

Submission
No 23

INQUIRY INTO COMMENCEMENT OF THE FISHERIES MANAGEMENT AMENDMENT ACT 2009

Organisation: Australian Institute of Aboriginal and Torres Strait Islander
Studies

Date Received: 24 February 2022



AIATSIS

**AIATSIS Submission: Inquiry into
the Commencement of the *Fisheries
Management Amendment Act 2009***

Mia Stone and Lilli Ireland

February 2022

Table of contents

1.	About AIATSIS _____	2
2.	Executive summary _____	2
3.	Cultural fishing in NSW _____	4
4.	Deficiencies in the current regulatory environment _____	5
5.	Impact of non-commencement _____	7
6.	Barriers to commencement _____	12
7.	Reference list _____	14

1. About AIATSIS

The Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) is Australia's premier national institute dedicated to Aboriginal and Torres Strait Islander peoples' knowledges, societies and cultures. We are the custodian of Australia's national collection of Aboriginal and Torres Strait Islander heritage materials and a publicly funded research agency which provides advice to government on Aboriginal and Torres Strait Islander culture and heritage including native title, land and water management and Indigenous governance. The AIATSIS Native Title Research Unit (NTRU) was established in 1992 following the *Mabo* decision.¹ Through the NTRU, AIATSIS seeks to promote the recognition and protection of the rights of Aboriginal and Torres Strait Islander peoples to self-determination, their lands and waters.

The NTRU has a long history of engagement with Aboriginal fishing communities in NSW. In 2015-2017 we facilitated the largest research project into Indigenous fishing values to date in collaboration with several Aboriginal community organisations including the NSW Aboriginal Fishing Rights Group (AFRG).² The research uncovered the immense importance of cultural fishing for many Indigenous people along the coast, and the profound impacts that barriers to access can have across a range of determinants. We continue to work closely with Traditional Owners to promote their rights to practice and maintain their culture, and to be involved in the management and custodianship of their Sea Country.³

These comments are informed by this history and over 29 years of research and practice in native title. We hope they will assist the NSW Parliament in the long-overdue implementation of legislative reform to improve recognition and respect for Aboriginal cultural fishing in NSW.

2. Executive summary

Aboriginal people on the NSW coastline have strong connections to their waters and sea Country. Being out on, and looking after Country, fishing and diving are an integral part of identity, culture, spirituality and livelihood.

Such rights and interests are protected under international law. The *United Nations Declaration on the Rights of Indigenous Peoples* ('*UNDRIP*'), endorsed by Australia in 2009, protects the rights of Indigenous peoples to practice, maintain and teach cultural traditions as well as maintain and strengthen their distinctive spiritual relationship with their traditional lands, waters and coastal seas.⁴ Of particular relevance to this inquiry is the obligation, set out in art 10(c) of the 1993 *Convention on Biological Diversity*, for States to 'protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use

¹ *Mabo v Queensland (No 2)* (1992) 175 CLR 1.

² Smyth, L, H Egan & R Kennett 2018, *Livelihood values of Indigenous customary fishing: Final report to the Fisheries Research and Development Corporation*, AIATSIS (Australian Institute of Aboriginal and Torres Strait Islander Studies), Canberra (*Livelihood values report*).

³ See later projects including Mystery Bay Community Report 2021, AIATSIS (Australian Institute of Aboriginal and Torres Strait Islander Studies) (pending publication) ('Mystery Bay Community Report'). For more, see: AIATSIS (Australian Institute of Aboriginal and Torres Strait Islander Studies) 2022, 'Livelihood values of Indigenous customary fishing', accessed 7 February 2022, www.aiatsis.gov.au/research/current-projects/livelihood-values-indigenous-customary-fishing

⁴ *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN Doc A/RES/61/295 (2 October 2007, adopted 13 September 2007) arts 12, 25 ('*UNDRIP*').

requirements'.⁵ The rights and interests of Aboriginal people to fish and access their waters is recognised domestically in s 211 of the *Native Title Act 1993* (Cth) ('NTA'). The High Court has reinforced this by holding that native title can be held over territorial seas, and may include the right to exploit resources for any purposes, including commercial.⁶

In contravention with these rights, Aboriginal people continue to be prosecuted on the NSW coastline for practising their culture. The current legislative and policy environment fails to adequately accommodate cultural fishing, leading to Aboriginal people being penalised under the *Fisheries Management Act 1994* (NSW) ('*Fisheries Management Act*') for taking or possessing seafood in excess of bag limits, among other things.

While individuals, families and communities have shown strength, resilience and creativity in continuing to assert their rights and culture, compliance activities have had a detrimental impact. These include financial, cultural and spiritual impacts, as well as harm to health and wellbeing. This includes the direct and latent effects of incarceration due to fisheries offences, which can lead to whole-of-community impacts. Current fisheries laws and regulations have also led to disruptions to the transmission of cultural knowledge to younger generations. Much of this has acted to further disenfranchise Aboriginal people socio-economically, exacerbating the gap between Aboriginal and non-Aboriginal people.⁷

The commencement of s 21AA as set out in schedule 1 of the *Fisheries Management Amendment Act 2009* (NSW) has the potential to ameliorate some of these concerns. It would provide a rightful place for cultural fishing within the NSW coastal management framework and give due recognition to the rights and interests of Aboriginal people in marine resources. The *Amendment Act* was passed in 2009, but 12 years later, s 21AA has yet to commence. The non-commencement of a provision so long after the enactment of the parent statute is highly unusual in the legislative history of the state.⁸ Some people have even described the delay in commencement and inaction to address cultural prosecutions as 'systematic racism'.⁹ The failure to implement s 21AA must be rectified as soon as possible, as the Aboriginal community has long called for.

While acknowledging that broader reform is beyond the scope of this inquiry, it is important to note that the commencement of s 21AA alone is not sufficient. Section 21AA does not allow for cultural-commercial fishing – something Aboriginal people have practiced for centuries¹⁰ – nor does it address the systemic change needed to put Traditional Owners in charge of the management of their own Sea

⁵ *Convention on Biological Diversity*, opened for signature 5 June 1992, 1760 UNTS 79 (entered into force 29 December 1993) art 10(c).

⁶ See *Commonwealth v Yarmirr* (2001) 208 CLR 1; *Akiba on behalf of the Torres Strait Regional Seas Claim Group v Commonwealth of Australia* (2013) 250 CLR 209.

⁷ Closing the Gap in NSW remains a priority issue, see New South Wales Government 2021, *NSW 2021-2022 Implementation Plan*, New South Wales Government, Sydney.

