

**Submission  
No 101**

## **INQUIRY INTO ANIMAL WELFARE POLICY IN NEW SOUTH WALES**

**Organisation:** Recreational Fishing Alliance of NSW

**Date Received:** 28 February 2022

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# The Recreational Fishing Alliance of NSW

## Promoting Sustainable Fishing



28 February 2022

The Hon Catherine Cusack, MLC  
Chair— Standing Committee on State Development  
Legislative Council  
Parliament House  
6 Macquarie Street  
SYDNEY NSW 2000

### **Submission to Inquiry into Animal Welfare Policy in New South Wales**

On behalf of the Recreational Fishing Alliance of New South Wales (RFA), thank you for your invitation to provide a written submission to your inquiry.

The RFA is the peak representative body for recreational anglers in New South Wales. The RFA represents the interests of anglers in the management of the State's recreational fisheries.

The inquiry and its outcome are of interest to recreational anglers. Many members are concerned that animal welfare issues have been distorted to be used against recreational fishers worldwide and have the potential to expose the anglers of NSW to unintended consequences.

Accordingly, we hope this inquiry considers the issues raised by the RFA against the bigger picture of the NSW Government's animal welfare management policies and practices.

With this in mind, the RFA considers it important that we don't see any unintended consequences to the way recreational fishers and spearfishers currently engage in the legal activity of fishing and the way they catch, prepare and store their fish, inc. cephalopods and crustaceans.

The RFA also strongly suggests that the Committee hears evidence from Dr Ben Diggles who can provide insights into the animal welfare discussion based on his 30 years' experience working in the field of aquatic animal health and welfare.

I attach the RFA's submission, together with background information, for the Committee's consideration. If it pleases the committee, the RFA will welcome any opportunity to elaborate further on its submission or other matters of interest to the committee.

Yours sincerely,

Stan Konstantaras  
President  
Recreational Fishing Alliance of New South Wales

## Submission to Inquiry into Animal Welfare Policy in New South Wales

### 1. Introduction

The changes proposed to the State's animal welfare policy, regulatory and legislative framework are far-reaching and include for the first time the introduction of a new definition 'cruelty'.

The proposed changing of the definition of cruelty is to now be the overarching concept of Harm. It also includes, for the first time, psychological suffering as a form of animal cruelty and makes any interaction with any animal potentially an offence - including the activity of fishing.

The Exposure Draft *Animal Welfare Bill 2021* will give the Animal Justice Party (AJP) and other opponents to legal recreational fishing the ammunition they need to attack a recreational activity of millions of Australians.

The Defence offered for fishing in the Exposure Draft *Animal Welfare Bill 2021* is only just that, a "defence" against an alleged offence. How is one expected to prove that harm wasn't done to the fish, cephalopod or crustacean if it is caught on a hook, in a trap or kept alive whilst fishing and ultimately killed?

This change will impact all recreational fishers, businesses and trades that catch and use fish, crabs, lobster, octopus, and squid, and any other saltwater or freshwater catch as part of their processes.

As part of this Exposure Draft *Animal Welfare Bill 2021*, the NSW Government has provided the AJP a means to an end which sidesteps normal scientific processes as part of a political/ animal rights activism process which includes, amongst other things, getting "marginal" animal groups such as crustaceans considered under welfare legislation.

The RFA does not want to see the any form of fishing be impacted by any changes that are not evidence based including the storage of legally caught live bait, whether by recreational anglers or commercial businesses such as tackle businesses that will be impacted by these changes. The simple extension to live seafood would be the next logical step for the AJP to attack, whether it's keeping caught fish in a boat's live wells, keeper nets in rock pools, prawns or nippers in a bucket or even a few crabs as bait in a bait bucket.

The RFA does not want to see catch and release fishing, including the plethora of state-run competitions or scientific tagging programs, targeted under any legislative changes and these issues needed to be considered even before this process began. This has been a failing of the entire process. What will this mean for our charter boat fishing industry? What will this mean to the seafood industry, our fish markets and commercial fishers? The unintended consequence of "harm" should be of concern to everyone who interacts with all animals including livestock and pets.

