Submission No 41

INQUIRY INTO COMMENCEMENT OF THE FISHERIES MANAGEMENT AMENDMENT ACT 2009

Organisation: NTSCORP

Date Received: 2 March 2022

abn: 71 098 971 209
w: www.ntscorp.com.au

The Hon. Mark Banasiak MLC
Chairperson
NSW Legislative Council Portfolio Committee No. 4 – Regional New South Wales, Water and Agriculture
NSW Parliament House
6 Macquarie Street
Sydney NSW 2000

By Email: PortfolioCommittee4@parliament.nsw.gov.au

28 February 2022

Dear Chairperson and Committee Members,

NTSCORP Limited Submission to the Inquiry into the commencement of Schedule 1 of the *Fisheries Management Amendment Act 2009* concerning Aboriginal Cultural Fishing

We thank Portfolio Committee No. 4 – Regional New South Wales, Water and Agriculture for the opportunity to provide submissions to its Inquiry into the Commencement of Schedule 1 of the *Fisheries Management Amendment Act 2009* (**the Inquiry**).

In these submissions we:

- provide a short background on NTSCORP Limited;
- outline the legal rights of Aboriginal Traditional Owners (**Traditional Owners**) in relation to fishing and taking marine resources, including the operation of the current *Fisheries Management Act 1994* (NSW);
- address the following aspects of the Inquiry's Terms of Reference:

  (a) the historical reasons for not commencing Schedule 1 for 11 years;
  (b) the present challenges to commencing Schedule 1;
  (c) the impact of the non-commencement of Schedule 1 on Aboriginal peoples and the practice of Aboriginal cultural fishing;
  (e) compliance measures undertaken by Fisheries NSW as it pertains to the non-compliance of Schedule 1; and
  (f) any other related matter; and

Level 1, 44-70 Rosehill St Redfern NSW 2016 Australia
t: + 61 2 9310 3188
PO Box 2105 Strawberry Hills NSW 2012 Australia
f: + 61 2 9310 4177
abn: 71 098 971 209
w: www.ntscorp.com.au

- make recommendations to the Committee in relation to the subject matter of the Inquiry.

NTSCORP Limited

NTSCORP Limited (**NTSCORP**) has statutory obligations under the *Native Title Act 1993* (Cth) (**NTA**) to act to protect the native title rights and interests of Aboriginal Traditional Owners (**Traditional Owners**) in New South Wales (**NSW**) and the Australian Capital Territory (**ACT**).

NTSCORP is funded under Section 203FE of the NTA to carry out the functions of a native title representative body in NSW and the ACT. NTSCORP provides services to Traditional Owners who hold or may hold native title rights and interests in NSW and the ACT, specifically to assist them to exercise their rights under the NTA.

In summary, NTSCORP's functions and powers under sections 203B to 203K of the NTA (inclusive) are:

(a) Facilitation and assistance, including representation in native title matters;

(b) Dispute resolution;

(c) Notification;

(d) Agreement-making;

(e) Certification; and

(f) Internal review.

NTSCORP advocated strongly for the introduction of the *Fisheries Management Amendment Act 2009* as it related to Aboriginal Cultural Fishing and has continued to advocate strongly in the twelve years which have elapsed since that time for the commencement of Schedule 1 of the *Fisheries Management Amendment Act 2009* which provides as follows:

> **21AA Special provision for Aboriginal cultural fishing**
>
> *(1) An Aboriginal person is authorised to take or possess fish, despite section 17 or 18, if the fish are taken or possessed for the purpose of Aboriginal cultural fishing.*
>
> *(2) The authority conferred by this section is subject to any regulations made under this section.*

Level 1, 44-70 Rosehill St Redfern NSW 2016 Australia
t: + 61 2 9310 3188
PO Box 2105 Strawberry Hills NSW 2012 Australia
f: + 61 2 9310 4177
abn: 71 098 971 209
w: www.ntscorp.com.au

(3) The regulations may make provision for the management of Aboriginal cultural fishing as authorised by this section.

