

REPORT ON PROCEEDINGS BEFORE

**PORTFOLIO COMMITTEE NO. 4 - CUSTOMER SERVICE
AND NATURAL RESOURCES**

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

CORRECTED

At Room 814-815, Parliament House, Sydney on Friday 19 August 2022

The Committee met at 9:30.

PRESENT

The Hon. Emma Hurst (Acting Chair)

The Hon. Taylor Martin
The Hon. Peter Poulos
The Hon. Peter Primrose
The Hon. Mick Veitch

PRESENT VIA VIDEOCONFERENCE

The Hon. Scott Barrett

* Please note:

[inaudible] is used when audio words cannot be deciphered.

[audio malfunction] is used when words are lost due to a technical malfunction.

[disorder] is used when members or witnesses speak over one another.

The Hon. MICK VEITCH: Before we get started, I acknowledge the Gadigal people of the Eora nation, the traditional custodians of the lands on which we are meeting today. I pay my respect to Elders past, present and emerging and celebrate the diversity of Aboriginal peoples and their ongoing cultures and connections to the lands and waters of New South Wales. I also acknowledge and pay my respects to any Aboriginal and Torres Strait Islander people joining us today. Welcome to the public hearing for the inquiry into the commencement of schedule 1 to the Fisheries Management Amendment Act 2009. This inquiry is gathering information in relation to Aboriginal and cultural fishing and how the non-commencement of schedule 1 is impacting Aboriginal communities in the practice of cultural fishing. Today's hearing follows an important community round table that we held recently in Narooma.

Today we will be hearing from a number of stakeholders, including commercial and recreational fishers, cultural fishers, academics and legal and government representatives. While we have many witnesses with us in person, several will be appearing via videoconference today. I thank everyone for making the time to give evidence to this important inquiry. Before we commence, I would like to make some brief comments about the procedures for today's hearing. Today's hearing is being broadcast live via the Parliament's website. A transcript of today's hearing will be placed on the Committee's website when it becomes available. In accordance with the broadcasting guidelines, media representatives are reminded that they must take responsibility for what they publish about the Committee's proceedings.

While parliamentary privilege applies to witnesses giving evidence today, it does not apply to what witnesses say outside of their evidence at the hearing. I therefore urge witnesses to be very careful about comments you may make to the media or to others after you complete your evidence. Committee hearings are not intended to provide a forum for people to make adverse reflections about others under the protection of parliamentary privilege. In that regard it is important that witnesses focus on the issues raised by the inquiry terms of reference and avoid naming individuals unnecessarily. All witnesses have a right to procedural fairness according to the procedural fairness resolution adopted by the House in 2018. If witnesses are unable to answer a question today and want more time to respond, they can take the question on notice. Written answers to questions taken on notice are to be provided within 21 days. If witnesses wish to hand up documents, they should do so through the Committee staff.

In terms of the audibility of the hearing today, I remind both Committee members and witnesses to speak into the microphone. As we have a number of witnesses in person and via videoconference, as well as a member of the Committee, it may be helpful to identify who questions are directed to and who is speaking. For those with hearing difficulties who are present in the room today, please note that this room is fitted with induction loops compatible with hearing aid systems that have telecoil receptors. Finally, could everyone please turn their mobile phones to silent for the duration of the hearing. I now welcome our first witnesses.

Mr STAN KONSTANTARAS, President, Recreational Fishing Alliance of NSW, sworn and examined

Mr GREG RYZY, President, Abalone Association of New South Wales, affirmed and examined

Mr STEPHEN BUNNEY, Industry Liaison, Abalone Association of New South Wales, affirmed and examined

The Hon. MICK VEITCH: Would you like to start by making a short statement? Please keep it to no more than of a couple of minutes because we only have half an hour and that will allow for questions. I will start with either Mr Bunning or Mr Rzyz.

STEPHEN BUNNEY: We have a prepared statement that refers directly to the terms of reference that I will read out from the Abalone Industry Association. The abundance, resilience and the sustainability of wild abalone and their ecosystems should always come first. Today's New South Wales abalone fishery exists in a modern post-industrial marine estate environment that is influenced by an array of people-driven consequences such as population, pollution, resource conflict, aquatic biosecurity and climate change. These stressors are combining to change the ecological trajectories of some of our key coastal habitats and species such as abalone.

Currently the New South Wales commercial abalone fishery is meeting these challenges by using a finer reef scale management strategy that is linked to the greater New South Wales marine ecosystem-based management regime with a raft of dynamic assessment systems supported by tested stock performance indicators. This is the best approach to achieve the goals of sustainability, resilience and adaption. Therefore, the New South Wales abalone industry supports schedule 1, section 21AA borne by sustainable cultural fishery catch settings in regulation, as intended. We have a quote from the Hon. Niall Blair, MLC, Minister for Primary Industries on 18 October 2017. He remarked:

The intention has long been that section 21AA would commence in conjunction with a cultural fishing regulation.

We begin on the terms of reference. First, the historical reasons for not commencing schedule 1 for 11 years. The key Aboriginal representative groups, including the New South Wales Aboriginal Land Council, NTSCORP and the Aboriginal Fishing Advisory Council, advised the New South Wales Government they no longer supported the regulation. The New South Wales abalone industry believes that this is the critical failure point in achieving the intended outcomes of the Fisheries Management Amendment Act 2009 and was the failure of the Aboriginal Fishing Advisory Council and other concerned Aboriginal representative agencies in fulfilling their responsibilities to provide sustainable abalone cultural catch set limits as prescribed to enable the necessary regulation required for section 21AA of the Fisheries Management Amendment Act 2009, schedule 1. During the crucial period 2015 to 2017, the abalone industry had a representative on the Regulation Review Committee. The RRC's expectation was that the enabling cultural catch settings would be provided by AFAC to enact the regulation as a milestone step. At the eleventh hour, AFAC decided to renege on this fundamental responsibility, the consequences of which have led to this inquiry.

Secondly, the present challenges to commencing schedule 1. There is an overriding fundamentalist political rights agenda that values itself before the key values of sustainability and stewardship, and actively compromises any opportunity to find reasonable trade-offs and outcomes that would enable schedule 1. Again, the commencement of section 21AA is as the Hon. Niall Blair, MLC, stated, that the Fisheries Management Amendment Act was for section 21AA to commence with a supporting regulation to support the conservation, development and sharing of fisheries resources. Thirdly, the impact of the non-commencement of schedule 1 on Aboriginal people and the practice of Aboriginal cultural fishing. It prevents cultural fishers' rights progressing from the Aboriginal Cultural Fishing Interim Access Arrangement and the section 37 permit system to a potentially superior, holistically sustainable resource sharing and co-management arrangement. This is a real thing.

It leaves Aboriginal fishers vulnerable to criminal elements wishing to exploit the "cultural catch umbrella" for profit. Zero limits or zero access arrangements on high-value species like abalone have been demonstrated to be a considerable pull factor for serious organised crime syndicates. It diminishes the role and engagement that First Nations people have in the actual management of the fishery. By failing to engage realistically on basic catch criteria, such as size and bag limits that reflects the recognised and understood sustainability standards, Aboriginal peak bodies are disengaging cultural fishers from and making them irrelevant to the process of resource sustainability regulation development.

One hundred and seventeen millimetres is the standard minimum legal size limit for abalone in New South Wales—literally it is the gold standard based on hard-learned lessons—and is used by the recreational fishery. Simply, the minimum legal size limit guarantees that half the mature abalone have had an opportunity to reproduce at least five times and, just as importantly, ensures that mature abalone are spatially dense enough for efficient reproduction. That's key. The commercial fisheries go a step further with a minimum legal size limit of

120 millimetres north of Wonboyn and 125 millimetres south of Wonboyn to the Victorian border. This is an example of basic finer scale reef management. The resource does not see commercial effort, recreational effort or cultural effort. It only sees sustainable or unsustainable effort. Density decline and colony collapse due to serial depletion is demonstratively catastrophic.

Fourthly, steps previously taken and proposed to be taken by the Government to commence schedule 1. The schedule 1 process was well structured, managed and thorough. The required instruments of the Aboriginal Fishing Trust Fund and AFAC were created and operational very early on. Since 2016, when the key Aboriginal advisory groups—the NSW Aboriginal Land Council, NTSCORP and the AFAC—advised the New South Wales Government they would no longer support the regulation, the New South Wales Government has been constantly engaging with these and other traditional owners to develop alternative arrangements, called local management plans.

LMPs seek to facilitate Aboriginal cultural fishing preferences to achieve the same natural resource management outcomes originally intended to be achieved through the schedule 1 regulation containing the sustainable legal minimum size limits and bag limits. I have a note here that the commencement of schedule 1 was always intended to have a structured fishing regulation attached to 21AA and that catch fisheries would need to be worked through regarding size limits and bag limits for the preservation of future fish stocks. This has been worked through over numerous working groups along the east coast and then failed to be supported in the final meeting of these groups.

Fifthly, compliance measures undertaken by Fisheries NSW as it pertains to the noncompliance of schedule 1. DPI has a duty of care to protect and manage all fisheries. Without the regulation that was prescribed by the Hon. Niall Blair, MLC, there would be no protection to the sustainability of the fisheries. Essentially, if one part is not sustainable, all parts are not sustainable. Finally, any other related matters. The abalone commercial fishery has been disappointed and somewhat dismayed by the seeming lack of acknowledgement and even rejection for the need of sustainable catch settings from some of the Aboriginal Elders and advisory groups.

The Department of Primary Industries-Fishing, Fisheries Research and Development Corporation and the Indigenous Land and Sea Corporation are developing pathways for cultural fishers to enter the New South Wales commercial fishery. The NSW Abalone Association welcomes and supports this effort and stands ready to assist where appropriate. Currently, there are 45 matters before the courts relating to Aboriginal people for some 11,462 seized abalone. The inescapable truth is that most of these seized abalone were undersize and immature. Minimum legal size limits and bag limits equal abundance, resilience, sustainability, equity and resource security. Thank you.

The Hon. MICK VEITCH: Mr Bunney, that is clearly a prepared statement. Are you able to hand it up to assist Hansard?

STEPHEN BUNNEY: Yes. I thought Sarah was going to bring a whole stack for you.

The Hon. MICK VEITCH: Thank you. Stan?

STAN KONSTANTARAS: I have emailed my prepared statement last night to Sarah. I will just read quickly from it. The inquiry and its outcome are of interest to recreational fishers. We all share the same principles around fishing to feed our families and that we all pass this culture down from generation to generation. The RFA's position on cultural fishing remains unchanged since 2015 and we still firmly believe it should occur if "the rules and regulations surrounding fishing can be relaxed without harming the general health and sustainability of our fishery". We all need to acknowledge that the fishery is under stress and that the impacts we have all had over the past 50 years means we are not fishing the once pristine waters we often speak about. We are faced with a fishery that is under immense stress from habitat degradation, poor water quality, overpopulation, poor land and water management practices and pollution. It is with this in mind that we need to approach fishing into the future.

The RFA is generally supportive of cultural fishing, for example the process to allow such activities in the Botany Bay Recreational Fishing Haven during the annual mullet run. That activity was supported by the local fishing club and meetings were held between all the stakeholders. The RFA prides itself on being conversant and familiar with these important issues. However, the lack of any updates makes this responsibility difficult at times and we still hold the view that an active role for groups like the RFA is needed to help develop statewide policies, strategies and action plans for all activities in New South Wales that involve cultural fishing. The RFA has attempted to detail the amount of cultural fishing that occurs in New South Wales and where; however, the information has not been made available at the time our submission was written. The lack of transparency should be of great concern to all stakeholders.