The RFA is concerned about the introduction of the concept of "psychological suffering" and how this will be judged, how it will be measured and who will examine the animal as to its psychological condition.

This is a subjective concept left open to judgement by the enforcement agency and its agents. It rests on the assumption that supposed scientific evidence of physiological capacity of the experience of pain, let alone consciousness, has to be accepted. The RFA cannot see how the proposed animal cruelty laws could be applied. Studies claiming to demonstrate that fish feel pain often include selective evidence, use poor definitions and have inconsistent and trivial results that are often unrepeatable.

The RFA appeals to you to listen to what recreational fishers and other groups that interact with animals are saying about the unintended consequences that these changes might deliver.

What support will be available to fight the extreme views of the Animal Justice Party, who seem intent on using animal welfare legislation to ban recreational fishing.

We note statements that have been made by the Animal Justice Party in Parliament indicate they intend to target fishing and eating of fish:

“Fishing is not a sport, it is animal cruelty”  
Animal Justice Party, 4 June 2020.

“Fish feel pain, they are self-aware, they remember, they build relationships and exhibit emotional responses. Deliberately inflicting pain and suffering on these sentient animals cannot be ignored - especially when the fishing industry kills more individual animals than any other form of animal slaughter”  
Animal Justice Party, 27 March 2021

It is important that we also talk about the benefits of recreational fishing to both individuals and society so that we are not looking at this through an animal welfare lens. Why should we be denied the right to fish but no one is asking the AJP why it should be allowed to deny people and society of the benefits of fishing and eating of fish.

At the same time as we make these comments, we are having another discussion about Aboriginal cultural fishing and their rights to catch and eat fresh fish and seafood. The irony has not escaped the RFA, and it is watching with interest what position the AJP and the NSW Government will take in that debate.

Recreational fishing in NSW:

- Provides opportunities for many different levels of physical activity for people of all ages and abilities.
- Facilitates greater social interaction both within families fishing as well as anglers from all over New South Wales and other states.
- Reinforces the role of parents, uncles, aunts, and grandparents in mentoring junior anglers.
- Means junior anglers will enjoy the opportunity to build new friendships and find peer groups within which to sharpen their angling skills.
- Fosters a healthy respect for rules and regulations in junior anglers, not just for fishing, but society in general.
- Provides for indigenous community to practice cultural fishing practices

The RFA asks you what actions you will be taking to ensure that Exposure Draft *Animal Welfare Bill 2021* will not open the door to groups like the AJP to escalate their attacks on recreational fishing and lead us down the path of having fishing banned in NSW in the future.

## **2. About the Recreational Fishing Alliance of New South Wales (RFA)**

The RFA is the peak representative body for recreational anglers in New South Wales. The RFA represents the interests of anglers in the management of the State’s recreational fisheries, promote

sustainable fishing practices, encourage the participation of children, help secure rights to fishing access, encourage recreational anglers to become involved in the well-being of the fishery, promote consultation and communication between government and anglers and promote fishing safety.

The RFA estimates that there are 1,000,000 recreational fishers in the NSW which currently contribute around \$3 billion each year to the Australian economy. The RFA represents the interests of these anglers, who are also members of the community that have an intrinsic and natural connection to the water and the life it supports.

The RFA itself has previously written to Minister for Water and the Minister for Agriculture and Western New South Wales, expressing concerns about the adverse impacts of these changes. While the RFA's correspondence with those Ministers and their departments is ongoing, the RFA remains unsatisfied with their responses to date. Accordingly, the RFA is grateful for the opportunity to present this submission and its concerns for consideration.

### **3. Comments on the Exposure Draft *Animal Welfare Bill 2021***

The RFA could not see any definition of 'unnecessary harm' in the draft Bill. This has always been the concern about what happens when it is unclear whether a particular activity is not considered 'normal' fishing practice or might be considered to cause 'unnecessary harm.'