⁸ The *Amendment Act* was to commence on a day set by proclamation by the minister (s 2). All provisions *other than* s 21AA commenced on 1 April 2010 by proclamation dated 31 March 2010. The proclamation explicitly singled out s 21AA, described as a 'special provision for Aboriginal cultural fishing' for non-commencement: *Commencement Proclamation under the Fisheries Management Amendment Act 2009 No 114*, 2010 No 112 (31 March 2010).

⁹ Allam, L 2021 (22 October) 'Aboriginal groups call on NSW government to end cultural fishing prosecutions', *The Guardian*, www.theguardian.com/australia-news/2021/oct/22/aboriginal-groups-call-on-nsw-government-to-end-cultural-fishing-prosecutions, quoting Pauline Wright (the president of NSW Council for Civil Liberties).

¹⁰ Schnierer, S & H Egan 2012, *Impact of management changes on the viability of Indigenous commercial fishers and the flow on effects to their communities: Case study in New South Wales*, Report to the Fisheries Research and Development Corporation, Canberra.

Country and marine resources.¹¹ Redress for past prosecutions should also be considered in recognition of cultural harm and other injustices suffered. Nevertheless, the commencement of s 21AA is a crucial and long-overdue transitional justice measure.

3. Cultural fishing in NSW

Aboriginal people have fished and dived sustainably in NSW since time immemorial. The earliest archaeological evidence of Aboriginal occupation of the South Coast dates back 21, 000 years ago, and demonstrates extensive and varied exploitation of marine resources.¹² Abalone, now a key contested species, has been harvested for at least 3000 to 4000 years and is an important traditional food.¹³ Extensive middens along the South Coast indicate the utilisation of a variety of fishing methods, including bone-tipped spears and shell fish hooks.¹⁴ They also suggest that fishing practices and methods have unsurprisingly evolved over time.¹⁵ Today, cultural fishing incorporates modern fishing methods.

AIATSIS' research in 2018, which was documented in the report, *Livelihood Values of Customary Fishing*, found that fishing had significant social, cultural and economic as well as physical and mental health values for research participants across NSW and other parts of Australia.¹⁶ Among the key findings were that:

- Fishing is governed by widely recognised cultural laws and norms.
- Fishing is one of the primary ways of living and practising culture, maintaining a connection with country and passing on cultural knowledge.
- Sharing catch is a strong norm; often a small number of regular fishers provide for many people.
- Sharing catch strengthens and maintains social ties within and between families and communities.
- Sharing catch creates a social safety net that supports vulnerable members of the community.
- Fishing is an important social and leisure activity.
- Subsistence fishing and the trade and barter of catch increase discretionary incomes by substituting purchased goods.
- Certain marine and coastal species are used medicinally.
- Fishing improves diets, through regular access to healthy foods which are otherwise unavailable or unaffordable.
- Fishing keeps people physically active.
- Fishing helps people to relax and deal with stress.
- Practising culture and providing for their families in this way gives people a sense of pride.
- Fishing is part of people's individual and cultural identities, and thus their sense of self-worth.¹⁷

¹¹ UNDRIP art 18; McCabe, P 2020, 'An Australian Indigenous common law right to participate in decision-making', *Oxford University Commonwealth Law Journal*, 20(1):52-85, doi: 10.1080/14729342.2020.1739376; The National Oceans Office 2002, *Sea Country: An Indigenous Perspective: Regional Marine Plan Assessment Report*, Australian Government, Canberra.

¹² Tran, T, et al. 2016, 'What's the Catch? Aboriginal Cultural Fishing on the NSW South Coast', *Australian Environment Review*, 31(5):182.

¹³ Cane, S 2014, 'Aboriginal Fishing Rights on the NSW South Coast: A Court Case' in Chapter 4 of *Customary Marine Tenure in Australia*, Sydney University Press, Sydney; Sullivan, ME 1987, 'The recent prehistoric exploitation of edible mussel in Aboriginal shell middens in Southern NSW' *Archaeology Oceania*, 22:97-106.

¹⁴ *Livelihood values report* (n 2), p 20.

¹⁵ *Ibid*, p 21; S Bowdler, 'Bass Point: the excavation of a south-east Australian shell midden showing cultural and economic change' unpublished BA (Honours) thesis, University of Sydney, Sydney, 1970.

¹⁶ *Livelihood values report* (n 2).

¹⁷ *Ibid*, p iv.

These values are reflected in the responses of participants in the 2021 Livelihood Values Extension Project, which looked at Sea Country health.¹⁸ As one cultural fisher said: ‘seafood is our main diet but fishing practices also create positive connections within our community. We need access to our traditional foods which is a way of life.’¹⁹ Prosecution of cultural fishing endangers the practice of one of the oldest living cultures and is in direct contravention of Australia’s international human rights obligations.

4. Deficiencies in the current regulatory environment

The current regulatory environment not only fails to adequately protect and support cultural fishing, but actively criminalises its practice in many ways. As the Committee would be aware, ss 17 and 18 of the *Fisheries Management Act* create offences for the taking or possession of specified species, respectively, in excess of statutory limits. Section 16 creates offences for the possession of undersized fish, while s 102 criminalises the selling of fish without a commercial fishing licence.

These laws interfere with longstanding cultural practices in several respects. The statutory limits on taking and possession, set out in the *Fisheries Management (General) Regulation 2019* (NSW) (*‘Regulations’*) are widely regarded as insufficient to meet community needs. For Aboriginal people, fishing is a social activity and a few fishers often fish for the family or community, including Elders and others unable to catch their own seafood.²⁰ Seafood is also a staple at large community events including birthdays and NAIDOC celebrations.

Under s 37 of the *Fisheries Management Act*, the Minister has a discretion to approve specific fishing activities for Aboriginal cultural fishing purposes that would otherwise be prohibited. The ability to apply for a s 37 permit is often cited by fisheries authorities as a solution to increased needs for specific occasions.²¹ However, community members have expressed concerns that applying for a permit is onerous.²² The form requires prospective fishers to supply a plethora of information including the names of the fishing party, species and number to be collected, location and date of collection, as well as evidence of traditional connection to the area.²³ Furthermore, an application must be submitted well in advance, with the application form advising applicants to allow up to three weeks for processing.²⁴ As has been noted, the exact date of fishing is often unknown, and can depend on culturally-specific cues,²⁵ as well as weather and water conditions.²⁶ On a more fundamental level, it is inappropriate to ask Aboriginal people to apply for a special permit in order to exercise their fundamental rights to practice and maintain their cultural traditions.

