

Submission
No 22

INQUIRY INTO COMMENCEMENT OF THE FISHERIES MANAGEMENT AMENDMENT ACT 2009

Organisation: NSW Aboriginal Land Council

Date Received: 4 March 2022



**New South Wales
Aboriginal Land Council**
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NSW Parliamentary Inquiry
Portfolio Committee No. 4
Regional NSW, Water and Agriculture

Re: NSW Parliamentary Inquiry into the commencement of the *Fisheries Management Amendment Act 2009*

Thank you for the opportunity to make this submission to the NSW Parliamentary Inquiry into the commencement of the *Fisheries Management Amendment Act 2009 (FMA)*.

The NSW Aboriginal Land Council (**NSWALC**) is the peak body representing Aboriginal peoples across NSW and with over 25,000 members, is the largest Aboriginal member-based organisation in Australia. We are the democratically elected voice of Aboriginal peoples.

NSWALC, the network of Local Aboriginal Land Councils (**LALCs**), and Aboriginal peoples of NSW are key stakeholders in relation to land, sea, water and fisheries resources and are holders of specific Traditional Ecological Knowledge and Traditional Fishing Knowledge accumulated over millennia. Aboriginal peoples are not merely one stakeholder among others, we possess inherent and pre-eminent rights, values and interests in the lands and waters on account of our status as Australia's First Peoples.

NSWALC welcomes the Inquiry. We seek the **urgent commencement of s.21AA (without regulations)**, and the **cessation of the abhorrent and unjust prosecutions** of Aboriginal people for undertaking cultural practices and providing for our communities.

NSWALC calls on the NSW Government to:

1. End the criminalisation of cultural practices¹ and support Aboriginal people's cultural fishing rights.
2. Place an immediate prohibition on prosecuting Aboriginal cultural fishers and ensure Aboriginal cultural fishers are protected from prosecution
3. Remove restrictions on Aboriginal cultural fishers and cultural fishing activity
4. Immediately commence section 21AA of the FMA

Furthermore, any future actions regarding the FMA, in particular s.21AA, must ensure the following:

- Acknowledge Aboriginal peoples' inherent rights to water, specifically, so we can maintain our culture through the sharing of oral histories regarding Traditional Ecological Knowledge and Traditional Fishing Knowledge
- Include strong safeguards and actions to protect Aboriginal cultural heritage, Aboriginal fishers, and the environment.
- Foster partnerships with all Aboriginal peoples and communities including NSWALC and LALCs in the implementation of the FMA.

ALWAYS WAS ALWAYS WILL BE ABORIGINAL LAND

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Enclosed are additional comments. Should you require further information, please contact the NSWALC Strategy and Policy Unit on 02 - 9689 4444 or via e-mail: policy@alc.org.au.

Sincerely,

Clr Danny Chapman
Chairperson
NSW Aboriginal Land Council

4th March 2022



NSW Aboriginal Land Council – Submission

NSW Parliamentary Inquiry into the commencement of the

Fisheries Management Amendment Act 2009

Introduction

1. **The NSW Aboriginal Land Council:** NSWALC is the peak body representing Aboriginal peoples in NSW and, is the largest Aboriginal member-based organisation in Australia. Established under the *Aboriginal Land Rights Act 1983 (NSW) (ALRA)*, NSWALC is an independent, self-funded non-government organisation that has an elected governing council and the objective of fostering the aspirations and improving the lives of the Aboriginal peoples of NSW.
2. Under the ALRA, NSWALC has the following functions in relation to Aboriginal culture and heritage:
 - a) *To take action to protect the culture and heritage of Aboriginal persons in NSW, subject to any other law,*
 - b) *To promote awareness in the community of the culture and heritage of Aboriginal persons in NSW.*²
3. NSWALC provides support to the network of 120 autonomous LALCs. As elected bodies, LALCs represent not only the interests of their members, but of the wider Aboriginal community.
4. NSWALC is committed to advocating for the protection of Aboriginal peoples' cultural rights. NSWALC has advocated tirelessly that a key amendment to the FMA, passed by the NSW Parliament in 2009 to recognise and provide for Aboriginal cultural fishers, is urgently commenced. Unfortunately, Aboriginal people are still waiting, over 10 years later, to see this come to fruition.