It is the view of the RFA that unless all fishers are engaged as part of any process to progress cultural fishing beyond a section 37 permit, to a local management plan or ultimately the commencement of section 21AA,

the outside perception of Aboriginal cultural fishing will continue to be that of a negative view of the process. Both Indigenous and non-Indigenous fishers share similar values around the social and health benefits that fishing provides. What some non-Indigenous fishers might lack is the understanding of fishing in terms of connection to ancestors and country, and how it is central to Indigenous culture and identity. We have missed the chance to share these values in a community discussion. There is a lack of a strategy or available information that would help us better understand the process and assist in better managing the activity. At this point, we cannot help manage any concerns that local fishers might have due to a lack of detailed information or assessment of the existing processes.

If we proceed to the commencement of section 21AA of the Fisheries Management Amendment Act that has the power to create cultural fishing regulations, we will need a robust and inclusive engagement policy that needs to be developed with a mechanism for meaningful community stakeholder consultation that could potentially look at particular rules that are specifically prescribed in a cultural fishing regulation that deal with the sustainability of a fishery that is under immense stress in 2022 and beyond. The RFA thanks the inquiry for the opportunity to share our views and welcomes the chance to share these values that recreational fishing in New South Wales is used as an opportunity for promoting reconciliation in Australia.

The Hon. MICK VEITCH: I will open up the questioning. Stan, you have emailed that through?

STAN KONSTANTARAS: I have, yes.

The Hon. MICK VEITCH: Stan, you say in the RFA submission more needs to be done to explain Aboriginal cultural fishing to the wider community. You touched on that in your opening statement. Can you elaborate on what you mean by that? What do you see needs to happen?

STAN KONSTANTARAS: I am also president of my local fishing club, South Sydney. I've got 200 members. I've fished Botany Bay for 50 years. I've got a good relationship with the Indigenous fishers there. When it came to allowing net fishing in Botany Bay for the annual mullet run, there were a lot of negative comments from fishing club members, something we had fought to get commercial fishing out, we were letting nets back in. But again, the engagement process was well handled back then. It allowed me to go back to my 200 members and explain things, and any negative perceptions that my members had were clearly put aside and we moved forward. That process has been occurring for many years now. We've had many updates. My anglers go down and watch; they engage, we communicate. That has gone by the wayside in the last two or three years. I didn't even get an update this year from the department on the mullet run in Botany Bay.

Other fishing clubs are aware of this. The section 37s are coming in up and down the coast. They are contacting the RFA and asking about the process. They're not well equipped to handle it and deal with the members as we were. We've got—and I have personally—a really long role in advocacy. I've sat on every government advisory committee there could be, at the highest level as well. We are really well equipped to go and talk to anglers up and down the State. The very first thing that we did when the mullet run in Botany Bay commenced is we went and broadcast this on national media. We had stories in the newspapers and on SBS. Everything has gone back to sort of behind closed doors, where I can't even get information on what's happening.

I'm fielding questions from as far as Merimbula, Narooma and up at Tweed. You have seen from my submission that we're getting zero feedback. We're not answering it, we're not dealing with the community issues. And, again, even back in the Botany Bay process it was a little bit to and fro. We all sat down together. There were things that we asked that they be really mindful of, that some of these areas were really easily accessible; they were really family friendly and that we really needed to share the space we were working in. That was fine; we all worked really well. But it hasn't happened at all and that, to me, is a worry. It's really fostering a really negative perception out there about anything we are trying to do in this space and our involvement as recreational fishers.

The Hon. MICK VEITCH: Mr Bunney, Mr Ryzy, do you agree that there needs to be more education with the fishing fraternity around what is cultural fishing, that it is actually more than the take, more than the catch?

GREG RYZY: Yes, there definitely has to be a bit more communication. As Stan just outlined, we are not getting much communication but also it needs to be done within a framework where it's sustainable. In our industry, especially, we are not attacking the juvenile abalone, which is the future of our industry and for all users. In our industry our biggest concern is not just for commercial and recreational but also Indigenous fishers that there's going to be that future for everyone, for the take. Yes, we need to have these structures in place because, as you see from our submission, the damage that can be caused is irreversible from our point of view. It can be totally destroyed in certain bays. We are seeing fishers coming down in the illegal activity, and they're coming further and further down south because the fishing grounds that they are using are totally destroyed and there's no

fish left in that area. It needs to be tidied up. There needs to be a clear line in the sand for everybody to know which direction to take and where we stand.

The Hon. MICK VEITCH: Stan, when you say there needs to be more communication, where do you think that communication should be coming from?

STAN KONSTANTARAS: I think the department needs to take a step back and let recreational fishers sit down with the Indigenous fishers as well in a broader process than is currently happening. Again, having that face-to-face contact, and again I've got a lot of history in Botany Bay, but that was really good. I think that is what is missing, especially down the South Coast. Very smaller communities as well feel that they could potentially be targeted for speaking out. We really need to put those people at ease. A local club president from down the far South Coast said that if this continues, he will quit as president because he doesn't want to be put in such a position that he has to—they're not equipped. It's groups like the RFA and other groups that can come down and really share their experiences and engage as a community, rather than just sitting down as—again, a lot of these people aren't equipped and the department is missing the chance to go to someone who could potentially help them.

The Hon. MICK VEITCH: Mr Bunney, who do you think the communication should come from?

STEPHEN BUNNEY: In terms of the abalone industry, on the far South Coast there has been no interest from Indigenous groups to engage with commercial abalone fishing. Again, because we're an industry, we assumed that we would have this engagement through working groups to work this stuff out and we had something to offer because we are—finer-scale reef management. We have processes in place for developing structured fishing programs and all the rest of that stuff. What we've actually seen is constant assault on the industry from people on ABC television and stuff like that, which has left us a little bit surprised. To be quite honest, we really don't have an avenue for engaging with a South Coast fishing rights group in an official way, or native title corp, or AFAC. We seem to have been purposefully put to one side.

Like it or not, our business is sustainability. We're constantly monitored. We agonise 24/7 over the spatial density of abalone because we're primary producers and that's what primary producers do. We want to be doing this in 15 or 20 years. We would love to have some engagement over that, but there's been no pathway and there's been no real interest. We've been sitting there and asking the Department of Primary Industries. I'm from Narooma, so I know some of the folks down there. I grew up with them and played football with them. We have conversations on the side, but they're meaningless because they don't translate into the next step, the next stage, of developing stuff. That statement that we made around—there seems to be a more overriding value for the politics around the native title claim than actually entering co-management arrangements and resource-sharing arrangements to sort out some of this resource conflict, which is why were all sitting here today, right?

The Hon. MICK VEITCH: I'm just going to go to the other panel members. Mr Barrett, do you have something you would like to pose?

The Hon. SCOTT BARRETT: Mr Bunney, you did touch on the impact on the fisheries of overfishing and taking undersized fish. What are the flow-on effects of that to the local community and the local economies?

STEPHEN BUNNEY: Are you talking just in terms of commercial fishing or for resource access for everybody?

The Hon. SCOTT BARRETT: I guess both. But if we do lose the abalone stocks, what are the impacts on that?

STEPHEN BUNNEY: Okay. A great example of this was—we've just had a scare with a virus called AVG that is not endemic or established in New South Wales. We don't have it. We have a naive stock. We had a risk of it turning up here. It gave us a moment to think about what would happen to New South Wales, local fishers, recreational fishers, commercial fishers and the ecology in general if we lost a key species like abalone. It would be really bad. I don't know how else to express it. We had a parasite go through New South Wales in the early 2000s that took out three-quarters of the abalone stock. The consequence of that was that you had a natural event that created a large-scale spatial decline in abalone. The abalone were no longer dense enough to have efficient reproduction, so you just don't get abalone north of Wreck Bay pretty much anymore.

From Ulladulla north, even 15 years on, those stocks haven't recovered. That's one of the reasons that you see crime syndicates moving from Sydney and Wollongong to fish down the South Coast, because we still have viable abalone stocks. Abalone is pretty easy. As long as you keep them mature and you keep them close enough to reproduce and their habitat's fine, they're a snail and they'll kick on. If you drop that population below a critical point, it takes years for those stocks to come back, and they don't just sit there waiting for you to come and take them out of that environment. They play a key, critical role in maintaining and sustaining that ecosystem.

So it's not just an exploitation thing; it's an ecological networking food-web problem as well. Is that what you were asking?

The Hon. SCOTT BARRETT: You can keep going, but I'll let others jump in as well.

STEPHEN BUNNEY: What you see depends on where you sit. Greg and I, because this is what we do, have a very specific view over the spatial management of abalone as it relates to value for communities.

The Hon. PETER PRIMROSE: Just one question in the time we've got, to Mr Konstantaras, please. I note in your submission you talk about the lack of any updates, information not being available and that the lack of transparency should be of concern. Who is not providing that information?

STAN KONSTANTARAS: The department, NSW DPI. In the RFA submission, I tabled a series of emails with some rather legitimate questions that I was trying to get some answers to for the fishing clubs on the South Coast—even some answers for my local fishing club—and the department seemed to have shut up shop. Trying to get an idea of the scope and the extent of cultural fishing in New South Wales and the take—I could not get that information either. It's really difficult to go out and—again, I think the fishing side of things is quite small compared to things like abalone.

I think there are issues that we can resolve quite easily between recs and the Indigenous, and we haven't been afforded that chance because we haven't got that information. They're really simple things. In Botany Bay, it was primarily an area in Yarra Bay, which was whiting and bream, which a lot of the families go down to in summer for protection from the nor'easters, and that was a really great fishing spot. We came to a really good agreement. On the far South Coast it's mullet which are under threat, and it has taken a long while for the mullet to come back into Merimbula. The locals—that's their only concern. There's a series of five lakes the section 37 applies to. They'd said, "Maybe we can leave one lake alone." They didn't think, based on their experience, that it could handle the nets.

They are really simple things that we just haven't had the opportunity or the information to go out and tackle, so there is that belief down there that cultural fishing is killing everything on the far South Coast. But essentially, it's not. There's a couple of really simple points that we can tackle together. We haven't been afforded that opportunity, which is a shame, because it's been going on now for months. There are no updates and no reports. The clubs from Narooma all the way down to Merimbula are all in limbo. Their committees don't want to deal with it. They're not equipped. They don't want to be seen to be against cultural fishing when most of them are really supportive of it.

The Hon. PETER PRIMROSE: Thank you. Mr Bunney and Mr Rzyzy, is that your experience as well?

STEPHEN BUNNEY: Yes.

GREG RZYZY: Yes.

The Hon. PETER PRIMROSE: Good—succinct. Thank you.

The Hon. MICK VEITCH: We have a couple of minutes. To start wrapping this up, I'll start with Stan and I'll come across. Essentially, your organisations support the commencement of section 21AA sooner rather than later. Would that be a fair addition to that?

STAN KONSTANTARAS: Yes, I think we should get the process going, get the conversation happening and get those little sticking points out of the way. I don't think they're big sticking points. I don't see why there's a reason. It hasn't really been explained to us ever about why it was never commenced. Mr Bunney gave me a little bit more insight into some of the reasons behind it. But again, for a recreational fisher like me who has been involved at all levels, until it was announced that we had an inquiry it was really something that had never been raised. Section 37s and native title is all we spoke about, even at the highest level of the advisory committees with the Government.

The Hon. MICK VEITCH: Thank you. Mr Rzyzy or Mr Bunney?

GREG RZYZY: Yes, we support it, as long as it's got that structure behind it with bag limits, size limits and sustainability, and it doesn't undermine what the future's going to be. There's no point having no bag limit and no size limit if there is not going to be any fishery left for anybody to use, for all stakeholders. With the right legislation and the right guidance from DPI and groups, I think we can definitely work through the process. But there needs to be that finer scale management where it's thinking of the future, not just today and tomorrow. We've got to look at long-term sustainability.

