Submission No 37

INQUIRY INTO COMMENCEMENT OF THE FISHERIES MANAGEMENT AMENDMENT ACT 2009

Organisation: NSW Council for Civil Liberties

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NSWCCL SUBMISSION

PORTFOLIO COMMITTEE NO. 4 - CUSTOMER SERVICE AND NATURAL RESOURCES

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About NSW Council for Civil Liberties

NSWCCL is one of Australia's leading human rights and civil liberties organisations, founded in 1963. We are a non-political, non-religious and non-sectarian organisation that champions the rights of all to express their views and beliefs without suppression. We also listen to individual complaints and, through volunteer efforts, attempt to help members of the public with civil liberties problems. We prepare submissions to government, conduct court cases defending infringements of civil liberties, engage regularly in public debates, produce publications, and conduct many other activities.

CCL is a Non-Government Organisation in Special Consultative Status with the Economic and Social Council of the United Nations, by resolution 2006/221 (21 July 2006).

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The NSW Council for Civil Liberties (NSWCCL) welcomes the opportunity to make a submission to the Portfolio Committee No. 4 – Regional New South Wales, Water and Agriculture inquiry into the failure to proclaim the commencement of Schedule 1 of the *Fisheries Management Amendment Act* 2009 concerning Aboriginal cultural fishing.

Impact on the fundamental Human Rights of South Coast Aboriginal People

Through the non-commencement of the *Fisheries Management Amendment Act* 2009 there has been a failure to recognise, protect and incorporate Aboriginal fishing rights in fisheries management law, conflicting with Australia's international human rights obligations. It is inconsistent with the focus on commercial and recreational fishing rights to fail to support, uphold and recognise Aboriginal Peoples' rights with respect to their sea country.

Australia is a signatory to the UN Declaration of the Rights of Indigenous Peoples (UNDRIP), and the ratified Covenants and Conventions it was drawn from, including the International Covenant on Civil and Political Rights (ICCPR), International Convention on the Elimination of all forms of Racial Discrimination (ICERD), the Aboriginal and Torres Strait Islander peoples and Tribal Peoples Convention (ILO Convention 169), Convention on Biological Diversit,y and the International Covenant on Economic, Social and Cultural Rights (ICESCR).

The United Nations DRIP was first adopted by the United Nations General Assembly in 2007 and endorsed by Australia in 2009. UNDRIP provides a global framework for the advancement of the human rights of Indigenous Peoples. Particularly, Article 11 of the UNDRIP provides that Indigenous People have the right to maintain, protect and develop their cultural traditions and customs.

By failing to act to enact the s21AA amendments the NSW Government has breached their agreement to uphold the standards provided in UNDRIP, particularly at Article 11.

It is particularly concerning that despite the formal recognition of the Commonwealth, State and High Court, the authorised officers of the FMA do not appear to be appropriately trained in the recognition of native title rights nor the internationally recognised fundamental human rights of Aboriginal People.

The lack of support and recognition of Aboriginal Peoples' fundamental human rights by NSW Fisheries has damaged communities along the South Coast. This same disregard has left Aboriginal Communities with the perception that the Department is deliberately seeking to destroy their cultural practices and traditional way of life which have been passed down for generations. This is not conducive to health and wellbeing.

Impact of Compliance Measures

Aboriginal People are over-represented in conviction rates for offences under the FMA. Since 2009, Aboriginal People account for only 4 percent of the population living on the South Coast, yet they account for approximately 80 percent of prison penalties for fisheries offences.

Following the commencement of the FMA, 2000 Aboriginal people have been prosecuted, with approximately 600 of these prosecutions occurring on the South Coast. With only 437 convictions being recorded out of 2000, this is indicative of a pattern of charging Aboriginal people when insufficient evidence is available to found the offence, or the gravity of the offending behaviour is so minor as to merit dismissal in the courts. Based on this statistic it appears the current legislation permits the harassment and interrogation of Aboriginal People, for merely engaging in cultural practice.

The disproportionate rate of Aboriginal People in NSW being prosecuted for fishing matters demonstrates racial discrimination by State agencies and is inconsistent with the requirements of the *Racial Discrimination Act* 1975 (Cth), the International Convention on the Elimination of all forms of

Racial Discrimination (ICERD), the Aboriginal and Torres Strait Islander peoples and Tribal Peoples Convention (ILO Convention 169) and UNDRIP.

When considered alongside the over-representation of Aboriginal People convicted and incarcerated for fisheries offences, it is unsurprising that Aboriginal communities consider that the harassment they face when accessing their right to fish appears targeted and racially motivated.

Commercial Access

We propose that the Government's response should incorporate substantial initiatives to enable Aboriginal fishers to obtain a reasonable share of commercial quotas so that they can carry out their traditional activities in a meaningful and sustainable manner.

The engagement of Aboriginal Peoples was first recognised as necessary in the National Fishing Principles adopted 18 years ago, and it will only be through the implementation of suitable First Nations-led programs designed to implement that engagement that any progress will be made.

As recognised in the National Fishing Principles, the participation of Aboriginal Peoples in fisheries-related business is an essential aspect of Indigenous involvement in marine management. Commercial quotas were first distributed before Aboriginal and Torres Strait Islander people were recognised as citizens of Australia. The lack of engagement of First Nations Australians in the commercial sector and the ongoing profits flowing to non-Indigenous owners is yet another example of the dispossession and marginalisation of Aboriginal people on the South Coast.

These communities have been severely affected by the non-commencement of the Amendment Act and deserve to witness substantive and meaningful changes to the management of fisheries resources.

Conclusion

Aboriginal Peoples should be able to exercise their traditional rights to fish free from the burden of fearing criminal charges.

NSWCCL is concerned about the failure of previous departments and Ministers to commence schedule 1 of the *Fisheries Management Amendment Act* 2009.

We would encourage the NSW Parliament to seek the Minister's commitment to:

- commence item [27] of Schedule 1 to the *Fisheries Management Amendment Act* 2009 without further delay;
- review all fines and prosecutions under the FMA and withdraw all fines and prosecutions under the FMA of Native Title Holders fishing within the South Coast Claim Area;
- appropriately training authorised officers in native title rights and interests, Aboriginal culture, and the internationally recognised human rights of Aboriginal people;
- engaging Aboriginal people in all decision-making bodies that deal with fisheries management, including the resource assessment committees; and
- committing to the equitable participation of Aboriginal People in the commercial fisheries sector.

Yours sincerely,

Michelle Falstein
Secretary, **NSW Council for Civil Liberties**