In October 2014, the NSW Department of Primary Industries (DPI) introduced the ‘Aboriginal Cultural Fishing Interim Access’ policy, which doubled the bag limits for Aboriginal fishers, and

¹⁸ Mystery Bay Community Report (n 3).

¹⁹ Ibid, p 10.

²⁰ *Livelihood values report* (n 2).

²¹ Fisheries NSW, Department of Primary Industries (NSW), *Aboriginal Cultural Fishing Interim Access* (Public Circulation Document No INT14/90930, 29 October 2014).

²² NSW Aboriginal Land Council 2009 (July), *Reel Cultural Fishing Rights*, Submission to Department of Primary Industries, NSW Aboriginal Land Council, Sydney (‘Reel Cultural Fishing Rights’).

²³ Fisheries NSW, Department of Primary Industries (NSW), *Form 24*, accessed 24 January 2022, www.dpi.nsw.gov.au/__data/assets/pdf_file/0008/639116/Form-24.pdf

²⁴ Ibid.

²⁵ *Livelihood values report* (n 2).

²⁶ *Reel Cultural Fishing Rights*.

further increased catch allowances for select species including abalone.²⁷ Under this policy, the daily abalone catch limit for Aboriginal people was increased from 2 to 10.²⁸ Again, this continues to be insufficient and culturally inappropriate. It is indicative of incremental temporary measures which do not address underlying issues or acknowledge the fundamental rights of Indigenous peoples to their waters and resources.

Provisions imposing size limits on catch are a further example of cultural ignorance in the fisheries management regime. Many cultural fishers in NSW have been prosecuted for taking undersized abalone, however, this largely stems from diverging conservation techniques.²⁹

Section 211 of the *Native Title Act 1993* (Cth) exempts native title holders from prosecution for want of a licence for hunting, fishing, gathering and carrying out other cultural or spiritual activities for the purpose of satisfying their personal, domestic or non-commercial communal needs. This provision overrides anything in the *Fisheries Management Act* to the extent of any inconsistency, and the *Fisheries Management Act* explicitly provides that it ‘does not affect the operation of the *Native Title Act 1993*’.³⁰ However, in the absence of a positive determination of native title, or at least a registered claim on foot, a native title defence has shown to be near impossible to make out for individuals charged with fisheries offences due to the high evidentiary demands of the court system.³¹ It has in any case apparently not deterred attempted enforcement activity by fisheries authorities. Although charges have often been dropped when the potential defence is raised in court, Aboriginal people continue to face altercations when fishing and the burden of court appearances. This is despite the successful registration of a native title claim over the South Coast.³²

Finally, neither s 211 of the *NTA* nor s 21AA of the *Fisheries Management Act* in their present forms are sufficient to accommodate cultural-commercial fishing, despite the High Court having recognised in recent years a native title right to take resources for any purposes, including commercial purposes, where supported by the content of the traditional laws and customs of the native title group.³³ Section 102 of the *Fisheries Management Act* currently prohibits the sale of catch without a commercial fishing licence. For some Aboriginal cultural fishers, selling a portion of catch (after feeding family and community) is consistent with longstanding cultural traditions which allow for trade and barter, including for money in modern times. The cost of commercial fishing licences excludes many Aboriginal people from participation in the fishing industry. This exclusion further exacerbates wealth inequality and impedes on Aboriginal peoples’ aspirations to be strong contributors to the economy. As Wally Stewart, co-founder of the NSW AFRG, argues:

We were made out to be criminals, and we weren’t even criminals, it was who we were, it’s in us, it’s culture, our way of life; if we could make some money out of it we should’ve gotten that opportunity

²⁷ Fisheries NSW, Department of Primary Industries (NSW), *Aboriginal Cultural Fishing Interim Access* (Public Circulation Document No INT14/90930, 29 October 2014).

²⁸ Ibid.

²⁹ *Livelihood values report* (n 2).

³⁰ *Fisheries Management Act* s 287.

³¹ See, eg, *Mason v Tritton* (1994) NSWLR 572; *Derschaw v Sutton* (1996) 17 WAR 419; *Dillon v Davies* (1998) 145 FLR 111.

³² See National Native Title Tribunal, 2022, ‘Register of Native Title Claims Details: NC2017/003 – South Coast People’, accessed 15 January 2021, www.nntt.gov.au/searchRegApps/NativeTitleRegisters/Pages/RNTC_details.aspx?NNTT_FileNo=NC2017/003

³³ See *Akiba on behalf of the Torres Strait Regional Seas Claim Group v Commonwealth of Australia* (2013) 250 CLR 209, among others.

too. We had trade and barter before they came along, in traditional times they bartered. But they just expect that blackfellas, if you want to go fishing, go fishing in a canoe.³⁴

During 2007 and 2008 a voluntary buy-back scheme for non-Traditional Inhabitant commercial licences was completed for the finfish Reef Line Fishery in the Torres Strait. The scheme resulted in 100% of the commercial catch entitlements transferred to members of the community and held on trust by the Torres Strait Regional Authority (TSRA).³⁵ While beyond the scope of this inquiry, consultation is required with a view to increasing opportunities and access to cultural commercial fishing in NSW. This is part of a broader effort towards Indigenous co-management of marine resources.

5. Impact of non-commencement

Prosecutions

Compliance and enforcement activity in NSW under the *Fisheries Management Act* has had devastating and far-reaching consequences for individuals, communities and the practice and transmission of one of the world's oldest living cultures. Between 2009 and 2015, it is estimated that close to 500 Aboriginal people were fined, jailed or had equipment confiscated for fisheries offences.³⁶ The exact number of regulatory actions connected with cultural fishing is unknown. This is because hearings in the lower-level Magistrates Courts are not always reported, withdrawn charges and warnings are not recorded, and instances of seizure of catch and/or gear are not made publicly available.³⁷ Nevertheless, in the 2020 AIATSIS Livelihood Values Extension Project survey, almost three-quarters of participants knew someone within the community who had been prosecuted for fishing.³⁸ This demonstrates the prevalence of the issue as a significant stressor across the community and source of conflict with fisheries authorities.