The Hon. PETER POULOS: Just a quick one for Mr Konstantaras. I'm very encouraged by your observations. In relation to engaging with Indigenous fishers, is it your view, from your observations with different

communities, that there is a focus within cultural fishing for sustainability principles along the lines of any other recreational fisher?

STAN KONSTANTARAS: Yes, absolutely.

The Hon. PETER POULOS: So we're in alignment?

STAN KONSTANTARAS: Pretty much, yes.

The Hon. MICK VEITCH: Thank you for attending this hearing. Committee members may have additional questions for you after the hearing once they receive the transcript. The Committee has resolved that answers to those questions, or questions you may have taken on notice, be returned within 21 days. The secretariat will contact you in relation to those questions. Thank you very much.

(The witnesses withdrew.)

Dr PAUL CLEARY, Oxfam Australia, sworn and examined

The Hon. MICK VEITCH: I now welcome our next witness. Would you like to start by making a short statement?

PAUL CLEARY: I will. I've actually been crossing out parts of my statement while listening to the previous sessions because I do want to keep it short. We can come back to it later. Firstly, I acknowledge country and the Gadigal people's ongoing rights and custodianship of the land on which we are gathered. I want to thank this Committee for looking at this issue and particularly for the open-minded approach that I've seen you take to the evidence so far. Oxfam is an international development agency. We work in about 90 countries around the world, but we've had a program in Australia for the past 50 years because we realise a lot of the issues that we find in developing countries are here at home in Australia and in fact, in many cases, are much worse. We've been working on this issue from late 2017, after attending a native title conference and listening to a fabulous presentation by some men from the Yuin nation around Narooma. It was very clear to us that there's a very compelling, rights-based issue here at stake.

It also became obvious to us that there's a bigger picture. Oxfam is a founding member of Closing the Gap, the campaign which has been going since 2007 and which is about health equality. What was clear when I went down the South Coast and met some of the fishers, both commercial and cultural, was that here you have these fit, healthy people—men and women in their 50s and 60s and 70s—and they're not turning up in our hospitals with complex and costly medical conditions, which you often find, sadly, with many Indigenous people. Here they are, living a healthy and productive lifestyle that had been criminalised. There's very strong evidence that the Government was really going after and targeting Aboriginal people. The first thing I did was look at some of the data. I'll go into this in more detail, but I want to make the point that contrary to the New South Wales Government's submission, which actually has some figures in there which—I don't know where they got them from.

We began generating data from the NSW Bureau of Crime Statistics and Research. It shows, for example, that 36 per cent of the prosecutions since 2016, the year chosen by the Government, involved Aboriginal people, compared to the 7 per cent figure quoted by the Government. I can go into some of those figures in a bit more detail later. The other thing I did was followed some of the court cases. These are people that are described by the Government as "recidivists". I would actually describe them as people who are immersed in their culture, who have a very strong belief in sustainability and working with their communities, helping to feed their communities, as well as doing some trading and earning a living. But they are very much people who are culturally rich, I would say. I think this claim that they're somehow involved in organised crime—I've sat in on some of these cases, and there has been no evidence whatsoever that organised crime has been involved in some of these so-called recidivist cases.

I want to touch very briefly on the Government's submission. There are a few points in there that I think really need to be addressed. It's very interesting that Aboriginal Affairs NSW has not made a submission to this inquiry. That's an agency that's within Premier and Cabinet. It's pretty inexplicable, I think, that that is the case. The Government's submission talks about the cultural fishing permits issued since 2010. There were 132. That's about one a month. There's no mention of the tonnage, by the way, or the kilograms involved—I would argue because it's very insignificant compared to the 100,000 kilograms of abalone. The discussion of local management plans—we'll hear more about them later. They began working on it in 2016 and there are only two introduced, so far, as trials. That's pretty half-hearted. On accountability, there were interesting comments by the previous witness from the recreational fishers—a lack of interest and engagement with the public. We put in a GIPAA request last year for documents on the compliance activities over a period of just two years. We were told it was an unreasonable diversion of resources and we were given nothing.

This poor record contrasts with much stronger and more far-reaching actions taken in places like the Torres Strait, where the regional authority is working with local fishers to transfer the commercial catch to traditional owners. The Northern Territory allows for community-based people to catch and sell up to five tonnes a year. Fishery laws in Queensland and Western Australia allow for cultural fishing. South Australia does so; it has also negotiated fishing agreements with native title holders such as the Narungga nation. I really think there's a strong case for New South Wales to be looking at transferring the commercial catch over time—the commercial catch, that is—to Indigenous interests, as well as supporting 21AA. In the interest of reconciliation, it's time for a circuit-breaker, and I think this Committee is a great part of that process. I hope this inquiry perhaps sees the need for a broader one that looks at these other issues about how to find a better way of operating. I would say, as a gesture of reconciliation, we should be looking at dropping the charges, ceasing the prosecutions and removing the criminal records. Thank you.

The Hon. MICK VEITCH: Thank you. Dr Cleary, when we were in Narooma, one of the participants in the round table pulled me aside a bit later on and had a chat to me to provide his explanation of his view of cultural fishing. It wasn't about the take or the catch for him. It was actually about his opportunity to sit down, as he said, with young fellas and have a conversation with them about the environment, the waterways and how to manage the fish stock. There were lessons there more than just the fish take, which is what everyone seems to finish up focusing on. Would you agree that cultural fishing is broader than just the take, and why?

PAUL CLEARY: Yes, I do. It's very much part of people getting out and about and leading a healthy lifestyle, as I said earlier. It's about people engaging with each other and having that spiritual connection to their land, which I hope you all accept that Aboriginal people still have, which is a great thing and something that should be respected. I think it's interesting that you mention young people in that question, because one of the disturbing things we've found is that, with these practices and the aggressive enforcement, what you are seeing is that young people are actually disengaging, which is really a concern. It's often a lot of the older people that are fishing. The younger people, some of which have been deterred by the fines they received—Danny Chapman gave evidence of that. His own son has been copping these fines as a teenager, which has then prevented him from getting jobs and a driver's licence. To answer your question, though, in the contact I have had—and I have spent time on the South Coast—there is very much that spiritual and cultural process that is part of it.

The Hon. SCOTT BARRETT: The spiritual connection to land and that sort of stuff—where does that intersect with the take for market that you touched on earlier?

PAUL CLEARY: Aboriginal people, as we would all know, have always traded. They've traded all sorts of things, going back tens of thousands of years. They've traded food. They've traded ochre. In one of the court cases I sat in on down in Batemans Bay, there was evidence of the very first contact between an expedition led by Governor Macquarie in the early 1800s. The very first thing that happened was there was trade between the traditional owners. They traded fish for biscuits and tobacco, so trade has been part of it. When I think of that trade as happening within the sustainability limits, then that's not something that we should have a problem with. I think trade is very much part of their culture.

The Hon. SCOTT BARRETT: You mentioned those sustainability limits there. The people you're seeing in court—have they got one or two abalone under size?

PAUL CLEARY: In one of the court cases I sat in on, we're talking about a bag of 9.7 kilograms of abalone. That's someone who then got a suspended jail sentence for 9.7 kilograms—a bag of abalone. Think of the costs involved in prosecuting that person and possibly, in some of those instances, being jailed for a few small kilograms, compared to 100,000 kilograms allocated to industry. One of the cases I sat in involved someone who did have a boot load. When I read it in the media, I have to admit that I was slightly judgemental. I thought, "What's going on here?" But then the evidence—it is good, as I say; from sitting in on the court hearings, you learn a lot. Of course, that abalone was frozen.

It had been collected by that man, Keith Nye, over a period of months and had been collected from various people who had been, I would argue, fishing within their culture and in a sustainable way. He was acting as a go-between. A lot of the people he works with are a bit reluctant to trade and engage with non-Indigenous people, but Keith has that background. As I say, it was frozen. Unfortunately, in that case, the evidence wasn't brought from the people who caught the fish. I think the feeling was that he didn't want to put other people in the spotlight. But I spoke to Keith about that and he explained how it had been caught. As I say, the fact that it was frozen really does put a different complexion on it.

The Hon. SCOTT BARRETT: Has there ever been a time when you sat in there and thought, "Jeez, this is a bit much"?

PAUL CLEARY: I've not heard of organised crime. As I say—

The Hon. SCOTT BARRETT: No, but as far as their take—not just the amount of take but the size of what they're taking?

PAUL CLEARY: The only case where I did think, "This sounds like a bit much" was Keith Nye, when I read the media reports. But then I went to the hearing and went, "Right, okay. That's how it all worked." There was evidence given by an anthropologist that explained Keith's role—that of being a go-between. As I say, the fact that I think it was something like 500 abalone—he recently received a suspended jail sentence, a fine and the seizure of his new motor vehicle that he won in a raffle for a boot load of abalone that he was selling on behalf of the community.

The Hon. SCOTT BARRETT: We heard earlier about what could happen if we do overfish these abalone stocks. What would be the impacts on the Aboriginal culture if we did see a dive in these stocks and they weren't there?

PAUL CLEARY: It is concerning. People I've spoken to, younger people, have seen in their lifetime that the abalone isn't as easy to harvest any longer. It would be devastating for these communities, and that's why I think sustainability definitely has to be at the forefront. Aboriginal people are very much—from what I've seen, from what they're taking they are feeding their communities. They might be selling a bit on the side as well; as I say, that's part of their culture. Certainly they are concerned about the stocks, but I would say that a hundred thousand kilograms of abalone a year is possibly what's actually been doing the damage.

The Hon. PETER POULOS: Dr Cleary, thank you for your contribution and your scholarship. A lot of your responses today are very consistent with the observations made by numerous Aboriginal fishers when we toured Narooma. Some of the commentary was that there was an eagerness to transfer knowledge from one generation to the other. I'm interested in your views about the impacts of withdrawing these opportunities for cultural fishing from the communities. To what extent is there this correlation between the ability to engage in one's cultural practices and their mental and health wellbeing?

PAUL CLEARY: That's a terrific question. I've certainly seen impacts on mental health from the enforcement, and I think the Government has given no regard to that at all in terms of the impact it's having. The Government submission talks about these 47 cases that are going at the moment, 37 of them involving people from the South Coast alone. But certainly I've spent time on the coast with people when they're actually engaged in these practices and, as I say, it's an incredibly healthy lifestyle. I said to one of them the other day—in fact, a couple of weeks ago, when we were coming back from Narooma. Someone who was actually facing court—I didn't know what to say to this person. He was actually facing a jail term. I said, "How do you deal with this? Are you going to meditate or something like that? What do you do?" He said, "I'm going to go and fish." That connection, that deep immersion in their culture, is how people actually deal with it. But unfortunately, all the time, they are being targeted—it's pretty clear—and they do have people breathing down their necks.

The Hon. PETER PRIMROSE: Dr Cleary, you mentioned concern about some of the statistics in the Government submission. I was wondering if you could comment on that specifically, but maybe take on notice and come back to us with some specific references and details of some of the significant concerns you have.

PAUL CLEARY: Yes. I've got the Bureau of Crime Statistics and Research research here in a spreadsheet. I found it extraordinary—the Government chose the year 2016 for some reason, I think because that might have been a low point. They claim that 7 per cent of the prosecutions involve Aboriginal people. I went back and looked at the data from BOCSAR. It's 36 per cent. What's interesting is that the overrepresentation of Aboriginal people increases with the severity. You start with about four times for fines and then you go up to 20 times for jail sentences. The more severe penalties are skewed towards Aboriginal people. The Government says here:

The proportion of penalty notices (fines) ... is 1.5% ...

