

## Legislative Council Hansard – 18 October 2017 – Proof

**FISHERIES MANAGEMENT AMENDMENT (ABORIGINAL FISHING) BILL 2017***Second Reading***The Hon. NIALL BLAIR (Minister for Primary Industries, Minister for Regional Water, and Minister for Trade and Industry) ( 20:02 ): I move:**

That this bill be now read a second time.

I seek leave to incorporate my second reading speech into *Hansard*.

**Leave granted.**

I introduce the Fisheries Management Amendment (Aboriginal Fishing) Bill 2017.

This bill will introduce significant improvements to the operation of the Aboriginal Fishing Trust Fund.

The role of the Aboriginal Fishing Trust Fund will be to provide monetary support for cultural fishing and fishing businesses.

Last year, during its inquiry into commercial fishing in New South Wales, the Legislative Council's General Purpose Standing Committee No 5 recommended the "Minister for Primary Industries ensure that the Aboriginal Commercial Fishing Trust is fully operational by July 2017."

The Committee recognised the importance of the Aboriginal Fishing Trust Fund to Aboriginal people and it is the intention of this bill to make the Trust Fund operational so that it will be of benefit to future generations.

Fishing has always been an important part of the cultural and economic life of Aboriginal communities.

For many Aboriginal people, fishing is an integral part of their connection to their traditional country.

In addition, fishing can provide critical economic opportunities for Aboriginal people and Aboriginal communities.

The Parliament of NSW has recognised the importance of fishing to Aboriginal people and enshrined it in our fisheries legislation.

The objects of the Fisheries Management Act go directly to the heart of this.

The objects recognise the spiritual, social and customary significance of fisheries resources to Aboriginal people.

The objects also seek to protect and promote the continuation of Aboriginal cultural fishing.

I note that section 21AA of the Act gives special provision for Aboriginal cultural fishing, which has not yet been "switched on".

The intention has long been that section 21AA would commence in conjunction with a cultural fishing regulation.

The New South Wales Government continues to investigate whether a state-wide cultural fishing regulation is the best approach.

As I mentioned earlier, local management plans are being trialled as part of these investigations.

The aim of local management plans is to understand the cultural fishing practices of individual Aboriginal communities and create a plan, in consultation with the community, for how cultural fishing is carried out in that community.

These trials will guide how and when section 21AA should apply.

I acknowledge that some stakeholders, including the NSW Aboriginal Lands Council would prefer a quicker timetable for the application of 21AA.

Given the shared nature of our precious fisheries resource, the Government believes a measured approach is the most prudent.

In 2015, the Fisheries Management Act was amended to introduce the Aboriginal Fishing Trust Fund.

The House recognised the Trust Fund was an important mechanism that could help Aboriginal communities continue to access and manage fisheries resources.

Since that time, we have been working closely with the Aboriginal Fishing Advisory Council—or AFAC—to make sure that the trust fund is implemented in a way that supports and promotes the cultural and economic fishing aspirations of Aboriginal communities.

During the development of the detailed operational arrangements for the Aboriginal Fishing Trust Fund, it became apparent that the scope of the legislative framework needs to be expanded.

Currently, the legislation only allows for the trust fund to provide grants.

However, grants alone are not sufficient to promote the broad spectrum of economic development opportunities for Aboriginal communities.

It also limits the fund's ability to target funding as effectively as possible.

To this end, this bill expands the scope and functions of the Aboriginal Fishing Trust Fund by:

- Allowing for loans to be issued from the trust fund, and
- Enabling assets purchased using trust monies to be held on trust for the benefit of the Aboriginal community.

This bill provides a framework for how the Aboriginal Fishing Trust Fund will operate.

While the legislative framework is critical for the operation of the trust fund, what is even more important is the actual administrative detail of who will be eligible for funding, transparency and robust governance arrangements around decision-making.

The Government has been working hand in hand with key stakeholders to design the Aboriginal Fishing Trust Fund and ensure the money goes to the right projects and supports Aboriginal communities across the State.

An important part of the Aboriginal Fishing Trust Fund is that Aboriginal people will be genuinely involved in decisions about how the money is spent.

To this end, an expenditure committee will be set up to assess all applications for funding from the trust fund and assist the Aboriginal Fishing Advisory Council in making recommendations to the Minister about expenditure from the fund.

On 4 October 2017, the Department of Primary Industries called for nominations for the new expenditure committee.

The expenditure committee will consist of up to six individuals who are Aboriginal, and who have expertise in business and economic development.

I am confident we will receive a high calibre of applications.

A trust fund cannot operate without funding.

The whole purpose of the trust fund is to invest in projects that will protect and promote the fishing aspirations of Aboriginal communities.

To kick-start the trust fund, the NSW Government has committed \$1.5 million over three years.

This funding will support projects that seek to protect and promote Aboriginal cultural fishing, and commercial fishing and fishing-related activities.

A significant amount of work has been progressed in developing the administrative arrangements for the Aboriginal Fishing Trust Fund, and the Government intends to open the first round of funding in this financial year.