(4) Without limiting the above, the regulations may:

(a) prescribe the circumstances in which the taking or possession of fish by Aboriginal persons for the purpose of Aboriginal cultural fishing is authorised by this section, and

(b) specify restrictions as to the quantity of fish of a specified species or of a specified class that may be taken by or be in the possession of Aboriginal persons for the purposes of Aboriginal cultural fishing as authorised by this section.

(5) The Minister must not recommend the making of a regulation under this section unless an advisory council for the Aboriginal sector of the fishing industry has been established under section 229 and the Minister certifies that the advisory council has been consulted on the proposed regulation.

(6) A person does not commit an offence against section 17 or 18 in respect of the taking or possession of fish if the taking or possession of the fish is authorised under this section.

(7) This section does not prevent the issue of a permit under section 37 for Aboriginal cultural fishing purposes.

(8) This section does not authorise an Aboriginal person to do anything that is inconsistent with native title rights and interests under an approved determination of native title (within the meaning of the Native Title Act 1993 of the Commonwealth) or with the terms of an indigenous land use agreement (within the meaning of that Act).

This submission is informed by our experience working with Traditional Owners of lands, seas and waters within NSW and the ACT, including by assisting Traditional Owners to assert their native title rights to fish and to take resources under the NTA and to defend charges under the *Fisheries Management Act 1994* (NSW).

Interaction of the *Fisheries Management Act 1994* (NSW) and the *Native Title Act 1993* (Cth)

Section 287 of the Fisheries Management Act 1994 (NSW)

The starting point in understanding the interaction between the native title rights of Traditional Owners in NSW and the operation of the *Fisheries Management Act 1994* (NSW) (**FMA**) is section 287 of the FMA which provides:

Level 1, 44-70 Rosehill St Redfern NSW 2016 Australia
t: + 61 2 9310 3188
PO Box 2105 Strawberry Hills NSW 2012 Australia
f: + 61 2 9310 4177
abn: 71 098 971 209
w: www.ntscorp.com.au

287 Native title rights and interests

This Act does not affect the operation of the Native Title Act 1993 of the Commonwealth or the Native Title (New South Wales) Act 1994 in respect of the recognition of native title rights and interests within the meaning of the Commonwealth Act or in any other respect.

Accordingly, by reason of section 287, the FMA does not and cannot affect or regulate the exercise or enjoyment of native title rights. Conduct which is the exercise of a native title right cannot be an offence under the FMA.

Section 211 of the *Native Title Act 1994 (Cth)*

In addition to the operation of s287 of the FMA, s211 of the NTA applies to exempt native title holders from the operation of the FMA in certain circumstances.

Section 211 of the NTA provides that Commonwealth and State laws do not apply to prohibit or restrict native title holders from *'hunting, fishing, gathering, cultural or spiritual activity…in the exercise of their native title rights and interests'*.

The intent of s211 of the NTA is clear from the parliamentary discussion when the provision was introduced in the Senate, late in the legislative process as cl. 196A of the Native Title Bill when proposed as Amendment 33B to the Bill on 21 December 1993. The proposed amendment, which ultimately passed, was explained:

> *"Amendment 33B to insert the new cl. 196A seeks to ensure the Aboriginal people are not prevented from exercising their inherent native title rights and interests in circumstances where State and Commonwealth laws allow others to engage in those activities…*
>
> *The clause is particularly important for those Aboriginal and Torres Strait Islander people who may already be largely dispossessed and his native title rights are limited to particular activities or resources. Without it there could be a creeping process of dispossession as native title rights are regulated out of existence, one by one, while other people remain free to carry out those same activities."*[1]

The High Court confirmed this right in *Karpany v Dietman* [2013] HCA 47 where Narrunga People in South Australia had taken undersize greenlip abalone in accordance with their traditional laws and customs but were charged with possessing

[1] Senate, Official Hansard, No. 161 1993, Tuesday, 21 December 1993 p.5440-1.