There have been several publicised court cases involving Aboriginal cultural fishers since the enactment of the *Amendment Act* that would likely have been avoided if s 21AA had commenced. In 2013, five Aboriginal men were charged with taking and possessing excess quantities of abalone,³⁹ while in 2015, proceedings against two men for fisheries offences were commenced over two years after charges were first laid.⁴⁰ In both cases, the charges were ultimately withdrawn. In relation to the 2015 case, the presiding Magistrate held that the NSW Department of Primary Industries (DPI) should

³⁴ Wally Stewart, personal communication with Dr Tran Tran 15 April 2016.

³⁵ DAWE (Department of Agriculture, Water and the Environment) 2020, *Assessment of the Torres Strait Finfish Fishery*, Canberra

³⁶ Tran, T, et al. 2016, 'What's the Catch? Aboriginal Cultural Fishing on the NSW South Coast', *Australian Environment Review* 31(5):182; Macey, J 2015 (19 March), 'NSW Election 2015: Aboriginal Groups Want Cultural Fishing Rights Made Law', *ABC News*, accessed 7 February 2022, www.abc.net.au/news/2015-03-19/aboriginal-groups-want-cultural-fishing-rights-made-law/6331716

³⁷ Pain, N, & G Pick 2020, 'Balancing Competing Interests in the Criminal Justice System: Aboriginal Fishing Rights in Coastal NSW', *UNSW Law Journal*, 43(4):1395 ('Balancing Competing Interests').

³⁸ Mystery Bay Community Report (n 3).

³⁹ McIntosh, C 2014 (9 May) 'Charges Withdrawn in Court', *Bay Post – Moruya Examiner*, accessed 10 January 2021, www.batemansbaypost.com.au/story/2269342/charges-withdrawn-in-court/; 'Balancing Competing Interests' (n 36):1397.

⁴⁰ *NSW DPI v Ardler* (Local Court of New South Wales at Nowra, Magistrate G Fleming, 1 April 2015).

have further inquired into a potential native title defence.⁴¹ Following this, the DPI announced it would investigate circumstances prior to proceeding to charge.⁴²

However, this has not prevented prosecutions. Kevin Mason, a 74 year-old Aboriginal Elder and life-long cultural fisherman, has been charged three times in five years, including recently.⁴³ In October 2018, Mason was apprehended for possession of excessive quantities of abalone but the charge was dropped after Mason raised the defence of native title.⁴⁴ Two year later, he was charged with resisting arrest and swearing at a compliance officer.⁴⁵ In this instance, Mason was tackled into the water and his leg was broken while insisting he was a native title holder.⁴⁶ In 2017, Keith Nye received a four year sentence for allegedly trafficking abalone, reduced to 17 months on appeal.⁴⁷ As recently as 2021, John Junior Carriage was sentenced to a one year jail term, fined \$6,000 and banned from abalone fishing for two years for possession of 9.67 kg of abalone.⁴⁸ Yuin participants in the AIATSIS Livelihood Values Extension survey repeatedly emphasised that cultural ignorance, manifested in both the regulations themselves, as well as those tasked with enforcing them, is behind the prosecution of Aboriginal fishers.⁴⁹

Data suggests that Aboriginal people are disproportionately represented in prosecutions for fisheries offences and receive harsher sentences than non-Indigenous people.⁵⁰ 50 per cent of charges for fishing offences in NSW from July 2011 to June 2021 were brought against Aboriginal fishers, despite the Indigenous population of NSW making up just 3.4 per cent of the total NSW population in 2016.⁵¹ In addition, of these, 19 Aboriginal persons received custodial penalties compared to only four non-Aboriginal offenders. This adds to the over-representation of Aboriginal people in custody and the fracturing impact this has on Aboriginal people and communities.⁵²

⁴¹ Ibid; 'Balancing Competing Interests' (n 36):1396-1397.

⁴² McIntosh, C 2015 (17 July) 'Department of Primary Industries Adds New Step in Aboriginal Cultural Fishing Enforcement', *Merimbula News*, accessed 12 January 2022, www.merimbulanewsweekly.com.au/story/3217641/indigenous-fishing-prosecutions-snapfrozen/

⁴³ McKnight, A 2021 (1 November) 'Data Suggests First Nations Fishers Face Disproportionate Rate of Charges', *About Regional*, accessed 7 February 2022, www.aboutregional.com.au/data-suggests-first-nations-fishers-face-disproportionate-rate-of-charges

⁴⁴ Brennan, B & A Burns 2021 (15 September) 'Kevin Mason's Backyard Becomes Battleground for Aboriginal Fishing Rights', *ABC News*, accessed 4 February 2022, www.abc.net.au/news/2021-09-15/native-title-fishing-raises-issues-over-land-use/100452546

⁴⁵ Airs, K 2021 (16 September), 'Disturbing moment an elderly Aboriginal man is chased into the sea by a fisheries officer accusing him of taking too many abalone – sparking a row over Indigenous fishing rights', *Daily Mail Australia*, accessed 4 February 2022, www.dailymail.co.uk/news/article-9993643/Elderly-Aboriginal-man-CHASED-NSW-fisheries-officer-accusing-taking-abalone.html; Brennan, B, A Burns and K Weallauer 2021 (16 September), 'Kevin Mason's backyard becomes battleground for Aboriginal fishing rights', *ABC News*, accessed 4 February 2022, www.abc.net.au/news/2021-09-15/native-title-fishing-raises-issues-over-land-use/100452546

⁴⁶ Brennan, B & A Burns 2021 (15 September) 'Kevin Mason's Backyard Becomes Battleground for Aboriginal Fishing Rights', *ABC News*, accessed 4 February 2022, www.abc.net.au/news/2021-09-15/native-title-fishing-raises-issues-over-land-use/100452546

⁴⁷ White, M, 'Catch of Cultures', *SBS*, accessed 18 January 2022, www.sbs.com.au/news/feature/catch-cultures

⁴⁸ Allam, L 2021 (22 October) 'Aboriginal Groups call on NSW Government to End Cultural Fishing Prosecutions', *The Guardian*, accessed 7 February 2022, www.theguardian.com/australia-news/2021/oct/22/aboriginal-groups-call-on-nsw-government-to-end-cultural-fishing-prosecutions

⁴⁹ Mystery Bay Community Report (n 3).

⁵⁰ McKnight, A 2021 (1 November) 'Data Suggests First Nations Fishers Face Disproportionate Rate of Charges', *About Regional*, accessed 7 February 2022, www.aboutregional.com.au/data-suggests-first-nations-fishers-face-disproportionate-rate-of-charges

⁵¹ Aboriginal Affairs 2020, *Key Data – NSW Aboriginal People: September 2020*, New South Wales Government, Sydney.