Given NSWALC's legislative functions relating to Aboriginal culture and heritage, and to represent Aboriginal people in NSW, the NSW Government must partner, appropriately, transparently and in good faith, with NSWALC and Aboriginal peoples of NSW, to support the implementation of s.21AA and all policy, programs or activities relating to Aboriginal cultural fishing.

The Fisheries Management Act 2009

5. **Amendments to the FMA:** On 3 December 2009 amendments to the FMA which acknowledged Aboriginal cultural fishing were passed by the NSW Parliament. The amendments included:
 - a) A new **objective** of the FMA to recognise Aboriginal cultural fishing,

² S.106(7) of the ALRA

- b) A new **definition** of Aboriginal cultural fishing,
 - c) A **general exemption for Aboriginal people from paying a fee** for recreational fishing,
 - d) The inclusion of Aboriginal cultural fishing as a new ground for obtaining a **section 37 permit** that authorises the person or group to take and possess fish or marine vegetation that would otherwise be unlawful,
 - e) A new provision **authorising Aboriginal people to take and possess fish** for cultural fishing purposes – section 21AA (**This amendment is not yet in force**), and
 - f) The establishment of the Aboriginal Fisheries Advisory Council (**AFAC**), to play a key role in advising the Minister on all Aboriginal fishing issues.
6. Overall, the FMA was amended to recognise the spiritual, social and customary significance of fisheries resources to Aboriginal persons and to protect and promote the continuation of Aboriginal cultural fishing.³
 7. NSWALC supported these amendments, including section 21AA, relating to protections against prosecution for Aboriginal cultural fishers, as a first step to achieving positive reforms that would improve the rights of Aboriginal fishers in NSW.
 8. Most of the amendments came into effect on 1 April 2010. However, after more than a decade, s.21AA has yet to be enacted.
 9. This has resulted in the ongoing prosecution of Aboriginal cultural fishers, delayed recognition of rights for Aboriginal people, and a lack of certainty regarding the compliance regime.

The NSW Government must immediately commence s.21AA of the FMA.

Aboriginal Cultural Fishing Rights, more than just fishing

10. **Traditional Ecological Knowledge and Traditional Fishing Knowledge:** Aboriginal peoples in NSW, particularly LALCs, are holders of specific Traditional Ecological Knowledge and Traditional Fishing Knowledge accumulated over millennia.
11. Since time immemorial the seas surrounding this land and its rivers, billabongs and groundwaters have provided Aboriginal peoples with cultural, spiritual, physical and economic nourishment. Dispossession and degradation of these cultural water assets have had significant negative impacts on Aboriginal people and our cultural landscapes.
12. Aboriginal fishers have a long and ongoing presence in NSW waters and since time immemorial we have fished in accordance with our laws and customs. Aboriginal fishers provided resources used for sustenance, barter, trade and meaning. Through Aboriginal people's connection to fisheries resources, Aboriginal communities built up extensive knowledge systems which were used to aid in the management of these resources.
13. Since European settlement our connection to fisheries resources has been greatly impacted by changing non-Aboriginal governance structures and exploitation patterns. Today, Aboriginal peoples require more to be done to ensure that we have adequate access to fisheries resources in order to maintain our cultural fishing practices.