#### **11 Meaning of "harm"**

**Harm** includes—

- (a) distress, and
- (b) pain, and
- (c) physical suffering, and
- (d) psychological suffering.

So 'Harm' can mean any one of the four elements described above but also leaves it open to individual law enforcement officers, Magistrates or Judges to include anything else that he or she interprets as falling within meaning of the word 'harm'. If the definition had used 'means' instead of 'includes', then the meaning will not stray beyond those four elements.

The RFA is hopeful that any angler that is engaged in bona fide fishing activities will have sufficient scope to challenge any attempted prosecution associated with causing 'unnecessary harm'.

On the other hand, 'harm' does not just equate to 'pain' anymore and it is the view that this is a disingenuous effort to side step the debate over whether fish, crustaceans and cephalopods feel pain.

In addition, the definition of 'harm' is what you could describe as an 'includes' definition, which means it is an open ended definition.

The RFA strongly believes that we need to change the definition to a 'means' definition, that would address the open endedness of the word 'harm'.

The draft Bill does not make reference to lawful fishing activities and the discussion paper makes it clear that the Bill does not differentiate between lawful and unlawful fishing activities. Rather, the test is, according to page 26 of the Discussion Paper and sub paragraph 119(1)(b) of the draft Bill, is whether one is inflicting unnecessary harm on an animal while fishing. The discussion paper also

makes reference to 'normal fishing practice'. There is no reference to this in the draft Bill as this could influence the Court's interpretation of how the provisions apply to fishing activities.

Page 26 of the Proposals Paper indicates that it is possible for an angler to face prosecution if it was considered that the angler was causing 'unnecessary harm.' It would be up to the Court to then assess if the fishing exemption applied.

If the Bill does get passed in its current form, the RFA will seek to play a role in setting out guidance on what is and is not 'normal' fishing activities and what constitutes or does not constitute 'unnecessary harm', otherwise we risk other pressure groups hijacking that agenda.

The RFA and others already have codes of practice for sustainable and ethical fishing .

The inclusion of cephalopods and decapod crustaceans has been a hasty decision; we feel that the scientific evidence is not settled with it comes to the ability of those animals to experience pain or harm. However, the Proposal Paper states the definition also aims to bring NSW laws into 'alignment with animal welfare laws in other states and the Australian code for care and use of animals for scientific purposes' so the stated intent is broader than the current state of scientific evidence and this needs to be explained further.

#### **4. The Draft Bill**

When it is finally tabled in Parliament, the RFA and its stakeholders will also pay close attention to the Explanatory Memorandum and Minister's Second Reading Speech and keep an eye out for amendments that other MPs might attempt to table. The RFA trusts that this Committee will commit to keeping all stakeholders who have participated in the process updated as events unfold.

If the Bill gets passed, the RFA will watch for any regulations or other legislative instruments being made under the new legislation. The RFA trusts that this Committee commit to keeping all stakeholders who have participated in the process updated.

#### **4. The presentation of the Survey Responses**

You will notice from the discussion paper that survey responses ranged from 65% to 78% positive in response to each of the proposals. It is the RFA's polite suggestion not to attach too much weight to the survey responses.

79% of the written submissions were either pro-forma submissions or campaign-style submissions. There were 2452 survey responses and 2360 written submissions. Of the written submissions, 79% were either pro-forma submissions (40%) or campaign-style submissions (39%). 3% came from organisations such as RFA NSW and 19% came from individuals who wrote their own submission.

The RFA would not be surprised if there was a similar break down in the survey responses.

What is missing from the Discussion Paper is a breakdown of the different sectors represented in the submissions and survey responses. We also don't have any information on the broad views of each sector in response to the different proposals. By presenting the survey information in this manner, the voices of each sector has effectively been silenced by the masses.

In addition, the contents of the 'Our response' sections made to the issues or themes raised come across as talking points that were already prepared in anticipation of many of the issues or themes raised.

To the RFA, this looks like a contrived outcome that has been cleverly dressed up as a genuine consultation process.