⁵² ALRC (Australian Law Reform Commission) 2018, *Pathways to Justice – Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*, Report 133, Australian Government, p 21-22 (*Pathways to Justice*); As per

Although there is some suggestion that judicial prosecutions have decreased in recent years, anecdotal evidence of Aboriginal fishers suggests ongoing frequent confiscation of catches as well as fishing and diving equipment.⁵³

Impact

The unfair targeting of cultural fishing has had a widespread impact on the health and wellbeing of Aboriginal people on the South Coast, their family and community connections, the transmission of cultural knowledge, and the livelihoods of cultural-commercial fishers on the coast. Fisheries compliance activities can often be the backdrop for an escalation of charges contributing to the overrepresentation of Aboriginal people in the justice system. For example, confiscation of catch can lead to additional charges for offensive language and/or obstructing a fisheries officer, and the non-payment of fines can escalate to custodial sentences.⁵⁴

Physical and mental health

One of the most frequently cited impacts of the current regulatory regime is the toll that a lack of access to fresh, healthy seafood and regular physical exercise associated with fishing has had on health and wellbeing.

Seafood has traditionally played an important role in the diets of saltwater people in NSW. Fishing restrictions have significantly impaired the ability to access this resource, which is often otherwise unavailable due to the high cost of purchase. Elders, persons with a disability and those with large families are more likely to miss out under current catch limits which do not adequately account for traditional customs of sharing catch within the community.

Many participants in the Livelihood Values of Customary Fishing project also linked reduced consumption of seafood and exercise associated with fishing with specific health complaints including diabetes and hypertension.⁵⁵ This may be partly due to the use of some species for medicinal purposes relating to these conditions.⁵⁶

The non-commencement of s 21AA of the *Amendment Act* has also had a significant mental health impact. Connecting with Country and culture brings purpose, spiritual renewal, and connection with Ancestors, and preserves kin relations.⁵⁷ Fear of prosecution has necessarily damaged the practice and transmission of culture, with negative repercussions for health and wellbeing. On a related but separate note, being able to fish and provide for the family is considered by many cultural fishers to

ABS (Australian Bureau of Statistics) 2021, *Corrective Services Key Statistics: September Quarter 2021*, Australian Government, Canberra which reported 27% of Aboriginal and Torres Strait Islanders imprisoned in Australia during the last quarter of 2021 was in NSW.

⁵³ 'Balancing Competing Interests' (n 36):1395; also see recent prosecution cases referred to above at (n 31).

⁵⁴ *Pathways to Justice* (n 51), p 356.

⁵⁵ *Livelihood values report* (n 2), p 26.

⁵⁶ *Ibid.*

⁵⁷ Salmon, M, et al. 2018, *Defining the Indefinable: Descriptors of Aboriginal and Torres Strait Islander Peoples' Cultures and their Links to Health and Wellbeing*, Aboriginal and Torres Strait Islander Health Team, Research School of Population Health, Australian National University, Canberra.

be a source of pride and self-esteem.⁵⁸ It is also reported to be beneficial for managing stress and anxiety.⁵⁹

Aboriginal people have additionally borne the mental burden associated with the criminalisation of their cultural practices. Jail terms take a major toll on the individual whose liberty is denied, as well as the families and communities they are a part of.⁶⁰ Even for those who receive non-custodial sentences or who have their charges dropped, encounters with fishing authorities and the legal system can cause enormous stress. Against a backdrop of historical discrimination and poor treatment of Aboriginal persons by policing agents, these experiences can be particularly traumatic.⁶¹

Aboriginal fishers and the Aboriginal community more broadly can be additionally impacted by external perceptions of cultural fishers as criminals.⁶² As evidenced in the Mayi Kuwayu longitudinal study of the cultural determinants of wellbeing has revealed, racism and a lack of respect for culture are associated with a range of negative wellbeing outcomes for Aboriginal and Torres Strait Islander people.⁶³ For instance, it has been variously reiterated by Aboriginal people on the south coast of NSW that their cultural fishing has been racially described as the “black market”.⁶⁴ Enshrining a level of recognition and respect for cultural fishing in the NSW *Fisheries Management Act* would help to address the negative mental health impacts associated with prosecution, conflict with authorities and impaired access to Country and culture. It would also ensure managing authorities had appropriate direction in their day-to-day conduct and facilitation of relationships with the community and Traditional Owners.

It is well documented that cultural connection and the ability to uphold cultural obligations is a key determinant of the health and wellbeing of Aboriginal and Torres Strait Islander people.⁶⁵ It is therefore unsurprising that a disruption to culture brought about by the prosecution of cultural fishing has had negative impacts on physical and mental health.

Cultural transmission

Almost invariably, cultural fishers go fishing with others, including the younger generations.⁶⁶ Fishing thus is an opportunity for the building of social and kinship ties, and has a key role in the transmission

⁵⁸ *Livelihood values report* (n 2), p 26.

⁵⁹ *Ibid.*

⁶⁰ *Pathways to Justice* (n 51), p 268.

⁶¹ See, for context, Dodson, P et al. 1991, *Royal Commission into Aboriginal Deaths in Custody*, Adelaide. Courts, in sentencing, also consider that imprisonment also can cause greater hardships on Aboriginal and Torres Strait Islander people. See *R v Fernando* [1997] 76 A Crim R 58 [62]-[63] (Wood J).

⁶² Lockley, K 2017 (9 February), “‘They Call It Black Market, We Call It Survival’: Far South Coast Fisherman Denounce Abalone Arrests”, *Narooma News*, accessed 10 January 2022, www.naroomanewsonline.com.au/story/4456501/they-call-it-black-market-we-call-it-survival-far-south-coast-fishermen-denounce-abalone-arrests/?cs=1489

⁶³ Thurber et al. 2021, ‘Prevalence of everyday discrimination and relation with wellbeing among Aboriginal and Torres Strait Islander adults in Australia’, *International Journal of Environmental Research and Public Health*, 18(1):12.

⁶⁴ Lockley, K 2017 (9 February), “‘They Call It Black Market, We Call It Survival’: Far South Coast Fisherman Denounce Abalone Arrests”, *Narooma News*, accessed 10 January 2022, www.naroomanewsonline.com.au/story/4456501/they-call-it-black-market-we-call-it-survival-far-south-coast-fishermen-denounce-abalone-arrests/?cs=1489

⁶⁵ Australian Government 2020, *Closing the Gap*, Australian Government, Canberra; Bourke et al. 2018, ‘Evidence review of Indigenous culture for health and wellbeing’, *International Journal of Health, Wellness, and Society* 8(4); see also Mayi Kuwayu research in Salmon, M, et al. 2018, *Defining the Indefinable: Descriptors of Aboriginal and Torres Strait Islander Peoples’ Cultures and their Links to Health and Wellbeing*, Aboriginal and Torres Strait Islander Health Team, Research School of Population Health, Australian National University, Canberra.

