellow & Marine Farm  
Planning Specialist

## INTERIM REPORT

The Standing Committee on State Development inquiry into the *Fisheries Management Amendment (Advisory Bodies) Act 1996* has generated considerable interest among the fishing community, with the Committee receiving 25 written submissions and oral evidence from 21 witnesses. The crux of the inquiry is the membership and method of selection of Ministerial Advisory Bodies.

While the Act outlines in general terms the way in which these bodies are to be formed, the detail is to be provided by the associated regulations. The *Fisheries Management Advisory Bodies Act 1996* (Division 2, 229 Ministerial Advisory Bodies) states that:

- (1) The Minister may, subject to and in accordance with the regulations, establish advisory councils, including advisory councils for the commercial, recreational, research and aquaculture sectors of the fishing industry.
- (2) The members of any such advisory council are to be appointed by the Minister in accordance with the regulations.
- (3) The functions of any such advisory council are:
  - (a) to advise the Minister on any matter referred to it by the Minister, and
  - (b) to advise the Minister on any other matter it considers relevant to the fishing industry sector for which it is established.

The Act also states (231 Regulations):

The regulations may make provision for or with respect to the establishment, composition, functions and procedure of any advisory council or committee under this Division.

On Thursday 13 February 1997, the Committee heard the following evidence in relation to such regulations from the Director of Fisheries:

**Dr GLAISTER:** The regulations for the management advisory

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committees have been drafted or are being drafted. The regulations for the advisory bodies have not yet been drafted. The bodies that you refer to were established informally—in other words, they did not have statutory power and there has not yet been the requirement for them to undertake any actions that would require that power.

**CHAIRMAN:** How long will this state of limbo continue, given the legal and practical difficulties that it is clearly creating?

**Dr GLAISTER:** I understand that the management advisory committee regulations will be available Friday week.

**CHAIRMAN:** With consultation or to be gazetted?

**Dr GLAISTER:** For gazettal.

**CHAIRMAN:** So there is not to be any consultation about the regulations before they are gazetted, given your long standing commitment to consultation.

**Dr GLAISTER:** No. It is necessary to get the management advisory committee regulations in place so that the elections for the management advisory committees can occur as soon as possible. The intent of the regulations is to allow for the preparation of management plans for each of those fisheries as soon as possible<sup>1</sup>.

The Committee has corresponded with the Minister on three occasions (14/2/97, 3/3/97, 19/3/97) since this evidence was given. This correspondence resulted in the Department forwarding the Committee a draft copy of the regulations for the Management Advisory Committees, accompanied by suggested changes arising from further consultation with commercial fishermen. The Department did not nominate a date to furnish the Committee with regulations in relation to the proposed Ministerial Advisory Councils. The preliminary draft Ministerial Advisory Council regulations were received by the Committee on Tuesday 8 April 1997.

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<sup>1</sup> Evidence of Dr Glaister, 13 February 1997, p. 55.

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The Committee has a number of concerns regarding the delays that have occurred in drafting and gazetting the regulations associated with the *Fisheries Management Amendment (Advisory Bodies) Act 1996*. Firstly, the Committee is concerned about the apparent lack of consultation with stakeholders in drafting the regulations. Written submissions received by the Committee and evidence given during public hearings has generally indicated concern over the lack of consultation between the Department and the respective user groups. The Committee considers that such consultation is essential in ensuring the acceptance by stakeholders of regulations that have a significant impact on all those involved in the fishing industry. Public participation of some kind in the drafting of the regulations before their gazettal would therefore improve the chances of their wider acceptance.

Secondly, the Committee is concerned that the existing advisory structures are operating without the foundation of regulations to guide them.

Finally, the composition of the proposed fisheries advisory bodies, and particularly the role of conservationists, is central to the inquiry. The Committee found that it was unable to interpret the full impact of the Act, and therefore could not complete its inquiry, until it had access to all of the regulations governing the composition and function of the advisory bodies. The Committee cannot satisfactorily address the inquiry's Terms of Reference by the 11 April 1997 as it received the Ministerial Advisory Council regulations just three days before its Advisory Bodies Report was due to be tabled. Given these circumstances, the Committee has no other choice but to request an extension of the present tabling date to Thursday 19 June 1997.