Level 1, 44-70 Rosehill St Redfern NSW 2016 Australia
t: + 61 2 9310 3188
PO Box 2105 Strawberry Hills NSW 2012 Australia
f: + 61 2 9310 4177
abn: 71 098 971 209
w: www.ntscorp.com.au

undersize abalone contrary to s72(2)(c) of the *Fisheries Management Act 2007 (SA).* The consequence, provided by s211 of the NTA, was that s72(2)(c) of the *Fisheries Management Act (SA)* did not prohibit the applicants, as native title holders, from gathering or fishing for undersize abalone in the waters concerned, where they did so for the purpose of satisfying their personal, domestic or non-commercial communal needs and in exercise or enjoyment of their native title rights and interests.

In NTSCORP's experience there has been a substantial failure by the NSW Department of Primary Industries (DPI) Fisheries to recognise and administer the FMA in a way which provides Traditional Owners the protection afforded by s211 of the NTA or s287 of the FMA. This has resulted in extensive prosecution of Traditional Owners undertaking cultural fishing and an over-representation of Aboriginal People subject to charges under the FMA. This issue is detailed further below in our submission.

Accordingly, notwithstanding s211 of the NTA or s287 of the FMA, NTSCORP submits that the immediate commencement of Schedule 1 of the *Fisheries Management Amendment Act 2009,* without regulations*,* is necessary to prevent further wrongful prosecution of Aboriginal fishers.

<u>High Court's approach to native title rights to take resources, including marine resources</u>

In *Commonwealth v Akiba*,[2] the High Court accepted that the native title holders held a broadly stated right '*to take and use resources for any purpose'*. That is, the native title right was to take the resource for any purpose (including a commercial purpose), and unless there is some traditional restriction or limitation on that right, then it is correct to recognise the right in those broad terms.

This approach has since been followed and approved in numerous Federal Court decisions including Justice North's decision in *Willis on behalf of the Pilki People v State of Western Australia* [2014] FCA 714 which was upheld on appeal by the Full Federal Court. In that decision, Justice North found that under traditional laws and customs, the country belonged to the Pilki People and they were entitled as of right

[2] *Akiba on behalf of the Torres Strait Regional Seas Claim Group v Commonwealth of Australia* [2013] HCA 33; (2013) 250 CLR 209.

Level 1, 44-70 Rosehill St Redfern NSW 2016 Australia
t: + 61 2 9310 3188
PO Box 2105 Strawberry Hills NSW 2012 Australia
f: + 61 2 9310 4177
abn: 71 098 971 209
w: www.ntscorp.com.au

to access and take the resources for any purpose they saw fit. That included a right to access and take the resources for trading purposes.[3]

The historical reasons for not commencing Schedule 1 and the present challenges to commencing Schedule 1

NTSCORP has not been provided, and is not able to provide the Committee with, any rational or reasonable explanation as to why Schedule 1 of the *Fisheries Management Amendment Act 2009* has not commenced after twelve years.

NTSCORP has consistently advocated for the commencement of s21AA without regulations over those twelve years. In NTSCORP's view any regulations containing take and possession limits are an ineffective and inappropriate mechanism for managing Aboriginal cultural fishing and seek only to circumvent the original intent behind the introduction of Aboriginal cultural fishing to the FMA.

Whilst *s21AA(3)* in Schedule 1 of the *Fisheries Management Amendment Act 2009* provides that any regulations may make provision for the management of Aboriginal cultural fishing, there is no requirement that regulations must be developed in relation to Aboriginal cultural fishing.

Over some twelve years DPI Fisheries has variously proposed regulations and then "Local Management Plans", both as a means of seeking to impose bag and possession limits on Aboriginal cultural fishers.