³ <https://legislation.nsw.gov.au/view/html/inforce/current/act-1994-038> S3.2(h)

14. It is important to note that self-regulation occurs through Aboriginal law and custom which imposes a range of restrictions on community members including ensuring there is no waste in relation to catch, seasonal fishing, having regard to the gender of the species caught and spawning, and size limits. Self-regulation, which has been occurring for thousands of years, is a key tool in managing fisheries resources.
15. It should be recognized that Aboriginal peoples make up just over 3 per cent of the population, with only a small part of that comprising fishers. By comparison there are around 1 million recreational fishers in NSW, not including people under the age of 18 or pensioners, and a sizeable commercial fishing industry.
16. **Health and wellbeing:** Cultural fishing practices are an integral part of Aboriginal cultural, spiritual, mental and physical wellbeing. Connection to Country strengthens self-worth, cultural and spiritual connections and positive states of wellbeing.⁴ There is strong international support for the protection of Aboriginal people's rights to a customary harvest of biological resources as well as traditional knowledge associated with these resources.⁵
17. Fishing for Aboriginal people is about more than just 'the catch', it is a cultural practice, it impacts on the health and wellbeing of our people and our communities.⁶ The inability to participate in, or practice cultural fishing and pass that cultural knowledge on, without the concern of being punished, impacts on the health of our peoples and our communities.

The NSW Government must recognise and support Aboriginal people's cultural connection to fisheries resources and our inherent rights to practice cultural fishing.

NSW Government's commitments

18. **Closing the Gap:** The NSW Government has an obligation to meet its commitments outlined in the National Agreement on Closing the Gap.⁷ The National Agreement provides an important framework for governments to work in partnership with Aboriginal people to ensure we maintain distinctive cultural, spiritual, physical and economic relationships with water, and advance our rights and interests in water including fisheries resources.
19. The National Agreement includes four priority reforms which aim to change the way in which governments work with Aboriginal people, these are:
 1. Shared decision making
 2. Building the Aboriginal community sector
 3. Transforming government organisations
 4. Data sharing⁸
20. Under Closing the Gap, the NSW Government has committed to the outcome, 'People maintain a distinctive cultural, spiritual, physical and economic relationship with their land and waters' and target, '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'.⁹

⁴ [Australian Indigenous Health Bulletin : Developing an exploratory framework linking Australian Aboriginal peoples' connection to country and concepts of wellbeing](#)

⁵ Article 8(j) of the United Nations Convention on Biological Diversity

⁶ [NACCHO - definition of Aboriginal Health.](#)

⁷ <https://www.closingthegap.gov.au/national-agreement>

⁸ [People maintain a distinctive cultural, spiritual, physical and economic relationship with their land and waters | Closing The Gap](#)

⁹ <https://www.closingthegap.gov.au/national-agreement/targets>

21. The NSW Government is also committed under the National Agreement on Closing the Gap to 'reduce the rate of Aboriginal and Torres Strait Islander adults held in incarceration by at least 15 per cent.'¹⁰ NSW Government representatives have noted that: 'The overrepresentation of Aboriginal people in the justice system remains a true source of shame for this country'.¹¹
22. Additionally, Priority Reform 3 of the National Agreement on Closing the Gap focuses on transforming government organisations. The object of the Priority Reform Area is to make key government organisations accountable to Closing the Gap, and to make sure that government organisations and their services are culturally safe and responsive of the needs of Aboriginal people.¹² The NSW Government has committed to elements of transformation including embedding and practicing meaningful cultural safety, supporting Aboriginal cultures and eliminating racism.¹³
23. NSWALC is concerned regarding the low employment rate of Aboriginal peoples in DPI. DPI Aboriginal employment figures are significantly below DPI's own benchmark (benchmark 2.6%, with only 1.6% of Aboriginal people in the DPI workforce in 2019). It is important to note that the benchmark DPI has set is lower than the NSW Public Sector Aboriginal Employment Strategy 2014–17 benchmark (3.3%). NSWALC is deeply concerned about a lack of commitment from DPI to employ Aboriginal peoples and to meet their own benchmarks as well as the impacts of racism on retention.
24. Nevertheless, despite the NSW Government's commitments to reduce incarceration rates of Aboriginal peoples, to recognise Aboriginal people's rights and interests in the sea, and transform the way government and its agencies work, the NSW Government continues the criminalisation of Aboriginal cultural practices.
25. By failing to commence s.21AA, and continuing to prosecute Aboriginal cultural fishers, the NSW Government is not making good on commitments to Closing the Gap. The NSW Government remains complicit in the ongoing persecution of Aboriginal people who seek to maintain our culture and cultural rights as fishers.