⁶⁶ *Livelihood values report* (n 2), p 23.

of cultural knowledge.⁶⁷ This was highlighted by participants in the Livelihood Values Extension Project survey, who universally concurred that fishing was one of the key ways of practising culture, maintaining a connection with Country and passing on cultural knowledge: '[Fishing is] a cultural attribution and necessity to pass knowledge, to do it the right way so that you're not disrespecting the land and your culture.'⁶⁸

Disruption to the teaching and learning of cultural laws, traditions and histories is at the heart of the destructive impacts of colonisation. As such, the right to teach and pass on cultural knowledge is a key protected right of Indigenous peoples under international law.⁶⁹ The enormous impact that the non-commencement of s 21AA has had in the context of cultural transmission is best expressed by Danny Chapman, a Walbunja man and NSW Aboriginal Land Councillor:

Every time someone goes to fish, and Fisheries pulls them up and takes their stuff off 'em, that's just an erosion of our culture. They're doing this systematically, piece by piece. Pretty soon we will lose our ability to hunt and gather. We will lose all of our stories and our song lines and our culture. And the only way we'll be able to get food is at Woolworths.⁷⁰

Commencement of s 21AA is necessary to ensure younger generations can continue to be taken out on Country and taught about their culture and cultural practices, so that these practices, knowledges and skills can in turn be passed down from generation to generation.

Financial

The prosecution of cultural fishers in the absence of protections under s 21AA can and has imposed financial burdens on Aboriginal people in NSW in a variety of ways.

Fines under the *Fisheries Management Act* range from up to \$22, 000 for taking or possessing fish in excess of statutory limits for a first offence, to up to \$88, 000 for a second or subsequent offence 'in circumstances of aggravation' – for example, where the species in question is a priority species, or harvested in quantities considered 'commercial'.⁷¹ While these figures represent the maximum financial penalty available, and most sentences are likely lower, it illustrates the significant financial risk that cultural fishing can entail. Many cultural fishers come from low socio-economic backgrounds and their catches put food on the table for their families. Fines for fisheries offences can be crippling. Even as deterrence, the risk of fines and prosecution reduces discretionary income as free, healthy seafood is no longer available, or can no longer be consumed regularly. Other enforcement options, for example, the confiscation of personal fishing equipment, are similarly costly.

Furthermore, the criminalisation of Aboriginal people in NSW for fishing offences can lead to difficulties in retaining or obtaining employment, particularly for those who have received a custodial sentence.⁷² This has only exacerbated the social and economic disadvantages experienced by Aboriginal people in NSW.

⁶⁷ Ibid.

⁶⁸ Mystery Bay Community Report (n 3).

⁶⁹ See, for example, *UNDRIP* art 12.

⁷⁰ Danny Chapman, Walbunja, NSW Aboriginal Land Councillor: Allam, L 2021 (22 October) 'Aboriginal Groups call on NSW Government to End Cultural Fishing Prosecutions', *The Guardian*, accessed 2 February 2022, www.theguardian.com/australia-news/2021/oct/22/aboriginal-groups-call-on-nsw-government-to-end-cultural-fishing-prosecutions

⁷¹ *Fisheries Management Act* ss 17, 18.

⁷² *Pathways to Justice* (n 51), p 268.

Finally, trade and the commercial use of catch from cultural fishing has long been a key part of the economy of Aboriginal people living in coastal NSW.⁷³ Indeed, Aboriginal people on the south coast were the first to collect abalone for export to China in the late nineteenth century.⁷⁴ The treatment of Aboriginal cultural fishing as essentially recreational under the current fisheries management framework in NSW has impacted families that have historically been reliant on fishing for income, and has hindered the establishment of cultural-commercial ventures. A participant in the Livelihood Values Extension Project survey expressed the frustrations and struggles this brings: ‘while they [non-Aboriginal commercial fishers] are getting rich, we’re getting jailed, we’re getting fined. And it’s our culture, it’s not a living, it’s our culture.’⁷⁵ While this injustice is unable to be remedied by the commencement of s 21AA, it is an important consideration for future reform.

6. Barriers to commencement

AIATSIS is of the view that there are few to no genuine barriers to the commencement of s 21AA, and that commencement should take place without delay.

The *Amendment Act* introduced a host of reforms to the *Fisheries Management Act* designed to improve recognition and respect for Aboriginal cultural fishing. These include amendments to the objects of the Act, which now include ‘to recognise the spiritual, social and customary significance to Aboriginal persons of fisheries resources and to protect, and promote the continuation of, Aboriginal cultural fishing,’⁷⁶ as well as the introduction of s 37 permits for Aboriginal cultural fishing.⁷⁷ Reforms introduced by the *Amendment Act* further led to the establishment of the Aboriginal Fishing Advisory Council⁷⁸ which has provided some visibility and advocacy for Aboriginal fishers, though noting that advisory bodies do not replace the need for broad community consultation. Perplexingly, however, the provision best placed to provide the greatest relief to cultural fishers who have faced prosecution and harassment for practising their traditions, is that which is yet to commence over a decade later.

It was suggested by the Hon. Shayne Mallard in Parliament at the time Parliament passed a motion urging the commencement of s 21AA that a ‘complex’ landscape was to blame for the delay in commencement.⁷⁹ It appears that, on the government’s view, this complexity arises from the perceived need to simultaneously introduce limits under ss 21AA(3), (4). As the Hon. Shayne Mallard explained: ‘this is because regulated catch arrangements across all stakeholder groups provide the mechanism to manage the pressures on fisheries resources for the future of stocks and ongoing sharing of the resources.’⁸⁰

⁷³ Schnierer, S, and H Egan 2012, *Impact of management changes on the viability of Indigenous commercial fishers and the flow on effects to their communities: Case study in New South Wales*, Report to the FRDC (Fisheries Research and Development Corporation), Canberra.

⁷⁴ Cruse, B, L Stewart & S Norman 2005, *Mutton fish: the surviving culture of Aboriginal people and abalone on the south coast of New South Wales*, Aboriginal Studies Press, Canberra.

⁷⁵ Mystery Bay Community Report (n 3).