**FISHERIES MANAGEMENT AMENDMENT  
(ADVISORY BODIES) ACT 1996 NO 141**

Act No 141, 1996

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An Act to amend the *Fisheries Management Act 1994* in relation to advisory bodies. [Assented to 16 December 1996]

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Fisheries Management Amendment (Advisory Bodies) Act 1996*.

**2 Commencement**

This Act commences on a day or days to be appointed by proclamation.

**3 Amendment of Fisheries Management Act 1994 No 38**

The *Fisheries Management Act 1994* is amended as set out in Schedule 1.

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**Schedule 1 Amendments**

(Section 3)

**[1] Section 4 Definitions**

Omit the definitions of CFAC and RFAC.

**[2] Section 4, definition of ``Management Advisory Committee''**

Omit the definition. Insert instead:

**Management Advisory Committee** means a Management Advisory Committee for a fishery established under section 230.

**[3] Section 41 Staged implementation of share management fisheries**

Omit ``consults CFAC and other industry representatives'' from section 41 (a).

Insert instead ``consults relevant industry bodies''.

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**[4] Section 41 (b)**

Omit `` by CFAC''.

**[5] Section 43 Consultation with industry**

Omit `` consult CFAC and other representatives of the commercial fishing industry'' wherever occurring.

Insert instead `` consult relevant commercial fishing industry bodies''.

**[6] Section 58 Public and industry consultation**

Omit `` , CFAC and RFAC'' from section 58 (2).

Insert instead `` , and any other relevant commercial or recreational fishing industry bodies,''.

**[7] Section 59 Management Advisory Committees for fisheries**

Omit the section.

**[8] Section 63 Fisheries reviews new plan**

Omit `` , CFAC and RFAC,'' from section 63 (3).

Insert instead `` , and any other relevant commercial or recreational fishing industry bodies,''.

**[9] Section 70 Special endorsements to take fish in share management fishery**

Omit `` and with CFAC and RFAC'' from section 70 (2).

Insert instead `` , and with any other relevant commercial or recreational fishing industry bodies''.

**[10] Section 83 Composition and procedure of Panel**

Omit `` on the nomination of CFAC'' from section 83 (1) (c).

Insert instead `` on the nomination of such relevant commercial fishing industry bodies as the Minister determines''.

**[11] Section 111 Declaration of restricted fisheries**

Omit ``consult CFAC and RFAC'' from section 111 (3).  
Insert instead ``consult relevant commercial or recreational fishing industry bodies''.

**[12] Part 8, Division 2 (NSW Commercial Fishing Advisory Council and CFAC Regional Advisory Committees ss 229 237) and Division 3 (NSW Recreational Fishing Advisory Council ss 238, 239)**

Omit the Divisions. Insert instead:

**Division 2 Advisory bodies**

**229 Ministerial advisory bodies**

- (1) The Minister may, subject to and in accordance with the regulations, establish advisory councils, including advisory councils for the commercial, recreational, research and aquacultural sectors of the fishing industry.
- (2) The members of any such advisory council are to be appointed by the Minister in accordance with the regulations.
- (3) The functions of any such advisory council are:
  - (a) to advise the Minister on any matter that is referred to it by the Minister, and
  - (b) to advise the Minister on any other matter it considers relevant to the fishing industry sector for which it is established.

**230 Management Advisory Committees for fisheries**

- (1) The Director may, subject to and in accordance with the regulations, establish a Management Advisory Committee for a

share management fishery or restricted fishery, or any such proposed fishery.

- (2) The members of a Management Advisory Committee are to be appointed by the Director and are to be:
  - (a) commercial fishers elected in accordance with the regulations by shareholders or commercial fishers, or persons who are likely to be shareholders or commercial fishers, in the fishery, and
  - (b) persons representing other interested groups determined by the Minister in accordance with the regulations.
- (3) The Director (or the Director's nominee) may attend meetings of a Management Advisory Committee but is not entitled to vote at any such meeting. The Director (or the Director's nominee) is to chair any meeting of a Management Advisory Committee that he or she attends.
- (4) The functions of a Management Advisory Committee for a fishery are:
  - (a) to advise the Minister on the preparation of any management plan or regulations for the fishery, and
  - (b) to monitor whether the objectives of the management plan or those regulations are being attained, and
  - (c) to assist in a fishery review in connection with any new management plan or regulations, and
  - (d) to advise on any other matter relating to the fishery.

### **231 Regulations**

The regulations may make provision for or with respect to the establishment, composition, functions and procedure of any advisory council or committee under this Division.