NTSCORP does not support and has never supported regulations, including those pertaining to any Local Management Plan, which would seek to incorporate take or possession limits or any other prohibitions under the FMA. In NTSCORP's view such regulations:

- are not necessary;
- are not in-keeping with the objective of the FMA "*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*"[4] or the original intent of Schedule 1 of the *Fisheries Management*

[3] *Willis on behalf of the Pilki People v State of Western Australia* [2014] FCA 714 at [116].
[4] Section 3(2)(h) of the Fisheries Management Act 1994 (NSW)

Level 1, 44-70 Rosehill St Redfern NSW 2016 Australia
t: + 61 2 9310 3188
PO Box 2105 Strawberry Hills NSW 2012 Australia
f: + 61 2 9310 4177
abn: 71 098 971 209
w: www.ntscorp.com.au

Amendment Act 2009 to finally rectify the criminalization of cultural practices;

- will result in continued prosecutions of Aboriginal People for undertaking cultural practices and increasing levels of incarceration;
- are an ineffective mechanism for managing Aboriginal cultural fishing;
- do not recognise that Aboriginal cultural fishing can take place for Elders, the incapacitated, on behalf of other community members and for the purposes of cultural events and ceremonies such as funerals, and as such fails to reflect the unique nature of Aboriginal cultural fishing by seeking to impose a regime more akin to that of recreational fishers; and
- will not be enforceable against Aboriginal People exercising their native title right to fish and take marine resources in any event by virtue of s287 of the FMA and s211 of the NTA which provides that the FMA cannot prohibit or restrict an Aboriginal person's traditional fishing right.

It is important to understand that self-regulation of fishing activity amongst Aboriginal communities is already occurring through aspects of traditional law and custom which impose a range of restrictions on community members including measures such as limiting waste, undertaking seasonal fishing activity and having regard to the gender of the species caught, spawning cycles and fish size. Self-regulation, which has been occurring for thousands of years, is a key tool employed by Aboriginal communities in accordance with their traditional law and custom to appropriately manage fisheries resources.

The importance of self-regulation of fishing activity amongst Aboriginal communities was recognised in the recent Federal Court decision of Rares J in *Rainbow on behalf of the Kurtjar People v State of Queensland (No 2)* [2021] FCA 1251 (**Rainbow**) at [321].

In NSW, there are currently two native title groups whose native title rights and interests have been determined over sea country, and a further two native title claims presently filed over sea country. Both determinations which have been made by the Federal Court recognise the native title right to fish and in the years since those determinations were made (2017 and 2019 respectively) there has been no evidence of any negative impact on the fisheries resource in those regions. This can be easily

Level 1, 44-70 Rosehill St Redfern NSW 2016 Australia
t: + 61 2 9310 3188
PO Box 2105 Strawberry Hills NSW 2012 Australia
f: + 61 2 9310 4177
abn: 71 098 971 209
w: www.ntscorp.com.au

understood in that native title is the recognition of pre-existing rights which have been continually exercised since before the assertion of sovereignty. Understood in this way, it is difficult to comprehend any argument that regulations are necessary to manage Aboriginal cultural fishing and the fisheries resource.

In addition, the FMA includes a definition of 'Aboriginal cultural fishing', as well as a definition for an 'Aboriginal person' which already set clear parameters around Aboriginal cultural fishing.

In NTSCORP's view there is no present challenge to immediately commencing Schedule 1 of the *Fisheries Management Amendment Act 2009* without regulations. As outlined above the commencement of s21AA is not dependent on the development of Local Management Plans or regulations.

The impact of the non-commencement of Schedule 1 on Aboriginal peoples and the practice of Aboriginal cultural fishing and Compliance measures undertaken by Fisheries NSW as it pertains to the non-compliance of Schedule 1

Traditional Owners in NSW have a strong connection to their land, seas and waterways, including through the traditional practice of cultural fishing. A significant proportion of Australia's Aboriginal people lived and continue to live in close proximity to the nation's coastline.

Schedule 1 of the *Fisheries Management Amendment Act 2009* was enacted to recognise and protect Aboriginal cultural fishing and to ensure cultural practices were not criminalized. The fact that such a protective measure has still not commenced some twelve years later is an indictment on the NSW State Government.