The NSW Government must ensure it is honouring its commitment to the National Agreement for Closing the Gap including delivering social, cultural and economic outcomes for Aboriginal people, which includes the commencement of s.21AA. By failing to commence s.21AA, and continuing to prosecute Aboriginal cultural fishers, the NSW Government is not making good on commitments to Closing the Gap.

26. **International obligations:** In 2009 Australia became a signatory to the United Nations Declaration on the Rights of Indigenous Peoples (**UNDRIP**)¹⁴. In doing so the Australian Government has adopted the following Articles:
Article 25: 'Indigenous peoples have the 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'.

¹⁰ [National Agreement on Closing the Gap](#) (pg 31)

¹¹ <https://www.nsw.gov.au/media-releases/closing-gap-for-aboriginal-people-custody>, the Hon. Don Harwin, former Minister for Aboriginal Affairs.

¹² <https://www.closingthegap.gov.au/national-agreement/priority-reforms>

¹³ <https://www.closingthegap.gov.au/national-agreement/priority-reforms>

¹⁴ [United Nations Declaration on the Rights of Indigenous Peoples](#).

Article 32.2: 'states shall consult and cooperate in good faith with the Indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilisation or exploitation of mineral, water or other resources'.

27. It is a reasonable expectation that the NSW Government embeds the principles of the UNDRIP in its approach to the management of fisheries resources.

The NSW Government must embed the principles of the United Nations Declaration on the Rights of Indigenous Peoples (Article 25 and 32.2) in its approach to the management of fisheries resources.

Impact of prosecutions on Aboriginal fishers

28. Aboriginal people make up 4% of people living on the NSW South Coast, but have accounted for 80% of jail terms for fisheries offences since 2009.¹⁵ In particular, Aboriginal people are significantly overrepresented among those jailed or convicted in NSW for offences related to abalone fishing.¹⁶

29. In her submission to this inquiry, the Honorary Associate Professor Janet Hunt notes:
*"The statistics also reveal that Aboriginal people are more likely to be charged, and then prosecuted compared to non-Aboriginal people. This is evidence of structural racism which needs to be properly interrogated as the State's practice of these prosecutions may in fact be in breach of the Commonwealth's Racial Discrimination Act (RDA) 1975."*¹⁷

30. Associate Professor Hunt goes on to detail the impacts of the non-commencement of s.21AA and prosecutions has had on Aboriginal people in the South Coast, who are the target subjects of her research:

'The effect on many other people has also been chilling – in that they don't risk going into the water to dive or go fishing because of fear of interacting with compliance officers (even when they would be complying with existing laws).

There are several implications of all of this:

- *Loss of cultural knowledge and intergenerational transmission of this significant saltwater culture*
- *Poorer diet, and sometimes family hunger, as inability to fish means no seafood to eat*
- *Poorer health and well-being (particularly for more vulnerable members of the community)*
- *Continued or exacerbated poverty and unemployment.'*

31. NSWALC has previously recommended that the NSW Government address the significant problems with the levels of engagement, understanding and working relationships between Departmental staff/Fisheries officers and Aboriginal peoples.

32. NSWALC has deep concerns about reports from Aboriginal peoples regarding the racial profiling of Aboriginal fishers by Fisheries officers and the impacts on Aboriginal cultural fishing.

¹⁵ [The Guardian. -aboriginal-groups-call-on-nsw-government-to-end-cultural-fishing-prosecutions](#)

¹⁶ [Cleary, P. \(2021\). 'A load of abalone', The Monthly, May 1, 2021](#)

¹⁷ Inquiry into the Fisheries Management Amendment Act 2009. Submission by Honorary Associate Professor Janet Hunt, Centre for Aboriginal Economic Policy Research, Australian National University, February 2022.