The Aboriginal Fishing Trust Fund will, for the first time in New South Wales, provide a dedicated fund to support the fishing aspirations of Aboriginal communities in New South Wales.

It is another step in a long journey to strengthen relationships between governments and Aboriginal communities across the State.

I now turn to the detail of the bill.

In developing the operational arrangements around the Aboriginal Fishing Trust Fund, it became clear that many fishing-related economic development opportunities lay in the ability for Aboriginal communities to participate in commercial fishing ventures.

Importantly, the investments made by the Aboriginal Fishing Trust Fund for Aboriginal communities need to remain available to those communities into the future.

To this end, AFAC recommended that a mechanism is needed to ensure that the assets purchased by the trust fund remain within the community, and are not sold for individual profit.

The bill acts on this by providing for assets to be purchased by the Minister for the benefit of Aboriginal communities, enabling Aboriginal people or entities to access or use those assets.

It also enables the Fisheries Administration Ministerial Corporation to hold these assets for the benefit and use of Aboriginal people and communities.

A ministerial corporation is a discrete legal entity that is under the direction of the Minister.

The Minister and the corporation are bound to act in accordance with the objects of the Act.

While it is possible that other entities or organisations could hold shares on behalf of communities, it is important that all Aboriginal people and communities have the opportunity to access these assets.

In addition, other organisations may not be bound to operate in accordance with the objects of the Act.

While there are a number of organisations that represent Aboriginal people's interests, each has its own membership base.

The Ministerial Corporation is the most appropriate vehicle to ensure that commercial fishing shares and other assets purchased by the trust fund will be available to Aboriginal communities across New South Wales.

The purpose of this amendment is to ensure that the assets can be centrally held, while the benefits from investment, including access to commercial markets, sit with Aboriginal people and communities.

However, it is not proposed that all assets paid for through the trust fund are held by the Ministerial Corporation—the corporation will only be used in certain circumstances.

For example, commercial fishery shares bought using monies from the Aboriginal Fishing Trust Fund could be held by the Fisheries Administration Ministerial Corporation for use by an Aboriginal-owned organisation.

As the shareholder, the Ministerial Corporation could then enter into a contractual arrangement with an Aboriginal organisation or business to grant access to, or use of, those shares.

Under that contractual arrangement and the Act, the Ministerial Corporation would formally nominate an Aboriginal commercial fisher to take fish in the fishery on its behalf.

These nominations would be at the request of the Aboriginal organisation or business with which the Ministerial Corporation has a contract.

The bill also provides certain exemptions for the Ministerial Corporation from offences or other obligations generally imposed on commercial fishing shareholders.

This recognises that while the Ministerial Corporation may hold the assets or investments and will enter into contracts for the appropriate use of those assets, it will not be involved in running the business, or the day-to-day activities of the Aboriginal owned business.

The bill also clarifies and expands the scope of payments that may be made into the Aboriginal Fishing Trust Fund.

This will help "future proof" the trust fund.

The legislation needs to be flexible enough to allow different types of funds and assets to be directed into the Aboriginal Fishing Trust Fund over time.

The bill allows the Minister for Primary Industries to approve an Aboriginal fishing assistance program for the purposes of:

- Aboriginal cultural fishing, or
- fishing or fishing-related activities for a commercial purpose.

Through an assistance program, the Minister will be able to approve the broad objective or policy of a funding round, or a series of funding rounds.

Before approving an assistance program, the Minister will be required to obtain and have regard to the advice or recommendations of any relevant advisory council on Aboriginal fishing—currently AFAC.

The existing legislation only allows the Aboriginal Fishing Trust Fund to provide grants.

While the ability to provide grants allows the intent of the trust fund to be progressed, it has limitations.

The bill expands the scope and flexibility of the trust fund by allowing loans also to be provided.

Those loans may be subject to interest, or interest free.

Any interest payable on loans will provide a revenue stream back into the trust fund and will be used to support future investments in cultural and economic fishing opportunities for Aboriginal people.

The interest rate on a loan will be determined on a case-by-case basis, on advice from AFAC.

Interest free loans are more likely to be applied to short-term and smaller loans.

A low interest rate is more likely to be applied to larger, longer term loans.

To this end, the legislation provides that loans may be secured or unsecured.

In addition to loans, grants will also be available to provide support for cultural fishing and economic development opportunities.

Expenditure from the trust fund will be guided by advice from Aboriginal people who have a clear and distinct understanding of community needs in regards to cultural fishing and economic development for community.

This is reflected in the existing legislation.

The Minister must consult with AFAC over which funding applications should be supported and whether that support should be through grants or loans.

As I mentioned earlier, AFAC will be supported by an expenditure committee.

An example of when a loan may be more appropriate than a grant is where an existing commercial operation is looking to expand.

The commercial operation may have the capacity to repay the loan, allowing for a greater pool of money to be directed to community benefit projects, or to applicants who do not have the capacity to repay loans.

The New South Wales Rural Assistance Authority—the RAA—will administer these loans on behalf of the New South Wales Government.

The RAA has extensive experience and established systems in administering loans.