The BOCSAR data shows it's 13 per cent. They say in the submission, "Our data". I don't know what data they're using, but they're not using the crime statistics data. It's pretty clear. But I'll follow up on that and I'll give you the spreadsheet with a bit of analysis¹.

The Hon. PETER PRIMROSE: We may ask what our data is.

The Hon. MICK VEITCH: We could pose that this afternoon, I'd suggest.

PAUL CLEARY: Yes.

The Hon. MICK VEITCH: Dr Cleary, the recommendations at the end of the submission from Oxfam—there are two elements I'd like to pick up. One continues on that line of questioning I had with the earlier panel around communication and who is responsible for the communication. You talk about that you require the DPI to immediately involve Aboriginal people in all decision-making bodies that deal with fisheries management. Do you think the communication amongst all stakeholders could be improved in New South Wales, and do you see that as the way of doing it? Or is that just one way of doing it?

¹ In [correspondence](#) to the committee, dated 23 September 2022, Dr Paul Cleary, Policy and Advocacy Lead, First Peoples Program, Oxfam Australia, provided a clarification to his evidence.

PAUL CLEARY: It's interesting that Aboriginal people aren't involved, for example, in these assessment committees. That's just extraordinary. In this day and age, you would think that Aboriginal people would be—they're a stakeholder. Traditional owners are a fundamentally important stakeholder. I think involving Aboriginal people is a first step towards moving towards that Torres Strait model that perhaps might be the subject for a broader inquiry by this Committee down the track. It's pretty extraordinary that Aboriginal people have been left out. From what I can see, there is the fishing advisory committee, but that's separate. But in terms of the mainstream decision-making bodies—the resource assessment committees—they're not involved.

The Hon. MICK VEITCH: Number six in your recommendations is the other one that I'd like you to elaborate on. You talk about developing a 10-year strategy to transfer the management of all marine resources in New South Wales to accredited Aboriginal organisations. Is that based on a model in other jurisdictions?

PAUL CLEARY: Torres Strait. It's already there; it's working. There's a model. I'd recommend, if you had a future inquiry, that you go up there and spend time and look at how they're doing things. It's actually modelled on New Zealand, which is even further down the track to us, so look at New Zealand as well. There are good working models that are involving Aboriginal people both in cultural and commercial fishing and also in the management, like the rangers. We have great rangers in this country already doing fantastic work on managing feral weeds and animals, doing burning to reduce those huge wildfires—not enough on the east coast, I would argue. Perhaps that is also a model that could be deployed. There are Aboriginal marine ranger groups in other jurisdictions; perhaps that could be a model that's part of that process.

The Hon. MICK VEITCH: Clearly you support the commencement of section 21AA?

PAUL CLEARY: Yes, I do.

The Hon. MICK VEITCH: Do you know any reason why it would not have been commenced?

PAUL CLEARY: I think the reason why it hasn't been is because there has been a lot of pressure on government, particularly from industry. I think there hasn't been enough looking at the bigger picture and really developing a holistic strategy. At the moment, we're very narrowly focused on just the fishery, which is obviously really important—but to really think about how this could be done in a way that's sustainable, within the sustainability limits, and to ensure that also we're looking at a transition in the way that they're doing, for example, in the Torres Strait.

The Hon. PETER POULOS: Dr Cleary, I'm just curious. In one of the responses, you spoke about some huge volumes that are currently having impacts on the fish stocks. Surely that is unrelated to Aboriginal cultural fishing? That's industrial-scale fishing, isn't it, that's having the impacts on the stocks?

PAUL CLEARY: I've been down the coast, and I've seen the Aboriginal fishers and the way they work. They are free diving with a snorkel, a mask, a wetsuit and a small knife. That's the sort of level they're at. It's a very traditional type of fishing and is not on an industrial scale at all. So the idea that Aboriginal people are the problem is pretty crazy when you look at the capacity of industry to—

The Hon. PETER POULOS: So cultural fishing isn't about getting on a trawler and basically just—

PAUL CLEARY: No, not even a tinnie. They don't even have a tinnie. They've actually got a screwdriver or a small knife and a snorkel and a wetsuit, and they're free diving, and they're extremely healthy people.

The Hon. PETER POULOS: That's exactly what we saw in Narooma.

PAUL CLEARY: Yes. I wish I was as fit as 70-something-year-old Kevin Mason.

The Hon. MICK VEITCH: It would appear, Dr Cleary, that you've exhausted us. I daresay there may be more questions, so what you should know is that we may have individual questions arising after we receive the transcript. The Committee has resolved that the answers to those questions, along with any answers to questions you may have taken on notice, be returned within 21 days. The secretariat will be in contact with you in relation to those questions. Thus ends your session.

PAUL CLEARY: Thank you very much.

(The witness withdrew.)

Ms KATE THOMANN, Executive Director, Research and Education Group, Australian Institute of Aboriginal and Torres Strait Islander Studies, before the Committee via videoconference, affirmed and examined

Ms DORA BOWLES, Research Officer, Indigenous Country and Governance, Australian Institute of Aboriginal and Torres Strait Islander Studies, before the Committee via videoconference, affirmed and examined

The Hon. MICK VEITCH: I now welcome our next witnesses. Would either of you like to make a short opening statement?

KATE THOMANN: Yes, please. We would like to acknowledge Ngunnawal and Ngambri country, from which we are speaking today, and Gadigal country, on which the inquiry is taking place. We would like to share our respects to Elders past and present, and extend that respect through all Aboriginal and Torres Strait Islander people present. Aboriginal people on the New South Wales coastline have strong connections to their waters and sea country. Being out on and looking after country, fishing and diving are an integral part of identity, culture, transmission of cultural knowledge, spirituality and livelihood. In contravention of the rights and interests of Indigenous people to fish and access their waters, Aboriginal people continue to be persecuted for practising their culture. While individuals, families and communities have shown strength, resilience and creativity in continuing to assert their rights and culture, compliance activities under the Fisheries Management Act 1994 have had a detrimental impact on their lives.

This has been borne through in some of the research studies that AIATSIS has undertaken. It has had a profound impact on the health and wellbeing of Aboriginal and Torres Strait Islander people on the South Coast, their families and their family connections. It is AIATSIS' view that the commencement of section 21AA, as set out in schedule 1 of the Fisheries Management Amendment Act 2009, has the potential to ameliorate some of those aforementioned concerns. It would provide a rightful place for cultural fishing within the New South Wales coastal management system and give due recognition to the rights and interests of Aboriginal people in marine resources. Further, AIATSIS put through a formal submission to this particular inquiry. AIATSIS is of the view that there are no genuine barriers to the commencement of section 21AA of the Fisheries Management Amendment Act. Thank you.

The Hon. MICK VEITCH: Thank you. Ms Thomann, was that a prepared statement from which you were reading?

KATE THOMANN: Yes. Would you like us to table that and send it through to the secretariat?

The Hon. MICK VEITCH: We would love that. Hansard would really appreciate it as well.

KATE THOMANN: Of course.

The Hon. MICK VEITCH: Thank you. I'll open up for questioning and then I'll go to the panel members. I'm not sure whether you were listening into the previous session or not. I was talking about how, when we were at Narooma, an individual spoke to me about the fact that the concept of cultural fishing is broader than just the take or the catch. In fact, it relates to passing on history and providing land and water management information to individuals. One, do you agree with that? Two, what do you see as cultural fishing? If you were to try to put some sort of definition around this framework, what is it?

KATE THOMANN: We absolutely do agree with that definition and concept, and I'll further elaborate on a definition of cultural fishing, but you're absolutely correct. As you would've seen from previous testimonials, cultural fishing is far more than the sort of bagging and fishing and size measurement of marine resources. It is a cultural construct that has continued in Australia since time immemorial under Aboriginal and Torres Strait Islander cultural beliefs.

Essentially it sort of encompasses the entire spirituality and wellbeing of Aboriginal and Torres Strait Islander people and reaffirms connection to country, and it does so in that these practices are handed down by generation to generation through Elders to young ones and then that trend continues on, and inherent in that is also protection of species of marine resources due to the very nature of Aboriginal and Torres Strait Islander customary laws and cultural practices, which also affirm and support sustainability of marine resources. It really does sort of encompass that whole sense of community as well, not just cultural transmission but sharing of food, feeding families, leisure and wellbeing, physical health, mental health. It just all comes back to the continuation of cultural practice and what that actually means to Aboriginal and Torres Strait Islander people.

We, in our answers, so through the native title unit, have been involved in working with communities from the South Coast for a very long period of time. I think we first commenced the survey of Aboriginal and Torres Strait Islander people in the South Coast community, and in particular the Yuin community which is about

400 kilometres of the South Coast, commencing from 2015 to 2017 with follow-up surveys in 2018, when we released our report, and most recently I think our surveys were undertaken in 2020.

DORA BOWLES: In 2020 the surveys were undertaken and published in 2021.

KATE THOMANN: Thank you very much. We've actually interviewed 233 Aboriginal and Torres Strait Islander people as part of that, and our research reports livelihood values of customary fishing really do provide some evidence and speak to the very nature of what we're talking about today in that fishing is governed by widely recognised cultural laws and norms. It's one of the primary ways of living and practicing culture. It maintains a connection with country, including sea country, and the passing on of cultural knowledge, and it's an integral part of people's identity and cultural identities. So that's a very quick overview of the findings of the research that has been undertaken, with quite a significant amount of Aboriginal and Torres Strait Islander people involved.

The Hon. MICK VEITCH: My second question relates to the section 37 permits. Your submission articulates some reasons as to why they are onerous—is the word you use in your submission. Can you just elaborate on that? Can you talk the Committee through why section 37 permits are potentially not the solution to not enacting section 21AA?

KATE THOMANN: Sorry, section 37 is actually the bag limits under the Fisheries Act that talk about the weight of the bag catches that people are allowed to take. Is that correct?

The Hon. MICK VEITCH: Section 37 permits are often cited by Fisheries as the solution to increase needs for specific occasions. There are trials being conducted up and down the coast I think—well, in a couple of spots—around section 37 permits instead of enacting section 21AA. On page 5 of your submission you talk about how people are saying that applying for a permit is onerous.

KATE THOMANN: Yes, thank you. Applying for permits is onerous for a couple of reasons. They're quite extensive really, some of the reasons and the barriers for applying for permits, notwithstanding the fact that people also have to foreshadow when they're actually going to be undertaking the fishing activities, which can be a little bit problematic with sort of cultural and family traditions. Also, permit applications can be difficult for some members of our community if anyone experiences any sort of literacy or numeracy issues in completing the forms. But the 37 permit, not only being problematic in those two contexts—really also any breaches of the bag limits also then leads to compliance activities, which then takes on a whole other nature of compliance and persecution which is also spelt out in the submission.

The Hon. PETER PRIMROSE: Just two brief questions, if I can. In your various consultations, what are the reasons given by people as to why they think this particular section hasn't commenced?

KATE THOMANN: I don't think that that has actually come up in any of the submissions, but I'm happy to take that one on notice and just go through the survey responses and get back to you on that. My understanding is that with the Fisheries Act, it could have commenced 12 years ago but there has been some sort of complex views as to why it hasn't. But very clearly the fact that it hasn't actually commenced has been detrimental to Aboriginal and Torres Strait Islander communities on the South Coast.

The Hon. PETER PRIMROSE: The point I'm just getting at is I was just wondering the views of the community as to the reasons why it hasn't commenced. I'd be interested if you could let us know what people on the ground are actually thinking that's all.

KATE THOMANN: Absolutely.

The Hon. PETER PRIMROSE: The other point is we've heard this morning, again, from other witnesses expressing concern about the lack of transparency generally and concerns expressed about the statistics that are being thrown around in relation to this. I was wondering if you have any concerns about statistics, transparency, the amount of information that people have been able to get in relation to this matter.