⁷⁶ *Fisheries Management Act* s 3(2)(h), introduced by *Amendment Act* sch 1, s 1.

⁷⁷ *Amendment Act* sch 1, s 39.

⁷⁸ *Ibid*, s 119.

⁷⁹ Parliament of NSW 2021 (24 November), Legislative Council Hansard, ‘Aboriginal Cultural Fishing’, accessed 2 February 2022, www.parliament.nsw.gov.au/Hansard/Pages/HansardResult.aspx#/docid/HANSARD-1820781676-87700/HANSARD-1820781676-87707

⁸⁰ *Ibid*.

This explanation raises significant concerns. It suggests a continued ‘business as usual’ approach to fisheries management which risks undermining the spirit and intent of the provision. It is imperative that the commencement of s 21AA bring about real change in the relationship between fisheries authorities and cultural fishers, not merely serve as an alternative mechanism for the imposition of restrictive bag and possession limits which do not respect or engage with Aboriginal law and custom. Immediate commencement of s 21AA is entirely possible, given that s 21AA is ‘subject to,’ not dependent on, concomitant regulations being made.⁸¹ It would make a significant difference to the lived experience of Aboriginal cultural fishers, while having a minimal impact on overall resources. This is because bag limits reflect sustainability assessments and the perceived impact of non-commercial fishing on population numbers. However, the Aboriginal population represents only around 3.4% of the total population of NSW.⁸² Furthermore, in contrast to the recreational sector as a whole, Aboriginal cultural fishing is informed by a notable conservation ethic. Yuin Elder Keith Nye explains it: ‘It’s our culture, we’ve looked after it for 40,000 years. We know how to manage it.’⁸³

It was additionally suggested to Parliament that previous statewide community consultation indicated a lack of support for commencement, with a preference instead for local management plans.⁸⁴ Further information about the nature of the consultation would be welcome, as the conclusions appear inconsistent with documented community support for commencement, evidenced in a petition launched by the NSW AFRG in June 2017.⁸⁵ Furthermore, local management plans and the commencement of s 21AA are not mutually exclusive. Both are ultimately necessary to recognise and protect the rights of Aboriginal people to fish and access marine resources, as well as exercise self-determination in relation to the management of land and Sea Country.

⁸¹ *Amendment Act* sch 1, s 21AA(3). Prominent lawyers such as SC Tony McAvoy have also opined this: McIntosh, C 2015 (July 17), ‘Lawyer: If it ain’t broke, don’t fix it’, *Merimbula News*, accessed 7 February 2022, www.merimbulanewsweekly.com.au/story/3217644/lawyer-if-it-aint-broke-dont-fix-it/

⁸² Aboriginal Affairs 2020, *Key Data – NSW Aboriginal People: September 2020*, New South Wales Government, Sydney.

⁸³ White, M, ‘Catch of Cultures’, *SBS*, accessed 18 January 2022, www.sbs.com.au/news/feature/catch-cultures

⁸⁴ Parliament of NSW 2021 (24 November), Legislative Council Hansard, ‘Aboriginal Cultural Fishing’, accessed 2 February 2022, www.parliament.nsw.gov.au/Hansard/Pages/HansardResult.aspx#/docid/HANSARD-1820781676-87700/HANSARD-1820781676-87707

⁸⁵ Gorton, S 2017 (June 28), ‘NSW Aboriginal Fishing Rights Group starts petition’, *Narooma News*, accessed 3 February 2022 www.naroomanewsonline.com.au/story/4757111/nsw-aboriginal-fishing-rights-group-starts-petition

7. Reference list

Articles, reports, papers and books

Aboriginal Affairs 2020, *Key Data – NSW Aboriginal People: September 2020*, New South Wales Government, Sydney

ALRC (Australian Law Reform Commission) 2018, *Pathways to Justice – Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*, Report 133, Australian Government

Australian Government 2020, *Closing the Gap*, Australian Government, Canberra

Bourke et al. 2018, 'Evidence review of Indigenous culture for health and wellbeing', *International Journal of Health, Wellness, and Society* 8(4)

Cane, S 2014, 'Aboriginal Fishing Rights on the NSW South Coast: A Court Case' in Chapter 4 of *Customary Marine Tenure in Australia*, Sydney University Press, Sydney

Cruse, B, L Stewart & S Norman 2005, *Mutton fish: the surviving culture of Aboriginal people and abalone on the south coast of New South Wales*, Aboriginal Studies Press, Canberra

DAWE (Department of Agriculture, Water and the Environment) 2020, *Assessment of the Torres Strait Finfish Fishery*, Canberra

Dodson, P et al. 1991, *Royal Commission into Aboriginal Deaths in Custody*, Adelaide

Fisheries NSW, Department of Primary Industries (NSW), Form 24, accessed 24 January 2022, www.dpi.nsw.gov.au/__data/assets/pdf_file/0008/639116/Form-24.pdf

McCabe, P 2020, 'An Australian Indigenous common law right to participate in decision-making', *Oxford University Commonwealth Law Journal*, 20(1):52-85, doi: 10.1080/14729342.2020.1739376

New South Wales Government 2021, *NSW 2021-2022 Implementation Plan*, New South Wales Government, Sydney

NSW Aboriginal Land Council 2009 (July), *Reel Cultural Fishing Rights*, Submission to Department of Primary Industries, NSW Aboriginal Land Council, Sydney

Pain, N, & G Pick 2020, 'Balancing Competing Interests in the Criminal Justice System: Aboriginal Fishing Rights in Coastal NSW', *UNSW Law Journal*, 43(4):1395

S Bowdler, 'Bass Point: the excavation of a south-east Australian shell midden showing cultural and economic change' unpublished BA (Honours) thesis, University of Sydney, Sydney, 1970

Salmon, M, et al. 2018, *Defining the Indefinable: Descriptors of Aboriginal and Torres Strait Islander Peoples' Cultures and their Links to Health and Wellbeing*, Aboriginal and Torres Strait Islander Health Team, Research School of Population Health, Australian National University, Canberra

Schnierer, S & H Egan 2012, *Impact of management changes on the viability of Indigenous commercial fishers and the flow on effects to their communities: Case study in New South Wales*, Report to the Fisheries Research and Development Corporation, Canberra

Smyth, L, H Egan & R Kennett 2018, *Livelihood values of Indigenous customary fishing: Final report to the Fisheries Research and Development Corporation*, AIATSIS (Australian Institute of Aboriginal and Torres Strait Islander Studies), Canberra

Sullivan, ME 1987, 'The recent prehistoric exploitation of edible mussel in Aboriginal shell middens in Southern NSW' *Archaeology Oceania*, 22:97-106

The National Oceans Office 2002, *Sea Country: An Indigenous Perspective: Regional Marine Plan Assessment Report*, Australian Government, Canberra

Thurber et al. 2021, 'Prevalence of everyday discrimination and relation with wellbeing among Aboriginal and Torres Strait Islander adults in Australia', *International Journal of Environmental Research and Public Health*, 18(1):12

Tran, T, et al. 2016, 'What's the Catch? Aboriginal Cultural Fishing on the NSW South Coast', *Australian Environment Review*, 31(5):182

Internet materials

ABS (Australian Bureau of Statistics) 2021, *Corrective Services Key Statistics: September Quarter 2021*, Australian Government.