There is a fundamental structural issue with the management of fishery resources in NSW which uniquely discriminates against Aboriginal People. This means Aboriginal People are excluded from the lucrative economic opportunities provided by commercial fishing[5], whilst also bearing the brunt of an increasingly punitive fisheries management regime for simply undertaking their ancient cultural fishing practices. The negative impact of the failure to commence Schedule 1 of the *Fisheries*

[5] *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'* Stephan Schnierer and Hayley Egan Southern Cross University funded by Fisheries Research Development Corporation

Level 1, 44-70 Rosehill St Redfern NSW 2016 Australia
t: + 61 2 9310 3188
PO Box 2105 Strawberry Hills NSW 2012 Australia
f: + 61 2 9310 4177
abn: 71 098 971 209
w: www.ntscorp.com.au

Management Amendment Act 2009 is well-documented and only worsening despite Aboriginal People's native title rights and interests being recognised by the Courts.

The failure to recognise Aboriginal People's cultural fishing rights has meant the FMA heavily discriminates against Aboriginal fishers, resulting in an overrepresentation of Aboriginal People prosecuted. For example, in the 10 years to 2017, 25 of the 32 people jailed for criminal convictions for NSW fisheries offences identified as Indigenous (or 78 per cent). As Indigenous People make up 3.4 per cent of the state's population, this makes Indigenous People **23 times over-represented**. Of the 60 people convicted with bonds whose Indigenous status was recorded in the data, half identified as Indigenous, making Indigenous People **15 times over-represented**.[6]

When Aboriginal People are charged with offences under the FMA, the bag and possession limits applied are those specified under the regulations in accordance with sections 17 and 18 of the FMA, and not those adopted by DPI Fisheries in accordance with its interim compliance policy.

Access to a legal defence for Aboriginal People charged with these offences is complicated by there being no body specifically funded to represent Aboriginal People charged under the FMA and seeking to rely upon a native title defence. The significant costs of accessing such a defence privately, which frequently involves the preparation of expert anthropological reports and engaging Counsel, are cost prohibitive to the vast majority of Aboriginal People charged with offences under the FMA. The availability of legal advisors and anthropologists with the relevant native title expertise is also fairly limited. This is a profoundly unjust circumstance which is resulting in Traditional Owners being prosecuted for exercising their cultural right to fish, and even where a native title defence could be established, often pleading guilty in the absence of being able to access a legal defence.

Any other related matter: International Obligations

In considering the matters outlined in the Terms of Reference for the Inquiry into the commencement of Schedule 1 of the *Fisheries Management Amendment Act 2009 (NSW),* NTSCORP consider it is helpful for the Committee to consider the obligations of the NSW State Government under various international conventions.

[6] NSW Bureau of Crime Statistics and Research cited in *'A load of abalone: The trial of Keith Nye highlights how fisheries law unfairly target Aboriginal people'*, Paul Cleary, The Monthly

Level 1, 44-70 Rosehill St Redfern NSW 2016 Australia
t: + 61 2 9310 3188
PO Box 2105 Strawberry Hills NSW 2012 Australia
f: + 61 2 9310 4177
abn: 71 098 971 209
w: www.ntscorp.com.au

The objects of the FMA include recognising the spiritual, social and customary significance of the fisheries resource to Aboriginal People and protecting and promoting the continuation of Aboriginal cultural fishing.