KATE THOMANN: I think there's always a greater need for transparency in anything. I think most of the statistical impact that we actually see from AIATSIS's perspective but also borne out in the surveys is the actual impact on Aboriginal and Torres Strait Islander families as a result of some of the compliance activities and actions that are taken as a result of cultural fishing. Between 2009 and 2015, it has been estimated that close to 500 Aboriginal people have been fined, jailed or had their equipment confiscated for Fisheries offences, and some of the fines have been in the several thousands, and of course having to replace your fishing equipment all the time will also have an impact on that. We found that of the 64 people that we most recently surveyed in 2020, almost three-quarters of participants knew someone in the community that had been persecuted for fishing. That was a survey of 64 people, so three-quarters of 64 is a pretty significant number.

Some of the data that we're seeing from a statistical perspective also shows that Aboriginal people are disproportionately represented in some of the persecutions for Fisheries offences and receive harsher sentences than non-Indigenous people. Fifty per cent of charges in New South Wales from July 2011 to June 2012 were brought against Aboriginal fishers. That's against a context of an Indigenous population in New South Wales where Aboriginal people make up just 3.4 per cent of the total New South Wales population in 2016. Of that number, 19 Aboriginal people received custodial penalties compared to only four non-Aboriginal offenders, so it also adds to the overrepresentation of Aboriginal people in custody and the fracturing impact that this has on Aboriginal people and communities and also sort of reinforces issues, including future issues, around employment sustainability, being able to support family and community members, and potentially also has the impact to start feeding into broader debates and issues in Aboriginal and Torres Strait Islander affairs such as overrepresentation of Aboriginal people in custodial settings.

The Hon. SCOTT BARRETT: Just to put some numbers around things, of that Yuin community that you talk of, can you tell me how many people or what percentage of that community would engage in cultural fishing? And then, I guess, a flow-on from that, how many would benefit from cultural fishing?

KATE THOMANN: I might also take that one on notice in terms of telling you the population numbers of the Yuin community. We have surveyed, as I said to you, 133 participants throughout the course of our survey, which is fairly significant in terms of Aboriginal and Torres Strait Islander engagement with research, surveys and participation. I'm not aware of the total numbers of Aboriginal and Torres Strait Islander people in the Yuin community who would participate in cultural fishing activities. Suffice to say, given it is a cultural activity, that would be a significant population across the Yuin community because there is a cultural practice and an ongoing culture and cultural rule that is sustained. So the impact and involvement would be very significant. That's also brought out, I think, in the very proactive involvement of Aboriginal and Torres Strait Islander people who participate in some of the local cultural fishing groups. I'm aware that there are Facebook pages to share information amongst communities around cultural fishing and, indeed, there is also a cultural fishing group set up—which I'll just ask you for the name of.

DORA BOWLES: The NSW Aboriginal Fishing Rights Group.

KATE THOMANN: Thank you. So the NSW Aboriginal Fishing Rights Group has got quite active representation and engagement across some very significant and quite senior Aboriginal local identities involved in cultural fishing.

The Hon. SCOTT BARRETT: I hazard to ask this question, and please put it down to ignorance more than anything else. When we're talking about cultural fishing, we're not talking about the methods of fishing in particular, it's more the connection, in that it could still be someone sitting on the rocks with a beach rod and a lure on there. It's more about connection to the culture rather than the method of fishing?

KATE THOMANN: Yes. But, I mean, obviously, culture is adaptive and it modernises as well. People have obviously been involved in diving and deep sea diving for cultural resources, because we do exist in two worlds and in contemporary Australian society where we've actually got much more modern tools and infrastructure, I suppose, to undertake cultural rites and activities such as cultural fishing. Really, I think there are probably two points to make. Much of the return on cultural fishing activities is then brought back and shared with families. Obviously, it can be seen as a supplement to household diets and there is a very strong connection between eating traditional bush foods and supplementing your diet with bush food activities.

They may also have medicinal purposes. That improves the wellbeing of Aboriginal and Torres Strait Islander people, the connection to country and culture. It improves the wellbeing of Aboriginal and Torres Strait Islander people. And then, there has also, historically, in Aboriginal and Torres Strait Islander societies, been connections with commercial fishing in that we have songlines and trade routes, and we have actually shared our catches or traded our catches with other Aboriginal nations as groups, as part of the ceremony and trade practices. That's also what we're talking about here as well; it's a cultural norm.

The Hon. SCOTT BARRETT: Thank you. I asked that question purely for clarification. I think it's quite handy to have that on the transcript, that explanation you gave then. Thank you.

The Hon. MICK VEITCH: Section 211 of the Native Title Act, as I understand it, exempts native title holders from prosecution for want of a licence for hunting, for fishing and the like?

KATE THOMANN: Yes.

The Hon. MICK VEITCH: How does that interplay with the Fisheries Management Act in New South Wales? Doesn't the Commonwealth legislation override the Fisheries Management Act, and what are the issues around that at the moment as they're playing out in the courts?

KATE THOMANN: So, yes, my understanding is that it does, but here I'd also like to put on record and in *Hansard* that I am not actually a lawyer, nor am I a native title lawyer or expert. We do, however, in AIATSIS, manage the Native Title Research Unit, which has been around for 29 years and also has a lead role in working with Aboriginal and Torres Strait Islander people across the country in regards to native title claims. So, yes, my understanding is that section 211 of the Native Title Act does exempt native title holders from persecution and that it does actually override anything in the Fisheries Management Act. I think it's probably also applicable, very significantly, in this context because there has been a registration for a native title claim over the South Coast and that's also another impetus, I suppose, that actually provides legislative protection around the rights of Aboriginal and Torres Strait Islander people to undertake cultural fishing on their traditional lands.

The Hon. MICK VEITCH: What is the impact of non-commencement of section 21AA?

KATE THOMANN: The impact of the non-commencement over the last 12 years, I think, has been significant, not only for the 500 Aboriginal people that have been fined or persecuted, as I mentioned before, but it is that follow-on impact. Very clearly—and all of the employment, education and health statistics will also bear evidence and weight to this—some Aboriginal and Torres Strait Islander people are not in positions where they are able to pay fines. Getting fines can also put a severe financial and economic impact on communities. If family members are incarcerated, that then has a future impact on employment prospects and outcomes, the ability for people to be able to support their families.

Throughout our research, we have had evidence of Aboriginal and Torres Strait Islander people self-reporting impacts on their physical health, not being able to go out and actually undertake the cultural fishing practices; mental health, stemming from the inability to be able to practice and support and transmit and share cultural norms or, indeed, the outcomes of cultural fishing activities through sharing of meals; and the economic impact that I mentioned previously. So it has been quite extensive, the impact on families and communities—not just felt within the immediate nuclear family, but also extended families and ripple effects right across the entire Aboriginal community that we're talking about.

The Hon. MICK VEITCH: When a prosecution takes place, the impact isn't, as I understand it, just on the individual who's being prosecuted; it also extends across that community that you were just talking about. Is that correct? Can you give us an example of what that impact could look like?

KATE THOMANN: Absolutely. The impact is quite extreme, and it's quite extreme for several reasons that kind of get back to history—contemporary history and also the history on which Australia has been founded. A lot of the impact that actually exists for Aboriginal people around issues to do with incarceration is very significant, if you have a look at things like over-representation of Aboriginal people in custody, the fact that Aboriginal people are often in custody for longer and they're also in custody for far minor reasons. The impact on Aboriginal people going through the judicial system can be quite extreme. There are often difficulties in legal representation and understanding some of the charges. And a lot of families are, of course, very worried about how people are treated in prison and are very worried about the potential impact for a death in custody, which, of course, would have an extreme, ongoing, disastrous and highly traumatic impact on that family should that actually come to fruition. So it's sort of borne of history and engagement and brought out in statistics that lend weight to that argument.

The Hon. MICK VEITCH: Thank you very much for your time today, your submission and your contribution today. I've got to say, it was quite thoughtful and well presented. Thank you for attending the hearing. Committee members may have additional questions for you after the hearing, once they've received the transcript. The Committee has resolved that answers to these and any answers to questions taken on notice today be returned within 21 days. The secretariat will be in touch with you in relation to these questions. Thank you very much.

(The witnesses withdrew.)

(Short adjournment)

Mr TROY TUNGAI, Individual, affirmed and examined

Mr JOHN CARRIAGE, Individual, affirmed and examined

Mr BILL COOLEY, Individual, affirmed and examined

Mr NICHOLAS GLOVER, Individual, before the Committee via videoconference, affirmed and examined

The ACTING CHAIR: I now welcome our next witnesses. I invite you to give an opening statement if you have one prepared. Mr Carriage, I think you said you might have had something to read?

JOHN CARRIAGE: Yes, I've got something to read. Good morning. My name's John Carriage. I am a Walbunja man, traditional owner of my country on the South Coast. I was born on Walbunja country in 1979. I am 42 years old. From the day I was born to the day I stand in front of you today, I have never given up my rights to my land, waters and our natural resources. Neither have my old people past and present, or my ancestors before colonisation. My people never gave up their rights to land, waters and our natural resources, but they were raped, murdered, severely punished and had their land, waters and natural resources stolen. Fishing, gathering and diving is a big part of us Aboriginal people. It's been part of our way of living for hundreds of years. My ancestors, my old people, done this tradition before colonisation and after colonisation. I continue this tradition on today.

Growing up as a kid, I was taught to fish, dive, hunt and gather. I watched my father, uncles and great-uncles fish, dive and provide our ocean resources for our families. It was about survival. My family did what they could with these saltwater resources—fish, mutton-fish, lobsters and conks. That was our main food and my old people bartered, swapped, traded and sold. Today I follow in their footsteps. Diving is a big part of my life, catching mutton-fish and lobsters. I use those resources to provide for my family. It is my job. It is my duty to care for my family. I use my ocean resources today to feed my family and to barter, trade, swap and sell. It is my right as an Aboriginal man, a Walbunja man, a traditional owner on my country.

I have taught my son my knowledge: how to dive, fish and provide for himself. I have taught him about our waters and resources. We don't rape our resources. I have knowledge of how to sustain and care for my mutton-fish and lobsters. I know not to take the breeders and know to leave the babies to grow. I believe it is the commercial divers who are threatening to wipe out these resources with their commercial quantities they have been given permission to take.

Aboriginals have respect for country, including the ocean. Back in 1979, the year that I was born, our old people were fighting this same fight that I fight here today. On 7 February of that year, great Uncle Percy Mumbler gave evidence to the select committee. He told them that everything we need was in the water, that we should have the full rights to fish, that we should not need a licence, and that we should be able to sell to make money for our children. Our people fought for us to barter, swap, trade and sell back then. Today I am not allowed to take my resources to feed and support my family.

I've been charged and had big fines on me. They have locked me out of my waters, have taken my resources, my catch, stolen my diving gear and continue to prosecute me and criminalise me with your laws, rules and regulations. Today, because of your orders, I am not allowed to get in the water and teach my little son about the ocean. I have been in jail for doing what I was taught was my right and my responsibility. My old people have never given up our rights to the land, water and our resources. Today I will continue this fight—to fight for my full rights, to fight for my kids. Today my 21-year-old son is going through your court system. I will fight so you don't drag my two-year-old son through it too.

The ACTING CHAIR: Thank you, Mr Carriage. Mr Cooley, do you have an opening statement?