AIATSIS (Australian Institute of Aboriginal and Torres Strait Islander Studies) 2022, 'Livelihood values of Indigenous customary fishing', accessed 7 February 2022, www.aiatsis.gov.au/research/current-projects/livelihood-values-indigenous-customary-fishing

Airs, K 2021 (16 September), 'Disturbing moment an elderly Aboriginal man is chased into the sea by a fisheries officer accusing him of taking too many abalone – sparking a row over Indigenous fishing rights', *Daily Mail Australia*, accessed 4 February 2022, www.dailymail.co.uk/news/article-9993643/Elderly-Aboriginal-man-CHASED-NSW-fisheries-officer-accusing-taking-abalone.html

Allam, L 2021 (22 October), 'Aboriginal groups call on NSW government to end cultural fishing prosecutions', *The Guardian*, www.theguardian.com/australia-news/2021/oct/22/aboriginal-groups-call-on-nsw-government-to-end-cultural-fishing-prosecutions

Brennan, B & A Burns 2021 (15 September), 'Kevin Mason's Backyard Becomes Battleground for Aboriginal Fishing Rights,' *ABC News*, accessed 4 February 2022, www.abc.net.au/news/2021-09-15/native-title-fishing-raises-issues-over-land-use/100452546

Gorton, S 2017 (June 28), 'NSW Aboriginal Fishing Rights Group starts petition', *Narooma News*, accessed 3 February 2022 www.naroomanewsonline.com.au/story/4757111/nsw-aboriginal-fishing-rights-group-starts-petition

Lockley, K 2017 (9 February), "'They Call It Black Market, We Call It Survival": Far South Coast Fisherman Denounce Abalone Arrests', *Narooma News*, accessed 10 January 2022, www.naroomanewsonline.com.au/story/4456501/they-call-it-black-market-we-call-it-survival-far-south-coast-fishermen-denounce-abalone-arrests/?cs=1489

Macey, J 2015 (19 March), 'NSW Election 2015: Aboriginal Groups Want Cultural Fishing Rights Made Law', *ABC News*, accessed 7 February 2022, www.abc.net.au/news/2015-03-19/aboriginal-groups-want-cultural-fishing-rights-made-law/6331716

McIntosh, C 2015 (July 17), 'Lawyer: If it ain't broke, don't fix it', *Merimbula News*, accessed 7 February 2022, www.merimbulanewsweekly.com.au/story/3217644/lawyer-if-it-aint-broke-dont-fix-it/

McIntosh, C 2014 (9 May) 'Charges Withdrawn in Court', *Bay Post – Moruya Examiner*, accessed 10 January 2021, www.batemansbaypost.com.au/story/2269342/charges-withdrawn-in-court/

McIntosh, C 2015 (17 July), 'Department of Primary Industries Adds New Step in Aboriginal Cultural Fishing Enforcement', *Merimbula News*, accessed 12 January 2022, www.merimbulanewsweekly.com.au/story/3217641/indigenous-fishing-prosecutions-snapfrozen/

McKnight, A 2021 (1 November), 'Data Suggests First Nations Fishers Face Disproportionate Rate of Charges', *About Regional*, accessed 7 February 2022, aboutregional.com.au/data-suggests-first-nations-fishers-face-disproportionate-rate-of-charges/

National Native Title Tribunal 2022, 'Register of Native Title Claims Details: NC2017/003 – South Coast People', accessed 15 January 2021, www.nntt.gov.au/searchRegApps/NativeTitleRegisters/Pages/RNTC_details.aspx?NNTT_FileNo=NC2017/003

Parliament of NSW 2021 (24 November), Legislative Council Hansard, 'Aboriginal Cultural Fishing', accessed 2 February 2022, www.parliament.nsw.gov.au/Hansard/Pages/HansardResult.aspx#/docid/HANSARD-1820781676-87700/HANSARD-1820781676-87707

White, M, 'Catch of Cultures', *SBS*, accessed 18 January 2022, <https://www.sbs.com.au/news/feature/catch-cultures>

Legislation

Commencement Proclamation under the Fisheries Management Amendment Act 2009 No 114, 2010 No 112 (31 March 2010)

Fisheries Management Act 1994 (NSW)

Fisheries Management Amendment Act 2009 (NSW)

Fisheries Management (General) Regulation 2019 (NSW)

Native Title Act 1993 (Cth)

Cases

Akiba on behalf of the Torres Strait Regional Seas Claim Group v Commonwealth of Australia (2013) 250 CLR 209

Commonwealth v Yarmirr (2001) 208 CLR 1

Derschaw v Sutton (1996) 17 WAR 419

Dillon v Davies (1998) 145 FLR 111

Mason v Tritton (1994) NSWLR 572

NSW DPI v Ardler (Local Court of New South Wales at Nowra, Magistrate G Fleming, 1 April 2015)

R v Fernando [1997] 76 A Crim R 58

International instruments

Convention on Biological Diversity, opened for signature 5 June 1992, 1760 UNTS 79 (entered into force 29 December 1993).

United Nations Declaration on the Rights of Indigenous Peoples, GA Res 61/295, UN Doc A/RES/61/295 (2 October 2007, adopted 13 September 2007)

Other

Fisheries NSW, Department of Primary Industries (NSW), *Aboriginal Cultural Fishing Interim Access* (Public Circulation Document No INT14/90930, 29 October 2014)

Fisheries NSW, Department of Primary Industries (NSW), *Aboriginal Cultural Fishing Interim Access* (Public Circulation Document No INT14/90930, 29 October 2014)

Mystery Bay Community Report 2021, AIATSIS (Australian Institute of Aboriginal and Torres Strait Islander Studies) (pending publication)