Aboriginal People have an inherent right to fish in accordance with traditional systems of law and custom. Aboriginal People have undertaken this activity for thousands of years and have managed the fisheries resource in a sustainable way throughout. Those inherent rights are recognised in the UN Declaration on the Rights of Indigenous Peoples and in other conventions which Australia has ratified. Those international obligations include:

Principle	**Instrument**	**Article**
Right to manifest, practice, develop and teach traditions and customs	United Nations Declaration on the Rights of Indigenous People	12.1
Right to engage freely in all traditional activities	United Nations Declaration on the Rights of Indigenous People	20.1
Right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard	United Nations Declaration on the Rights of Indigenous People	25
Right to own, use, develop and control the land and territories and resources that they possess by reasons of traditional ownership or other traditional occupation or use	United Nations Declaration on the Rights of Indigenous People	26.2
Right to the conservation and protection of the environment and the productive capacity of lands, territories and resources	United Nations Declaration on the Rights of Indigenous People	29.1
Right to maintain, control, protect and develop… cultural heritage, traditional knowledge and traditional cultural expressions	United Nations Declaration on the Rights of Indigenous People	31.1
Respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application	United Nations Convention on Biological Diversity	8(j)

Level 1, 44-70 Rosehill St Redfern NSW 2016 Australia
t: + 61 2 9310 3188
PO Box 2105 Strawberry Hills NSW 2012 Australia
f: + 61 2 9310 4177
abn: 71 098 971 209
w: www.ntscorp.com.au

Right to enjoy and practice culture	International Covenant on Civil and Political Rights	27
Right to participate in cultural activities	International Convention on the Elimination of Racial Discrimination	5(e)(vi)

As stated in the United Nations 'State of the Worlds Indigenous Peoples' Report, volume 5:

> *Coastal indigenous communities rely on the ocean for sustenance and thus have a unique relationship with the ocean. This relationship is closely tied to their cultures, on the basis of which they have traditionally managed their environment, including the oceans, seabeds and other marine resources, in a sustainable manner to benefit all peoples and future generations.*[7]

Any other related matter: NSW Government's Closing the Gap targets

In July 2020, the NSW State Government entered the National Agreement on Closing the Gap (**Closing the Gap Agreement**).

Clause 62 of the Closing the Gap Agreement states:

> *When Government Parties change, design or deliver policies and programs that impact on the outcomes of this Agreement, they will do so in line with this Agreement.*

Clause 19 of the Closing the Gap Agreement states:

> *The Parties will listen to the voices and aspirations of Aboriginal and Torres Strait Islander people and change the way we work in response. Aboriginal and Torres Strait Islander people have been saying for a long time that:*
>
> *c. government agencies and institutions need to address systemic, daily racism, and promote cultural safety and transfer power and resources to communities.*

Clause 21 of the Closing the Gap Agreement states:

> *The Parties agree to implement all activities under this Agreement in a way that takes full account of, promotes, and does not diminish in any way, the cultures of Aboriginal and Torres Strait Islander people. This commitment is part of the new way of working*

[7] United Nations – Department of Economic and Social Affairs, 'State of the World's Indigenous Peoples: Rights to Lands, Territories and Resources', Volume 5 (2021), New York, p. 159

Level 1, 44-70 Rosehill St Redfern NSW 2016 Australia
t: + 61 2 9310 3188
PO Box 2105 Strawberry Hills NSW 2012 Australia
f: + 61 2 9310 4177
abn: 71 098 971 209
w: www.ntscorp.com.au

> *that Parties have agreed to under this Agreement. The Parties agree to demonstrate this commitment through their Implementation Plans.*[8]

Outcome 15 of the Closing the Gap Agreement is:

> *Aboriginal and Torres Strait Islander people maintain a distinctive cultural, spiritual, physical and economic relationship with their land and waters*

Target 15b of the Closing the Gap Agreement is:

> *By 2030, a 15 per cent increase in areas covered by Aboriginal and Torres Strait Islander people's legal rights or interests in the sea*.

Proposed Target 15c of the Closing the Gap Agreement relates to inland waters and is currently being finalised for national Joint Council endorsement.

Outcome 16 of the Closing the Gap Agreement is:

> *Aboriginal and Torres Strait Islander cultures and languages are strong, supported and flourishing*

As such, through the Closing the Gap Agreement, the NSW Government has committed to designing its policies to achieve the outcome of increasing Aboriginal People's legal interests in Australia's sea, as well as ensuring Aboriginal People's right to self-determination.