BILL COOLEY: From my mum, I'm a Dharawal man and Gadigal, born and raised in La Perouse, and through my grandmother's side I'm Walbunja—Ulladulla, Batemans Bay region. My family has a strong cultural connection to the ocean. I've traced my heritage back seven generations to a tribal fella from Ulladulla named Kadoo, keeper of the ocean, with his role to monitor the fishing activity for the local tribespeople and make sure there were enough resources there for tribes travelling through country on the way north or heading south. I've been raised as a young boy to dive and been taught that, if I need anything to survive, it's in the ocean. When I was a young kid I recall, as a seven-year-old, my father used to dive for abalone before abalone permits were ever invented or issued or you needed to have a permit to dive. Back then they'd dive in and around Royal National Park and the coastal area surrounding Botany Bay. They would sell them. They were sold; they'd go out and they'd get two or three hundred kilo of abalone in the shell. They could take them down to the fish markets down at Pyrmont in Sydney and they were sold readily and easily sold down there. They were getting \$2 a pound. That fed my family and it sustained my family financially to be able to pay bills, put bread and milk on the table.

I come from a family of 12 kids, so there was lots of pressure on my dad to provide for 12 children. Diving for abalone and fishing for other species, like groper and snapper and that, that's what sustained our family. Like I said, I'd been taught as a child, you know, if times get tough, that's what I'd do. There have been so many instances in my situation where I've gone to do that, as I've been taught by my Elders to do, in survival mode, and I've been apprehended by the Fisheries. They've taken my catch off me. Besides that, they've taken and confiscated all the diving gear that was associated with the catch that they apprehended me with under their laws.

I've been in this fight for close to 40 years. As far as I know, in around 1982 the New South Wales DPI Fisheries, they were consulting with every Aboriginal community from the Victorian border up to the Queensland border at Tweed Heads. In the first rounds of meetings that were held—they were held at Wreck Bay and Jervis Bay on the South Coast—they asked us what we wanted out of it, out of any laws that might apply to us, and back then we said that we would like to be able to catch a quota of abalone that equated to approximately \$500 per week. That was based on the fact that we were talking about 50 abalone each being sold at the abalone divers' market value. Fifty abs would never have hurt the environment. And as soon as we mentioned money, that we wanted to make some money out of it just to live—a general wage—the New South Wales officials just shut the meetings down completely and abandoned their whole project. That's left us in limbo. Like I said, I've been in this fight for Aboriginal cultural fishing rights in some capacity for 40 years and, in that 40 years, things have gone down, not up, in regards to our rights. They've actually got a lot harder on us. That's my submission.

The ACTING CHAIR: Thank you for that. Mr Tungai, just a short opening statement, if you have one?

TROY TUNGAI: Yes. My name is Troy Tungai. I was born and bred in Port Kembla, around the Illawarra area. I come from the Yuin nation. When I was growing up, probably around about five or six, I used to jump in the water with my old man and watch him get abalone. So he taught me how to get them for a couple of years and I was just holding the bag for him and, next minute you know, I'm getting them myself. But he always told me, "That's your survival", like a way of living. But also I've been to jail, got fined, like, over 30-something thousand dollars, for cultural fishing. I've also got pulled up by a Fisheries officer and police as I just come back from a funeral. I was one of the pallbearers. I'd get 200 metres up the road and I'd be pulled over by Fisheries officers and police saying that I'd been diving. Pretty much all my life I've been diving, but also getting pulled up and harassed by Fisheries officers.

I've told them I'm not going to stop diving because it provides us with our food in some way. I've taught my children. I've got two boys and five girls, and they all know how to dive. If they get hungry or whatever, they just go and get their own feed. It's also good for our Elders. That's why our Elders have got sugar diabetes, heart problems, kidney problems. You're not allowed to go and get their food for them no more because they've got to be down on the rocks, or 100 metres within the water's edge. Some of them Elders can't get out of the House. When I'd go to get a feed for them I've been prosecuted for it. I've been jailed for it, so what else can I do?

The ACTING CHAIR: Thank you. Mr Glover, did you have an opening statement that you wanted to give? Is Mr Glover still online? We may have to come back to Mr Glover because I don't want to lose any time. I'm sure there are members of the Committee here who have some questions. I see Mr Primrose with his hand up.

The Hon. PETER PRIMROSE: From some conversations, I've heard that Aboriginal people have been told they're not allowed to go back in the water. Would any of you like to describe, if that's the case, who said that and what does that mean to you? Mr Tungai?

TROY TUNGAI: I went to court back in 2008 in Batemans Bay court. It was for, I think, only around 40 abalone or so, but because they said I was a repeat offender, the judge barred me from the ocean for two years. So what I've done, I got it transferred from Batemans Bay court into Wollongong court. When I got to Wollongong court, the judge starts laughing. He said, "I've never heard of anyone getting barred from the ocean." It was me and another bloke, Joeboy Carriage. We ended up taking it back to Wollongong court and he dismissed it, yeah.

The Hon. PETER PRIMROSE: Has anyone else heard of a similar provision?

JOHN CARRIAGE: I've just finished my—I appealed to the District Court. The appeal got dismissed in July this year and I've been out of the water since October. The local magistrate down in Batemans Bay, he gave me two years out of the water, away from my oysters, lobsters, mutton-fish. I'm not allowed to have a screwdriver, I'm not allowed to have a pair of goggles, a snorkel, flippers, wet—anything to do with diving I'm not allowed to have. I appealed that. I went to the District Court and they dismissed it, \$35,000 fines [inaudible]. Before the court I had a four-day trial and I used my connection to country, you know, my genealogy and all this stuff, you know, what I needed to prove my rights as an Aboriginal man, traditional owner, down home [inaudible]. The local judge, I don't think he took any of that into consideration.

The abalone industry is a multimillion-dollar business to the abalone association and the industry, you know, and in my trial I asked the prosecutor and asked the judge do they eat abalone, and they both said no, you

know. A lot of people don't know what abalone is or what it tastes like, a lot of white Australians, and a lot of my mutton-fish [inaudible] seasonal stuff, you know. A lot of whitefellas I know, I've cooked it for them and I've fed it to them, and they'd be coming to catch it themselves after they tried it.

Even for my son's first birthday, my partner—there was a few different nationalities at my son's first birthday. I went and caught 160 mutton-fish for my son's birthday and I [inaudible] and bashed them and I cooked them all up, you know. I had mob coming from down the coast, all coming to my son's first birthday, and a lot of people missed out. You know, 160 abalone—I hadn't cooked them, because once they start eating them, you know, it's like oysters. You can't stop; you just love them. To be out of the water now, you know, it's been since October last year. I usually weigh around 90 kilo and I'm up to 150 kilo.

I hardly drank. I used to drink probably once a fortnight, one night. A packet of smokes would last me two or three days. Now I'm smoking a full packet of smokes in one day and drinking every weekend, like one day a week now. My mental health, stress—it's really done a lot to my lifestyle, the last 12—since being out of that water—it's therapy, you know? I go there with my son and my cousins and we take our nephews. We all talk about our issues and our problems. We light a fire and we're diving and we're fishing.

Some of the charges were of trafficking. They charged me for trafficking. They charged me for joint possession. When I go to that water, I dive for me and my family. My cousins, they dive for their family, you know? They put us all as one of them. I get into District Court and the district judge said when they go fishing, he fishes for his family. He takes his catch home to his family. But with us it's different. A group of blackfellas, it's all joined as some big—what's that word they were saying? A syndicate. They see us as a syndicate. But when you do trafficking—they're our natural resource. I've only heard of trafficking through drugs and all that sort of stuff. But this is our mutton-fish, our lobsters, and they say that we're trafficking. They're describing it like we're drug dealers or something, you know?

The Hon. PETER PRIMROSE: I appreciate that. Thank you very much.

The Hon. MICK VEITCH: Our first panel this morning had the Recreational Fishing Alliance and the NSW Abalone Association. Both those organisations were of the view that section 21AA relating to cultural fishing should be put in place. They agree it should start. But one thing they did say to us was there are issues around communication. The Recreational Fishing Alliance fellow said if they could just talk to people and be educated around what is cultural fishing and how it works, things would be much better. Do you reckon your communities would be open to sitting down with people and working out how we can do this so that you can culturally fish?

BILL COOLEY: Well the abalone industry, for one, the minority will come out and say, "Let's talk. We want to negotiate. We want to communicate." That's the minority. The majority of the abalone industry don't want us nowhere near the ocean touching what they consider their resources. They might pay millions of dollars for an abalone licence and they think that gives them inherent rights over the whole ocean. They've put a dollar perspective on everything. I know the president of the abalone industry—I can't name him, obviously, but he's one that publicly has said there should be a cultural catch and he would be willing to negotiate and talk. But then you've got the NSW DPI, the fisheries department, I believe they're protecting the abalone divers themselves.

TROY TUNGAI: Course they are.

BILL COOLEY: Because of the fact that the abalone divers pay them \$4 million or \$5 million for a licence. It's not an honest assumption to think that the abalone divers as a whole support cultural fishing because they don't.

TROY TUNGAI: Where's an Aboriginal person going to get \$1.5 million for an abalone licence? That's why they put these licences up, I reckon, because—

BILL COOLEY: We're locked out of a resource because—

TROY TUNGAI: From our own resources.

BILL COOLEY: —we haven't got the dollars to pay for it.

JOHN CARRIAGE: Another big thing is the fisheries, the DPI and the Abalone Association paint a picture of every blackfella on the South Coast diving and raping the ocean. You've got to be very careful in the water. You've got to know about the winds, the swells. I've got a brother—he's passed away now, but he was an Aboriginal artist. My brother, he could paint five paintings in the one day, you know? He had his art shop and everything. He was a good fisherman with a hand line but he wasn't a good diver for mutton-fish and lobsters. My little brother is an oyster farmer. He knows everything about oysters and he's done it for 12 years—that's my younger brother.

I've been diving for over 20 years providing for my family. When I go diving, I've got to depend on the swell, the weather, the ocean and which way the swell—the fisheries seem to think we're out there every day, that we're just taking and taking. I could probably get in the water for two days a week and the southerly swell comes up and I'm out of the water for about three weeks. We don't use boats and stuff. We've got to wait. We walk around the rocks and we walk along the distances around the rocks, swimming in the little areas and jumping out. If that swell is around the rocks, I could go diving for two or three days to provide for my family through the barter, sell and trade system, and then I could wake up the next day and it's heavy thunder, rain and the big seas, so I've got to wait for the swell to calm down. It takes about two weeks most times.

They paint this picture that we're in that water every day, we're taking our resources. It's 2022, you know? I've got to learn to live in today's society. An old saying is money didn't run the world, but in today's society money absolutely runs the world. It runs the electricity, it runs your car. Everything you do today in your life depends on money. I feed my mother and father my seafood. I feed my kids. I feed my partner. I feed my partner's family. At the same time, I help with household bills—what I've got to do as a father and as a man. I'm a provider for my family and that's my job, you know? I've got to make sure there's food on the table, the kids have got clothing, and when their birthdays come up they're going to have a nice party and presents. I've got to do that for my family.

The Hon. MICK VEITCH: Mr Glover is back online.

The ACTING CHAIR: Yes, we have Mr Glover back. Mr Glover, I hope you can hear me.

NICHOLAS GLOVER: Yes.

The ACTING CHAIR: We lost you earlier. I wanted to give you an opportunity to give a short opening statement, if you had something that you wanted to present to the Committee today?

NICHOLAS GLOVER: Yes.

The ACTING CHAIR: Great.

NICHOLAS GLOVER: I'm Nicholas Glover. I'm Biripi. My grandparents and my mother, they all come from Taree land. I came down to the South Coast, I got married on the South Coast. Through Troy's family, I know Troy pretty well. I'm not an abalone diver but I used to go down and hold the bag and go diving. I used to go down with Troy and we used to go down and get a feed. Sometimes we maybe did a swap on the way [inaudible]. It was just something to do for a little bit of fun. But now it's got that way with the fisheries that I haven't been near the water for three years. We can't go near the water. I get pulled up at the side of the road at Albion Park Rail by [inaudible]. He's pulled me up and he's saying—I asked them what they're pulling me up for and they go, "I'm pulling you up because we want to search your car because you might have undersize fish in your car." But I say, "I haven't been near the water for yonks." We're looking for the police and the fisheries to give us a break. It's got that way now that it's just ridiculous.