33. NSWALC has previously recommended that initiatives are implemented that aim to build positive working relationships between Departmental staff and Aboriginal people at the local levels. These could include, but are not limited to:

- Initiatives to increase cultural awareness and understanding by Departmental staff,
- Development of communications and education plans,
- Providing employment opportunities for Aboriginal people, setting increased Aboriginal employment targets, and the employment of Aboriginal rangers,
- Providing training opportunities to Aboriginal people, including through traineeships,
- Building relationships with existing local Aboriginal organisations,
- Where appropriate, establishment of local Aboriginal advisory committees to advise Departmental staff,
- Bi-annual meetings with local Aboriginal fishers and Departmental staff,
- Implementation of culturally appropriate programs developed with Aboriginal peoples, and
- Education by Elders on customary approaches to managing resources in a sustainable way.

34. To date, the NSW Government has not engaged with NSWALC regarding these recommendations.

The NSW Government must immediately cease prosecuting Aboriginal cultural fishers. Aboriginal cultural fishers must be protected from prosecution, including those who are currently before the Courts.

Non- commencement of s.21AA of the FMA

35. **Barriers to commencing s.21AA:** The NSW Government has not provided reasoning or advice for the non-commencement of s.21AA and there appears to be no reasonable barrier to the immediate commencement. The intention of the Parliament in 2009 was to ensure the Act was brought into line with other State and national fisheries legislation by recognising Aboriginal cultural fishing and that Aboriginal cultural fishing rights were recognised, protected and integrated into current and future management frameworks.¹⁸

36. There was bipartisan support for the legislation with the then Opposition noting 'that there is a clear need for the Government not only to recognise cultural fishing practices but also to ensure that that recognition dovetails with current fisheries management practices and plans. The Opposition recognises cultural fishing as an important part of the legislation.'¹⁹

37. Parliament did not stipulate that the commencement of s.21AA be delayed until such time as there were regulations or other forms of management options in place or ready to take concurrent effect. There were no preconditions placed by the legislature on commencing s.21AA. NSWALC queries whether government departments have been attempting to stall Parliament's intention.

38. Non-commencement is both an affront to the NSW Parliamentary process and the intent of Parliament in 2009 and directly impacts on our people, our families and our communities. What has resulted is the ongoing prosecution of Aboriginal cultural fishers and a lack of certainty regarding the compliance regime.

¹⁸ Hansard, Fisheries Management Amendment Bill, The Hon. Tony Kelly, Second Reading Speech, Fisheries Management Amendment Bill 2009

¹⁹ Hansard, Fisheries Management Amendment Bill, Mr Andrew Constance, Legislative Assembly, 1 September 2009.

39. NSWALC has consistently advocated for the recognition and provision of Aboriginal cultural fishing right including through law reform processes, inquiries and formal submission processes and in correspondence over many years. **Appendix 1** provides correspondence on this issue. Please note this is not an exhaustive list of correspondence, but rather provides a snapshot into our ongoing position and advice on this matter and lack of government action.
40. In addition to the ongoing advocacy from NSWALC, AFAC was appointed under the provisions of the FMA. The AFAC is responsible for providing strategic level advice to the Minister administering the FMA on issues affecting Aboriginal fishing.²⁰ NSWALC is represented on AFAC.
41. NSWALC has continuously advocated for the commencement of s.21AA, without regulations through our involvement in AFAC.
42. Additionally, NSWALC has over many years supported AFAC's position that s.21AA be proclaimed without further delay and also without the introduction of accompanying regulations prescribing take and possession limits. In addition to this, NSWALC has supported AFAC's position regarding the need to introduce regulations and/or amendments to the FMA which specifically exempt Aboriginal cultural fishers from all fishing related restrictions that could apply to cultural fishing activity including for example regulations relating to size, gear, method and closure.
43. NSWALC is concerned regarding the level of departmental control of the advice provided from AFAC to the Minister. Departmental staff provide the secretariat functions to AFAC. We understand there have been numerous instances of advice being drafted by department staff, on behalf of AFAC to the Minister, which is not necessarily in accordance with the intent of AFAC's discussions or recommendations. We are concerned about the misrepresentation and vetting of advice to the Minister by AFAC's secretariat. We understand that AFAC is unable to make a submission to this Inquiry as a result of this.