It will provide the necessary rigour to administer monies invested from the trust fund in Aboriginal-related ventures.

The RAA will not be making decisions related to the allocation of loans.

That remains the decision of the Minister for Primary Industries, with regard to the advice provided by AFAC.

However, the RAA will be well placed to provide advice on an applicant's capacity to repay a loan, which will be considered as part of the review of applications process.

As an administrator of assistance programs, the RAA has a good understanding of common issues faced by borrowers and will be able to provide advice to the Minister for Primary Industries on assessing future loan applications.

As I mentioned earlier, the New South Wales Government has been working closely with the Aboriginal Fishing Advisory Council—or AFAC as I have referred to during the course of this speech—in order to design how the trust fund will operate.

The bill itself provides the high level framework for the trust fund.

Operation of the trust fund will be supported by further detail around who will be eligible for funding, the types of projects that should be funded, and governance around decision-making.

We have discussed this detail with AFAC on multiple occasions, and the council's valuable insights and advice have helped shape the trust fund.

The New South Wales Aboriginal Land Council and the Native Title Service Corporation have also both been consulted about how the fund should operate.

While the New South Wales Aboriginal Land Council and the Native Title Services Corporation have been involved throughout the development of this bill and have expressed their general support for it, I would like to clarify some of the issues they have raised.

There are concerns about whether the bill will allow for Aboriginal people and entities to purchase fishing assets using grants and loans, or whether all assets will be held by the Fisheries Administration Ministerial Corporation.

I would like to reassure the House that the primary purpose of this bill is to expand the application of the trust fund so that it can be used for grants and loans that will support Aboriginal people and communities.

The bill does not place any restrictions on how loans or grants may be used, and we expect that grants and loans will be used to purchase assets such as vessels and fishing equipment.

I would also like to clarify that assets purchased using loans or grants will not be held by the Fisheries Administration Ministerial Corporation.

These assets are intended to sit with the individual or organisation that has purchased the asset.

Only assets purchased by the Minister in relation to an application will be held by the Fisheries Administration Ministerial Corporation.

Specifically, I am advised that section 237B (7) of the bill applies only to assets acquired by the Minister. In addition, the legislation does not authorise the Fisheries Administration Ministerial Corporation to transfer ownership of an asset from an individual to itself.

In addition, the Minister for Primary Industries will consult with AFAC before assets held by the corporation are sold and will notify AFAC if the Minister's decision is inconsistent with AFAC's advice.

Some concerns have also been raised about whether the bill unintentionally restricts Aboriginal businesses from accessing money from the fund because the overarching purpose is to support Aboriginal communities.

The bill is not intended to restrict Aboriginal businesses or individuals from pursuing economic development opportunities.

In fact, the bill makes it clear that the Aboriginal fishing assistance program can provide grants or loans to Aboriginal people or Aboriginal entities.

Commercial opportunities for Aboriginal fishers will provide direct and indirect benefits to Aboriginal communities and the economy generally.

Aboriginal fishing businesses can also contribute to cultural and community events.

On the topic of Aboriginal businesses, queries have been raised about the definition of an Aboriginal entity.

AFAC have made it clear that an Aboriginal entity should be at least 51 per cent owned.

We support this and have agreed with AFAC that we will implement this definition through operational arrangements.

The legislation also allows for funding to be granted to a person acting on behalf of an Aboriginal entity.

This provides flexibility for Aboriginal organisations that may wish to engage a consultant to assist with their application.

AFAC will oversee robust application and assessment processes to ensure that the funding is not provided to open-ended projects that do not benefit Aboriginal organisations.

In addition, funding will be linked to milestones and be released in instalments.

The Department of Primary Industries will also continue to work with its key stakeholders to ensure there are clear parameters on who may act on behalf of an Aboriginal entity. If required, the Government will consider introducing a regulation to clarify and strengthen this provision.

The bill provides that fees may be required to be paid in some circumstances.

This refers to the fees that are payable by all participants in the fishing sector.

Applicants will need to consider these costs as part of the business plan that they attach to their application.

Finally, other concerns have been raised about money from the trust fund paying for the administration costs of the program.

This is discretionary in the legislation and any administration costs incurred are likely to be small.

This is discretionary in the legislation. Following representations from NSWALC and NTSCorp, this Government has committed that the costs of administering the program will be funded from the internal resources of the Department of Primary Industries and not the funds allocated to the trust fund.

I thank the AFAC, NTSCorp and the NSW Aboriginal Land Council for working with us on developing the trust fund and look forward to continuing working with these organisations to achieve social, cultural and economic outcomes for Aboriginal communities.

The bill introduces important changes to provide much needed flexibility for the Aboriginal Fishing Trust Fund.

These amendments go to the objectives of the Fisheries Management Act which recognise the significance of fishing to Aboriginal people.

The amendments will help support a broader range of projects and ensure the longevity of investments made by the trust fund.

This Government is committed to working hand in hand with Aboriginal communities to support them to achieve their fishing aspirations and economic prosperity.

I urge all Members of the House to support this bill.

I commend the bill to the House.

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