NTSCORP submits that the immediate commencement of Schedule 1 of the *Fisheries Management Amendment Act 2009 (NSW)*, without regulations, would be a substantial and positive step towards meeting the NSW State Government's obligations under the Closing the Gap Agreement.

Noting the figures cited above regarding the overrepresentation of Aboriginal People being prosecuted under the FMA, NTSCORP also submits that the introduction of Schedule 1 of the *Fisheries Management Amendment Act 2009 (NSW)* is relevant to Target 10:

> By 2031, reduce the rate of Aboriginal and Torres Strait Islander adults held in incarceration by at least 15 per cent

Failing to immediately commence Schedule 1 of the *Fisheries Management Amendment Act 2009 (NSW),* without regulations, runs counter to the NSW State

[8] See also clause 107 of the Closing the Gap Agreement which is cast in similar terms

Level 1, 44-70 Rosehill St Redfern NSW 2016 Australia
t: + 61 2 9310 3188
PO Box 2105 Strawberry Hills NSW 2012 Australia
f: + 61 2 9310 4177
abn: 71 098 971 209
w: www.ntscorp.com.au

Government's commitments under the Closing the Gap Agreement to strengthen, support, promote, and not in any way diminish Aboriginal cultures, to maintain Aboriginal People's distinctive cultural, spiritual, physical and economic relationship with their land and waters, to increase Aboriginal People's legal rights in the sea and to reduce incarceration rates.

NTSCORP's Recommendations

NTSCORP submits that the NSW Government should:

- recognise the unique nature of Aboriginal cultural fishing;
- uphold the original intent of Schedule 1 of the *Fisheries Management Amendment Act 2009 (NSW)* to recognise and protect Aboriginal cultural fishing and ensure that cultural practices are not criminalized;
- fulfil its obligations under the Closing the Gap Agreement to strengthen, support, promote, and not in any way diminish Aboriginal cultures, to maintain Aboriginal People's distinctive cultural, spiritual, physical and economic relationship with their land and waters, to increase Aboriginal People's legal rights in the sea and to reduce incarceration rates;
- actively implement its obligations under the United Nations Declaration on the Rights of Indigenous People and other international conventions ratified by Australia; and
- acknowledge that any regulations, including in the form of Local Management Plans, will not be enforceable against Aboriginal People exercising their native title right to fish and take marine resources by virtue of s287 of the FMA and s211 of the NTA;

by

(a) **immediately commencing Schedule 1 of the *Fisheries Management Amendment Act 2009 (NSW)* without regulations;**

(b) **removing restrictions on Aboriginal cultural fishers and cultural fishing activity, including for example regulations relating to size, gear, method and closure; and**

(c) **placing a stay on the prosecution of Aboriginal cultural fishers.**

Level 1, 44-70 Rosehill St Redfern NSW 2016 Australia
t: + 61 2 9310 3188
PO Box 2105 Strawberry Hills NSW 2012 Australia
f: + 61 2 9310 4177
abn: 71 098 971 209
w: www.ntscorp.com.au

We thank you for the opportunity to provide submissions to this important Inquiry.

NTSCORP would be willing to give evidence before the Committee should the Committee determine it would be assisted by further information from NTSCORP.

If you require any further information in relation to this submission, please do not hesitate to contact Mishka Holt, Principal Solicitor, or Sandy Chalmers, Deputy Principal Solicitor, at NTSCORP by email on mholt@ntscorp.com.au or schalmers@ntscorp.com.au or by telephone on (02) 9310 3188.

Yours Faithfully,

Natalie Rotumah
Chief Executive Officer
NTSCORP Limited

Level 1, 44-70 Rosehill St Redfern NSW 2016 Australia
t: + 61 2 9310 3188
PO Box 2105 Strawberry Hills NSW 2012 Australia
f: + 61 2 9310 4177
abn: 71 098 971 209
w: www.ntscorp.com.au