Inadequacy of the Aboriginal Fishing Interim Access arrangement

44. The Aboriginal Fishing Interim Access arrangement has been in place for more than a decade. It does not adequately provide for or protect Aboriginal cultural fishing and was only ever intended as a temporary measure.
45. It is important to note that while the Aboriginal Fishing Interim Access arrangement has been in place, there has been continued and increased prosecution of Aboriginal fishers.
46. NSWALC is aware of unfounded concerns raised by some stakeholders across the fishing community in relation to the supposed need for take and possession limits for Aboriginal cultural fishers.
47. NSWALC has advocated for, and has supported AFAC's recommendation, that an education and communication strategy be developed which would be based on the self-regulation of fishing activity amongst Aboriginal communities through the application of aspects of traditional law and custom and which explains that such traditional law and custom imposes a range of restrictions on community members.
48. NSWALC does not support the indefinite continuation of the Aboriginal Fishing Interim Access arrangement which inappropriately sets take and possession limits, and which is applied in an inconsistent manner.

²⁰ <https://www.dpi.nsw.gov.au/fishing/aboriginal-fishing/afac>

NSWALC does not support the indefinite continuation of the Aboriginal Fishing Interim Access arrangement which inappropriately sets take and possession limits, does not support Aboriginal cultural fishing and has resulted in Aboriginal cultural fishers continuing to be prosecuted.

Proposals for the development of regulations

49. On 1 October 2015 a draft regulation was released by the Department of Primary Industries (**DPI**) outlining daily bag/possession limits for Aboriginal cultural fishers. The NSW Government proposed regulations as a condition to commence s.21AA.
50. NSWALC submitted that a regulation was not necessary in order for s.21AA to be commenced. There is no need for concurrent commencement of s.21AA and regulation, particularly if a regulation restricts the exercise of Aboriginal cultural fishing.
51. In particular, NSWALC submitted that the draft regulation was:
 - a. **Unnecessary:** Section 21AA can be commenced without a regulation.
 - b. **Inappropriate:** Aboriginal peoples have sustainably managed fish stocks for millennia without Government regulation. The onus will be on Aboriginal people to put forward evidence of personal, cultural and community matters to support cultural fishing.
 - c. **Inadequate:** Limits are individual limits. This does not recognise that cultural fishing can take place for Elders, the incapacitated, and other community members, and catch sizes would need to be increased. In addition, proposed catch limits are the same as recreational fishers except for a few species.
 - d. **Inflexible:** Does not allow for variations in catch needed for customary reasons.
 - e. **Failed to recognise** Aboriginal people's spiritual, social, cultural and economic relationship with traditional lands and waters as outlined in the *Constitution Act 1902 (NSW)*.
 - f. **Increased costs of monitoring and compliance:** Will lead to poorly targeted increased monitoring and compliance.
52. NSWALC sought a commitment from the NSW Government that:
 - a. Aboriginal cultural fishers could fish without additional restrictions,
 - b. That Aboriginal cultural fishers would be protected from prosecution,
 - c. That the NSW Government would work with Aboriginal people to develop alternative management options rather than imposing regulations on our cultural fishing activities, and
 - d. That s.21AA of the FMA be commenced immediately without the introduction of regulations.

NSWALC maintains that s.21AA should be immediately commenced, without regulations. Regulations that set take and possession limits are not necessary, are inappropriate and are inflexible.

