

Submission
No 27

**INQUIRY INTO COMMENCEMENT OF THE FISHERIES
MANAGEMENT AMENDMENT ACT 2009**

Name: Name suppressed

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Partially
Confidential

Submission NSW Fisheries Management Act 1994 – Aboriginal Cultural Fishing

As a Bundjalung woman I am pleased to see this enquiry take place to get to the bottom of why it has taken 11 years for section 21AA to be commenced.

Please take into consideration the following matters of my submission which is based on my lived experiences of my culture within my family and community, and my professional career.

1. Poor understanding what Aboriginal cultural fishing means

The DPI Fisheries has a very narrow understanding of what Aboriginal cultural fishing means even though it is a distinct sub objective in the Fisheries Management Act. In my view, DPI Fisheries has adopted the same meaning as recreational fishing. Aboriginal cultural fishing is not recreational fishing, it is so much more holistic and encompassing than just that. And the continuation to treat it as such is a denial of Aboriginal people's cultures.

This has meant that the current response to Aboriginal cultural fishing is only about catching and taking of fish and this has led to the development of management policies such as the Aboriginal Cultural Fishing Interim Access. This Interim Access policy generally doubles the amount of fish Aboriginal persons can take but it also is the basis on which DPI Fisheries regulates. It is an arbitrary number for all Aboriginal people. It does not respond to some of the most fundamental elements of Aboriginal people's cultures such as obligations to share with others and communal responsibilities on which is a part of the reason the sub objective of Aboriginal cultural fishing was included in the Act.

I believe this narrow view taken by DPI Fisheries is one of the causes to why many Aboriginal people are being unfairly persecuted for undertaking their cultural fishing practices.

2. Poor engagement with Aboriginal people across NSW

While there is engagement of Aboriginal people on Aboriginal cultural fishing in several forums mainly including the Aboriginal Fishing Advisory Council (AFAC). To a lesser degree also the NSW Marine Parks and NSW Marine Estate Management Strategy, the engagement is poor and appears not to be designed to really listen to Aboriginal people with a view to improve the objectives of Aboriginal cultural fishing. This also includes the employment of Aboriginal people in roles that can have direct influence in decision making as it pertains to Aboriginal cultural fishing.

The AFAC appears to be a good model as it enables Aboriginal members to provide advice directly to the Minister on policy and strategy priorities. The concern and question is whether this is happening in practice as it is stated in its terms of reference. This issue sits completely with DPI Fisheries in how it manages and enables the AFAC to undertake its responsibilities as set out in its terms of reference. There is concern that AFAC are not enabled to maximise its terms of reference. Especially being provided adequate time to consider major policy and strategy matters to than allow them to give considered advice directly to the Minister.

Local Management Plans as a response to replace section 21AA is not acceptable. It is alarming and deep concern and worry that this approach is being proposed as an answer to meeting the

Aboriginal cultural fishing objectives in the Act. This is due in part to, there being a lack of understanding and acceptance of what Aboriginal cultural fishing means by DPI Fisheries. It will be treated as recreational fishing in the Local Management Plan approach. And secondly, there are not Aboriginal persons in authority roles to lead the development, engagement and implementation of Local Management Plans. This is essential to have whilst there is such a huge gap on the DPI Fisheries understanding and of Aboriginal people and acceptance of their cultures.

DPI Fisheries does not have Aboriginal people employed directly in Aboriginal cultural fishing roles where there is authority to lead policy, strategy and to make decisions on Aboriginal cultural fishing. This is alarming given the desire and active push for employment of Aboriginal people in critical roles across many NSW government agencies is well embedded and a core part of governments business.

3. Governments own evidence base on Aboriginal cultural fishing is ignored

There are numerous research papers and literature available on Aboriginal cultural fishing which offers a wealth of knowledge and data on what Aboriginal cultural fishing means in general for Aboriginal people and what best practice looks like as far as engagement of Aboriginal people and inclusion of Aboriginal cultural fishing into policy settings. The Yuin people of the NSW South Coast have been so active in this space for decades in lifting the awareness and knowledge of Aboriginal cultural fishing to not only protect their culture but to also work in partnership with many stakeholders to better understand for all other Aboriginal cultures as well. It begs the question to why DPI Fisheries has not capitalised on these sources of information to influence and support its decision making on Aboriginal cultural fishing.

The NSW Marine Estate Threat and Risk Assessment (TARA) is the evidence base of the Marine Estate Management Authority's (MEMA) management and decision making to reduce threats and risks to the marine estate. A number of government agencies make up the MEMA including DPI Fisheries. The TARA also includes fishing as one of its activities it assesses as far as the level of threat and risk it poses to environmental, social and economic benefits of the marine estate. Aboriginal cultures (including cultural fishing) is also listed as an activity and has been found to be the one activity across all in total that has no to very minimal threat and risk to the marine estate. This means that according to the government's own evidence base Aboriginal cultural fishing has is not a threat or risk (environmentally, socially and economically) to the marine estate.

There is an evidence base and so much data and knowledge already available. It is disappointing that this government has ignored this information and its own evidence base that provides a strong rationale to commence section 21AA.

4. Impacts of government denial may attribute to cultural genocide

The impact that the non-commencement of section 21AA is urgent and it is having a generational wide impact on all Aboriginal people across NSW. This will mean cultural fishing practices and connections to significant places will be completely severed if section 21AA is not

commenced and allow Aboriginal people to continue to hand down our cultures to our younger generations.

Two examples alone are included to illustrate what the prohibitions and limitations mean as far as threats to our cultures.

1. Cultural harvest of pipis is an important staple food for all coastal Aboriginal people and has strong associated cultural connections to places, families, other animals and flora. It makes pipi harvesting a significant cultural practice. There has been over a decade of prohibition on harvest of pipis for food which largely relies on the premise of water quality due to algae blooms being toxic to human health. However, commercial fishers are supported with a water testing program. This program was swiftly put in place to support viability of businesses. Yet there have been no attempts at all to engage Aboriginal people to work from a similar solution base. Other countries such as New Zealand have solutions to address this health concern. In addition to the prohibition the only current allowance to harvest is for bait only. Aboriginal people primarily harvest pipis to eat, not for bait. Therefore, this allowance appears to serve well only recreational fishing needs.
2. Prohibition of shucking shellfish within 100m high tide. Most if not all Aboriginal cultural practices include shucking (shellfish) close to where it is harvested to regenerate that fishery. This is evidenced by the middens remaining intact today (some dated as old as 20,000 years). By prohibiting a practice of shucking not only completely makes illegal Aboriginal cultural practices but also does not align to evidence of regeneration of that fishery species and its abundance in the wild. It is understood that this prohibition is to support the monitoring of compliance for officers to be able to better count and see whether there is a breach on catch limits. This is an example of where management and compliance supersede the continuation of ancient cultural practices and benefits to the environment.

The loss of cultural practices due to government regulations, policies and poor engagement was summed up by an Elder of the Bundjalung nation when talking about pipi harvesting on their Country in 2019. The Elder shared that due to the prohibition she and her family have not taken out and taught her grandchildren (inclusive of great nieces and nephews) how to pipi and care for Country. She explained they are too scared to do this with their children due to any potential interaction with Fisheries or Police. And that she felt a sorrow and loss that this practice has stopped in her time with her family and if not urgently turned around now, it will likely be lost forever.