As Troy might've stated earlier on, he got pulled up on his way to a funeral, with the Fisheries. It's just something that—it's got to be addressed and it's got to be addressed so we can have a little bit of a dive, get a feed. It's just got that way now that we can't do anything. The police are just as bad. The boys will tell you there that they're worse than the Fisheries. Twenty-six years ago I got pulled up. I had Troy's wife—she was having a baby; she had a little girl in the car. Me and my wife and her got pulled up at Gerringong. All up, there were 21 coppers. There were some with guns over their shoulders, and detectives were there. They up and got me. They told us to stay in the car, and I said, "Okay".

Then they got me out of the car. They search my car, they lifted the bonnet of my car. I was only moving to put the air filter back on my car, and they had a guy who was sort of standing there all dressed in black and he had a weapon over his shoulder—an assault rifle, I would say. He said, "I told you if you move again, someone's going to get hurt." I said, "Mate, I'm only putting my air filter on." I said, "We don't have to come to this." He says, "Well, youse broke the law so we're here to fix it." I'm going, "What are you going on with? Okay, we've got abalone in the back. We're going home for a feed." I said, "There's no right to do anything like this to us." We are frightened that police today, with the Fisheries—that one of us is going to get hurt really bad. I've been pulled up multiple times.

Me and Troy have been to court and the court's finished at nine o'clock at night, dealing with me and Troy. He said to me—and Troy can verify this—"Next time you front my courthouse," Mr Pearce said, "you bring your toothbrush because you're going to jail." What? For a couple of abalone? It's just ridiculous what we put up with every day of the week. As I said, I'm not an abalone diver. I just went with Troy and his father and his cousin and that, and I held the bag. But I still got the same punishment as everybody else. But it's just ridiculous that you can't get a feed. The way that Fisheries are carrying on today is that they think that they're higher than the police.

Someone's going to get hurt, and it's just ridiculous how they can pull us up, they can do whatever they want to do, and we can't stop them. It's just shocking to see it go like this. I'm not saying that—I like to [inaudible].

There are a lot of abalone divers I know who live in the area who get a lot more than what we do, and they're telling us to get a licence. Where are we going to get the money for a licence? We shouldn't have to. It's our land but everybody opens the ocean, as I said. But let us [inaudible], let us do what we can and everybody be happy. It's just got that way now we can't even get a feed out of it. I went fishing the other day and they asked me for a fishing licence. I said, "Why should I have a fishing licence? I'm a traditional owner of the land." He said, "You don't look Aboriginal to me." I said, "What does an Aboriginal look like?" He said, "They're black." I said, "Okay, I'm not black; my mum is." I said, "So you're saying to me you've gotta be an Aboriginal and you've gotta be black." He's going, "Yes, you have," and I'm going, "That's a bit rude." So he said, "You pack your gear up, get in your car and go home."

I reckon we should get a fair break at this and the coppers and the Fisheries should just leave us alone. We're not going there and raping the full sea and taking everything. We're only taking a few. The abalone divers are the ones that take everything. We only just go along and take what we need at this time. But the way they put it is that we're the criminals. That's the way they look at it, and I don't think it's right. One day someone's going to get hurt really bad. I'm not going to push the issue too much, but still today we still haven't—with black deaths in custody, no-one's never ever been charged. At the end of the day, someone's going to get hurt, and they're going to walk away with it.

We just need to have a little bit of dive, do what we can, get what we can. We're not raping it. We just want to get a feed. Again, some of us do swaps, some of us make a few dollars. Okay, that's fine. We're not making millions of dollars, and we ain't criminals. We've got a lot of kids. Troy's got quite a few kids. I've got our mob too go diving. But at the end of the day, they gotta give us a break. It's just something that youse have gotta look at, and youse have gotta help us with this. So I've said what I had to say, and that's what I reckon should happen. They should just give us a break, [inaudible] the police and the Fisheries, and we'll all be [inaudible].

The ACTING CHAIR: Thank you, Mr Glover. Do members have any questions?

The Hon. SCOTT BARRETT: Not from me, thanks.

The Hon. TAYLOR MARTIN: I've just got one if you don't mind. Just to contextualise some of the stories that you've told us, would you be able to give us a sense of how many fish you have on you when Fisheries intervene?

NICHOLAS GLOVER: I think it was about 201.

The Hon. TAYLOR MARTIN: Okay. Anyone else?

BILL COOLEY: I've been caught with 50.

TROY TUNGA: Yeah, all different.

BILL COOLEY: Yeah, all different.

JOHN CARRIAGE: The last case, there were 168 abs from one fisherman. They weren't mine.

TROY TUNGA: Most of mine was [inaudible] possession.

BILL COOLEY: My situation, 50 abalone is nowhere near a commercial catch. It wouldn't have a high black-market value. It might be \$100 on the black market. But these fines and all that that they're handing out is—very rarely someone gets caught in the act of selling their catch. Very rarely someone gets caught in, say, a Chinese establishment selling their abalone. When we go to court, the assumption is, with pressure from the DPI—Fisheries—that we're selling our catch. The fines that they're handing out now, they're reflecting on an assumption that we're selling our abs. But if you're committed for murder, they've got the gun. I don't think the assumption that we're selling abs justifies, say, a minimum \$5,000 fine. Because there's no proof that they're going to be sold.

What we're dealt with is that wholly they're getting sold because the abalone divers say, "We're selling our cultural catch." They just assume that we're selling our catch. There's no proof. These astronomical fines that they're dishing out, they are just on an assumption. It's not fair on us because we should be presumed innocent until proven guilty in the court of law. If they want to dish out a \$5,000 fine based on the assumption that they have, that were selling them, then they should have proof that we're actually selling them. They very rarely do. That's one unfair part of the legislation and the law. Every judge in their summing up will refer to the "black market". We're not earning black-market dollars; we're out there getting a feed. We're carrying \$20,000 worth of fines because the court assumes that we're selling them—again, without proof. It's not fair.

The Hon. SCOTT BARRETT: Mr Cooley, are you saying people aren't selling these abalone?

BILL COOLEY: The overwhelming majority do not sell their abalone.

JOHN CARRIAGE: My last court case only finished this year in July. My son was 16 and today he's 21, so five years. The mutton-fish were not my mutton-fish. On the day, the Fisheries followed me, my son and my two cousins. When I go fishing, we stop and buy a loaf of bread and butter and we usually sit out on this headland. We have a pie each and we look at the water, the wind and the swell and determine where we want to go for a swim that day.

In this actual meeting the Fisheries pulled up beside us—local Fisheries down home on the Walbunja country. They followed us to each beach we went to. But we still went diving and fishing. They sat on the cliff, two Fisheries officers, and they watched us all day. I left them—my son was catching the water, the water was high tide, so I knew if I come back tomorrow—it was two days before New Year's Eve so the campground was packed. We had to go to this other parking area. There were a lot of whitefellas spearing and fishing, and this is a marine sanctuary zone park where me, my son and my cousins were diving and then you've got all these whitefellas camping and they're spearing fish as well, you know?

The Fisheries had been at this spot all day watching me and my son and my two cousins. The tide was high so I spread my clothes and I put rocks over my catch and that so the lobsters couldn't get out. My other cousin, he ran up into the bush towards the cliff, and then put his below the cliff and put rocks around them. I sent my son up to the car first—he was 15 going on 16. I get pretty heated up, you know, when the Fisheries come and steal my diving gear. They stole my diving gear, my mutton-fish and my lobsters. They've been stealing them for over 20 years. I get heated up, you know? I can't handle that. So I sent him up to the car first; I didn't want my son seeing the arguing and the words that would come out of my mouth. You just see the people standing over them—I'm a father.

That case went on for five years in court. It wasn't my mutton-fish, I told the judge. My cousin come to the court and owned up to them, you know? He told them, "No, no, Johnny didn't take that and I haven't got his. When I went back to get mine, mine were gone but John and his son's were still there," and stuff like that, you know? That was 168 abalone, five years in court, \$35,000 fine and two years barred from the ocean. My son goes to court next month. He's got no representation. I'm all he's got, you know? I've taught this young boy how to survive in today's society: "If you've got no money, son, if you're starving, you need to"—in that world, there's a lot of money. I've taught him this—barter, swap, trade and sell. A lot of people done it back in the 1800s, our ancestors. There was no money back then. Today there's money, so now it's become barter, swap, trade and sell.

I hope next month that my son doesn't walk out with a \$10,000, \$20,000 fine. I hope they dismiss his case. The way I was treated in the court—I'm his father. I don't like the court system, the DPI and the Fisheries making me out to be a criminal in front of my kids. I'm teaching them their traditional ways and I'm teaching them about the land and the water and how to survive. Today it's about survival, hunting and gathering and survival to make it through today's society. At the moment youse aren't—the court system and DPI, they seem to think I'm teaching my son the pathway to a jail cell. I spent time in jail for diving. I got out of jail, went back in and spent another seven/eight months in jail for diving. I want to have the rights.

This is my trade. I love diving and I love providing for my family through diving, catching my mutton-fish. I love barter, swap, trade and sell. I love the look on my partner's face when I come home and I've got a couple of dollars to give her to put towards the rent and electricity bill, and I've got a nice lobster to cook up for her, you know, and I've got a couple of dollars for the kids. They can go and get themselves some phone credit and they're real happy. For Christmas, I love it when they open their presents and they've got a mad iPhone or something, you know?

The white kids, their parents go out—they could be tree-loppers. They get paid a thousand dollars for chopping down trees on my country. I don't even get royalties as a traditional owner down home. I don't get royalties off the abalone association. They've been taking my resources for God knows how long and selling them. Where's my royalties? My land's been cleared. Trees have been cut down. I'm a traditional owner. That's my land, my water, my resources—on land and the water. And I've got to sit back and be a third-class citizen on my own country, on my own land and be criminalised?

The ACTING CHAIR: Thank you, Mr Carriage, and thank you everybody for attending today. Unfortunately, we've run out of time. I suspect there might be some further questions from Committee members. If there are additional questions, the Committee has resolved to send them to you with an answer to be provided within 21 days. I don't think there were any questions taken on notice but the secretariat will be in contact with you in relation to any further questions.

TROY TUNGAI: Excuse me, before we go, I'd just like to serve a document to you.

The ACTING CHAIR: Yes, absolutely.

TROY TUNGAI: That's alright?

The ACTING CHAIR: Yes. I believe we've got copies.

TROY TUNGAI: You've got copies, have you?

The ACTING CHAIR: I think this is it.

TROY TUNGAI: If that can make it to the Parliament House in Canberra, it'd be good, if that rebuttal can make it to the Prime Minister.

The ACTING CHAIR: Thank you for this, and thank you again for all coming today, giving us your time and speaking so honestly with us.

(The witnesses withdrew.)

Dr JANET HUNT, Honorary Associate Professor, Centre for Aboriginal Economic Policy Research, Australian National University, affirmed and examined

Dr MICHELLE VOYER, Senior Research Fellow, Australian National Centre for Ocean Resources and Security, University of Wollongong, before the Committee via videoconference, affirmed and examined

Professor KATE BARCLAY, Director, Climate, Society and Environment Research Centre, University of Technology Sydney, affirmed and examined

Ms KATHRYN RIDGE, Doctoral researcher, University of Technology Sydney, affirmed and examined

The ACTING CHAIR: I now welcome our next witnesses. I'd like to invite witnesses to give a short opening statement, if they have one. I might start with Dr Hunt.