**[13] Schedules 4, 5 and 6**

Omit the Schedules.

**[14] Schedule 7 Savings, transitional and other provisions**

Omit `` of this Act'' from clause 2 (1). Insert instead:  
of the following Acts:

This Act

*Fisheries Management Amendment (Advisory Bodies) Act 1996*

**[15] Schedule 7, clause 2 (2)**

Omit `` to this Act''. Insert instead `` to the Act concerned''.

**[16] Schedule 7, clauses 18 and 19**

Omit the clauses from Part 8. Insert instead:

**18 Abolition of CFAC, CFAC Regional Advisory Committees and RFAC**

- (1) The following bodies established under this Act are abolished on the commencement of Schedule 1 [12] to the Fisheries Management Amendment (Advisory Bodies) Act 1996:
  - (a) the New South Wales Commercial Fishing Advisory Council,
  - (b) each CFAC Regional Advisory Committee,
  - (c) the New South Wales Recreational Fishing Advisory Council.
- (2) A person who held office as a member of any such body immediately before its abolition ceases to hold office and is not entitled to any remuneration, or compensation, for loss of that office. However, any such person is eligible (if otherwise qualified) to be appointed as a member of an advisory body established under Part 8 of this Act.



- (3) Any assets or liabilities of any such body immediately before its abolition become the assets or liabilities of the Crown. The Minister may transfer any such assets to any representative body of the fishing industry that has assumed the functions of any such abolished body.

**19 Continuation of Management Advisory Committees for share management fisheries**

A Management Advisory Committee in existence on the commencement of Schedule 1 [7] to the Fisheries Management Amendment (Advisory Bodies) Act 1996 is taken to have been established under this Act, as amended by that Act. Until the membership of any such Committee is determined in accordance with this Act as so amended, the persons holding office as members of any such Committee on that commencement continue to hold office as members of the Committee.



## SUBMISSIONS TO INQUIRY

- 001 Elaine Garvey, Secretary, Recreational Fishing Advisory Council Region 7
- 002 Russell & Shirley Massey
- 003 Calvin J Terry, President, NSW Silver Perch Growers Association
- 004 Colin Mansell
- 005 A J Golden
- 006 Stephen Beare, Acting Executive Director, ABARE
- 007 Dr Andrew Sanger, Acting Commissioner, Inland Fisheries Commission
- 008 Donald McKenzie Moore, Director/Manager, Newcastle Marine Brokerage
- 009 David Harrigan, President, Angers Action Group (Sydney Northside) Inc
- 010 Peter Parker, Environmental Consultants Pty Ltd & NSW Recreational Fishing Advisory Council Zone 1
- 011 John L Smith, President, NSW Recreational Fishing Federation
- 011a John Horsch, Secretary, NSW Recreational Fishing Federation
- 012 Peter Millington, Director, Programs, Fisheries Department of Western Australia

## Appendix Two

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- 013 Graeme Hillyard, Secretary, United Commercial Fishermen's Association of NSW
- 013a Gary Howard, Treasurer, United Commercial Fishermen's Association of NSW
- 014 Graeme Byrnes, Manager, Alan A Byrnes and Sons
- 015 Gary Howard, President, Upper Hawkesbury Professional Fisherman's Association
- 015a Susan Laughton, Secretary, Upper Hawkesbury Professional Fisherman's Association
- 016 Barrie J Bamford, Secretary, Jervis Bay Mariculture Association Inc
- 017 Peter C Young PhD BSc ARCS
- 018 B Dooley, Executive Officer, Lake Illawarra Authority
- 019 Dr John Glaister, Director of Fisheries, NSW Fisheries
- 020 R E Nieper, Director General, Department of Primary Industries Queensland
- 021 John Connor, Executive Officer, Nature Conservation Council of NSW Inc
- 022 Barrie de Flon, Chairman, Environment and Recreation Management Committee, Newcastle District Anglers Association Incorporated
- 023 Gary Colliton, Senior Vice President, Institute of Freshwater Anglers Inc (IFA)
- 024 Mary Howard

- 025 P P Rogers, Executive Director, Fisheries Department of Western Australia
- 026 Richard Roberts, President, NSW Seafood Industry Council Inc
- 027 Richard Roberts Oyster Farmers' Association of NSW Ltd
- 028 Terry Maloney, Secretary, South West Anglers Association Inc
- 029 Leon P Zann, Head, Environmental Resources Management Program, School of Resource Science and Management



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