Failed Local Management Plans

53. NSWALC's long standing position is that Local Management Plans (**LMP**) are not a substitute for commencing s.21AA, and commencing s.21AA must not be contingent upon LMPs. The Government's approach to LMPs is not in accordance with NSWALC or AFAC's advice and should not have any bearing on the commencement of s.21AA.
54. In 2015 NSWALC reiterated our call for s.21AA to be commenced immediately without the introduction of regulations, and for the NSW Government to work with NSWALC and Aboriginal people to develop alternative management options rather than imposing a flawed regulation on our cultural fishing activities.

55. In 2016, NSWALC supported exploring a LMP model. This approach was conditional on ensuring partnership with NSWALC, that LMPs would not restrict or regulate cultural fishing, and would be undertaken in conjunction with a suite of other supporting measures.
56. LMPs were originally proposed as a separate, but complementary mechanism to promote engagement between Government and Aboriginal communities about local fishing issues, and address local management issues. The LMP proposal was put forward on the basis that s.21AA was immediately commenced, with the development of LMPs to follow.
57. LMPs were to be based on:
- ***genuine partnership*** between Aboriginal people and Government to ***work*** together for the sustainable management of fisheries for future generations,
 - ***recognition of self-determination*** regarding Aboriginal cultural matters based on local custom,
 - allow for ***self-regulation*** and management, and
 - genuine input into local decision-making.
58. The matters LMPs were envisaged to include were:
- habitat protection initiatives,
 - annual meetings with Fisheries NSW to discuss issues in relation to the fisheries resource,
 - annual meetings with Commercial and Recreational Fishers to discuss issues in relation to the fisheries resource,
 - annual cultural camps with young people for Elders to teach sustainable fishing practices in accordance with traditional law and custom,
 - development of educational resources for the community in relation to sustainable fishing practices.
59. LMPs were not to include bag and possession limits or other prohibitions relating to method and were not to be used as an alternative form of regulations.
60. Given current LMPs are still not developed, and we understand negotiations remain ongoing, NSWALC questions the effectiveness of the further roll out of LMPs. Additionally, LMPs should require a genuine partnership and recognition of self-determination and self-regulation. While the prosecution of Aboriginal cultural fisher continues, NSWALC questions how genuine partnerships and trust can be developed.
61. Despite repeated requests, DPI has never clarified the purpose of LMPs, and their relationship to commencing s.21AA. The final 'engagement protocol' on the DPI website states that LMPs are to be given effect by Ministerial Order pursuant to section 37(3)(b) of the FMA. This further indicates that commencing s.21AA is not contingent on having LMPs in place.
62. In NSWALC's view, DPI have never been serious about commencing s.21AA or LMPs. This is evidenced by:
- LMP trials commencing over 6 years ago, with no outcomes to date that we are aware of,
 - DPI unilaterally commencing community engagements, with significant unresolved matters relating to the purpose of LMPs, and no engagement protocols in place,
 - An engagement protocol was not finalised until almost 12 months after community engagements had commenced
 - The lack of engagement with NSWALC throughout, continued obfuscation, and active exclusion of NSWALC
 - The lack of transparency and accountability by DPI

- That failure to adopt and implement appropriate monitoring and evaluation mechanisms

63. DPI has actively sought to undermine any progress in supporting and facilitating Aboriginal cultural fishing rights, including through the use of LMPs. Despite the significant state-wide impacts of the LMP trials, and NSWALC's legislative functions relating to Aboriginal culture and heritage, and to represent Aboriginal people in NSW, DPI have adopted an adversarial approach to engagement. To date the information NSWALC has received regarding LMPs has been extremely limited, despite numerous requests

64. We note that recently the Draft Tweed Region Cultural Fishing Management Plan was released to the Tweed Aboriginal Community for an 8-week community consultation period. NSWALC sought the opportunity to comment on the draft plan and to support LALCs in their response, however, was advised this was not possible.

The LMP program and approach must urgently be redesigned in partnership with NSWALC, and an independent agency should oversight this.

The NSW Government must urgently clarify the relationship of LMPs to s.21AA.