JANET HUNT: Thank you for the opportunity to appear today and for your inquiry. I'd like to firstly acknowledge the traditional owners of the land on which we're meeting, the Gadigal people of the Eora nation, and also pay my respects to the Yuin people of the South Coast, where I have conducted research and where I also spend a considerable amount of time, although I live in Canberra. There are just four points I'd like to make. First of all, Aboriginal people of the South Coast of New South Wales have had a cultural economy and governance system which, for thousands of years, managed the marine resources with abundance. That engagement continued after colonisation and I draw your attention to Natalie Kwok's submission for the whole history of that. The second point is that the New South Wales fisheries management amendments were to align New South Wales legislation with the Federal Native Title Act, in line with the 2004 national Indigenous fishing principles, which were to protect cultural fishing.

In the meantime, the South Coast native title claim was registered. It was not opposed by the New South Wales Government and the Government is aware, through that claim and the expert evidence presented in all these court cases, that the Aboriginal normative laws and customs have been passed down intergenerationally and they persist. Individuals should not have to prove that in the court or here because the Government already has this evidence. Furthermore, those native title sea rights may not be limited, except by an agreement, and can include rights to barter and trade. There's legislative precedence for this. Thirdly, I've documented multiple impacts of the persecution going on in my submission, and we've heard some of them today. Apart from these terrible socio-economic effects, intergenerational cultural transmission is threatened. If the culture is to survive it must be transmitted to younger generations, but fear of harassment and prosecution is impeding that now.

Lastly, I want to respond to the point that the recreational fishers say that they have a culture of fishing too. But this is not the same as for Aboriginal people. We're talking today about a relationship between a colonised people and the coloniser. In various other jurisdictions, there are treaty processes which are recognising this. In New South Wales that is not the case. But here the situation is certainly inconsistent with the New South Wales Closing the Gap policy and the New South Wales Government's vision—and I'm quoting here—"for Aboriginal people to determine their own futures" because maintenance of their saltwater culture is central to that. I would recommend immediate implementation of section 21AA with no limitations, adequate compensation for loss and harm to those affected by the non-implementation since 2009, and education of Fisheries staff—and police, perhaps—as to the legal rights of First Nations. Thank you.

The ACTING CHAIR: Thank you, Dr Hunt. Does either Professor Barclay or Ms Ridge have an opening statement that they would like to give?

KATE BARCLAY: I have a short opening statement. Thank you for inviting me to speak at this inquiry. I would also like to acknowledge the traditional owners of the land on which we meet today, the Gadigal of the Eora nation. This statement is on behalf of researchers at UTS who work on fisheries, Aboriginal land rights and native title nationally and internationally. Australian governments are bound by international human rights commitments to redress the damage done to Aboriginal and Torres Strait Islander people through colonisation. Native title measures are a key way to achieve that. The prosecutions of Aboriginal people for cultural fishing in New South Wales are a shameful continuation of damaging colonialism and these prosecutions need to stop. The Fisheries Management Act amendment is how native title should be implemented for fisheries in New South Wales. The Fisheries Management Act clearly regulates fishing for commercial fishing and recreational fishing, but it has a vacant space where regulation Aboriginal cultural fishing should be. Section 21AA fills that vacant space in the Fisheries Management Act. It should already have been implemented. It should now be implemented as a matter of urgency.

The ACTING CHAIR: Thank you. Dr Voyer, did you have an opening statement that you'd like to give?

MICHELLE VOYER: Sure, yes. I'm down here on Dharawal country, so I would acknowledge the traditional owners of this land. I work throughout Yuin country, particularly down in the Walbunja area, and I would acknowledge their traditional owners as well today. My work is largely around looking at supporting environmentally sustainable social and economic development opportunities for local communities, including Indigenous communities, in ocean spaces, which is something known as the blue economy. I would refer to my very learned colleagues for expertise around cultural fishing and native title, but during my work I've regularly engaged with Aboriginal fishers along the South Coast over the last 10 years.

In that time, I've regularly and repeatedly interviewed Aboriginal fishers, and the impacts of Fisheries compliance activities on their lives and livelihoods comes up repeatedly in those interviews. I have literally interviewed hundreds of people over the last decade or so, and some of these interviews are the most confronting and emotionally charged that I have experienced. I've seen expressions of despair, anger and stress as a result of Fisheries restrictions on cultural practices such as beach haul, abalone and lobster fishing. So I feel reasonably qualified to speak in general terms about these impacts. These include significant mental health impacts, financial impacts, loss of culture and family breakdowns.

But one of the more hidden impacts that I think is worth mentioning are some of the opportunity costs associated with the length of time that this has gone on unresolved within the community. What we're seeing increasingly is that Aboriginal communities are beginning to articulate some really exciting visions for how they would like to engage with the management and use of sea country into the future, and how they might develop their own unique economies based on their cultural use of marine resources. These models of economic development are based around notions of reciprocity, relationality and respect for nature—some things that are really exciting and that the entire community can learn from. But the situation gets really confused because this is all happening at a time of prosecutions and there's lots of energy being used to fight these prosecutions.

At the same time, the department is actively working to support Aboriginal activities in this space via the marine state management strategy on one hand. And on the other hand, Aboriginal fishers are having to defend their rights and manage the impacts of prosecutions on their mental and physical health, and their relationships with each other and the broader community. So this creates a really challenging situation, particularly for community leaders who are working in this space, trying to reconcile these competing messages coming from the department around prosecutions. I would absolutely support the recommendation to enact section 21AA as soon as possible and to think carefully about the system around who takes responsibility for engaging in this space, whether it can be both; whether the department can take on this role as both the prosecutor and the supporter of Indigenous self-determination.

The ACTING CHAIR: I will just double-check with Ms Ridge. Did you have anything you wanted to add?

KATHRYN RIDGE: I would just like to address an issue that arose this morning about whether or not Aboriginal cultural fishing is currently part of the framework for fisheries management in New South Wales. I just want to note that the first Indigenous fishing strategy that I am aware of was in 1997. There was another one, the *Indigenous Fisheries Strategy and Implementation Plan - December 2002*. In the environmental impact assessment statement that was prepared for the abalone fisheries strategy in 2005, Umwelt prepared a report for incorporation in that EIS of the impact of the New South Wales commercial abalone industry on Aboriginal people. The resource conflict was well and truly understood at the time the impact assessment statement was prepared for Fisheries, and Fisheries allowed an amount of one tonne per annum for Aboriginal cultural fishing.

Over the years, what happened was that unregulated fishing, which included cultural fishing in excess of the interim compliance policy, got bundled in with illegal and undersize and underreported catch. So you see a change in the language in the compliance strategy and in the management advisory committee and the later total allowable catch committees, where the focus is on under-reporting of commercial catch—which is the bulk of the compliance issues that have been reported in the industry—to a shift in a focus on Aboriginal fishing. Your Committee secretariat, I am sure, can research that document, or I can assist in providing that information, but you see a total shift in focus.

The other thing I just want to alert the Committee to is that every single abalone industry is largely an export industry. Australia is the second largest exporter of abalone in the world. So the fish that were previously an Aboriginal cultural resource are largely being exported. Every single export industry in Australia must prepare a sustainability statement and an export environmental impact assessment and they all say the fishery is sustainable. That includes the one tonne Aboriginal cultural fishing, which is not caught to its full extent, and you can see that

in the total allowable catch committee reports. But it is also including an estimate of between 20 tonnes and 40 tonnes per annum in this under-reported or unregulated fishing allowance.

So the amount of fish being caught by the people you heard just before us is accommodated within the existing framework in sustainability assessment reports for the industry. Just the last thing I want to say is that a lot of those reports always point to the fact that the last stock assessment for abalone in New South Wales was undertaken in 2007, so they are basing the sustainability of the resource on the catch, and the catchable limit estimate. So any evidence that cultural fishing is causing a problem to the sustainability of the resource is not available on the material that is in the public domain.

The Hon. MICK VEITCH: When we were in Narooma, and today with the previous panel, we heard—in my view—quite harrowing stories about how individuals have been treated. There is a theme to the stories that I want to explore, if I could, and that is that our system looks at the individual and the judiciary is against the individual, but they are all talking about how they are working with community. Can you maybe just provide a little bit of guidance here for the Committee around the importance of cultural fishing to the community, so those individuals gathering fish for the community, how does that work?

JANET HUNT: I will make a start and others can add. What we have to understand is that the culture is fishing, fishing is the culture. The families are very large, extended families—big networks. There are big obligations of the younger people who are fit enough and well enough to dive to feed Elders, to feed people who are unable to dive for themselves, to be engaged in some sort of reciprocity. It is part of the social system, the social way of being, that you have obligations to kin. They will reciprocate in some other way, but you must do your part. Those networks are large; they are not a small nuclear family. As we heard earlier, one of the fishers talked about his partner, his wife, his partner's family and so on. That is absolutely normal. That is the way in which Aboriginal families sustain their social structure, sustain their culture, sustain their relationships.

So it is also about the relationality that is supported through the way in which they provide for each other and provide for those to whom there are obligations. That can be quite a large number of people—aunties, uncles, grandparents as well as nephews, nieces, siblings—because not everybody is able to dive. We just heard an expert witness talking about how difficult it is to dive in those waters at times and, as someone who goes to the South Coast a lot, that's true. In the last year or two there have been many, many days of very wild seas. You couldn't possibly go diving on those days. So it is absolutely part of a cultural system, if you like, that this fishing and diving fits into.

The Hon. MICK VEITCH: Dr Barclay or Ms Ridge?

KATHRYN RIDGE: I would like to illustrate what I think you are referring to by two examples. The first is Uncle Ossie Cruse, who is a very senior South Coast Aboriginal man, his son BJ and his grandson Lee. So you've got three generations of abalone cultural fishermen and they regularly hold South Coast cultural camps in his community. His grandson has a traditional name, which relates to his cultural relationship and responsibilities towards abalone. At those camps he talks to his counterpart, who lives in the hinterland of the mountain range, who looks after black duck and the health of the black duck. So the cultural obligations for abalone are linked to cultural obligations for maintaining black duck habitat in those coastal lagoons that the recreational fisherman was talking about. So the health of those coastal lagoons are dependent upon the cultural burning that happens in the hinterland at the right time of year.

You are talking about a continuity of lore and custom that is countrywide; it is linked. It doesn't see a silo between fisheries management and catchment management. If you don't perform your cultural obligation to burn, then your cousin doesn't perform his cultural obligation to feed the Elders with the abalone, which is a really important food for lowering blood sugar levels. The idea that South Coast people don't know this is really terrible because they do know that it is a very good medicine. When people are in hospital and they are sick with diabetes, the grandsons will bring in abalone, and I have acted for a man who did that. The doctor of the patient said, "What have you done?" And she said, "My grandson brought me my feed of abalone because he knew I was unwell." So very complex and beautiful systems of lore and custom that if people sat down and did the exchange properly, we might find we have a healthier ecosystem and a much healthier Aboriginal community.

The second example I will give is Kevin Mason, again a very senior man. He's come and given evidence here. He has a very strong role in the maintenance of one of the major camps on the South Coast, at Mystery Bay. So his fishing is very much aligned to the management of the resource pressure at the time of year when South Coast people come back down and create those social relationships and reconnect. He makes sure that all those people coming back to that beautiful location doesn't stress the natural resources of that area. That's both the sea and the land resources. There's a number of social and cultural obligations, really important not only to the health of the community but the health of their land and sea country, that'd be great to see people be able to practice without fear of being prosecuted.

The Hon. MICK VEITCH: We did try to engage with some First Nations people around the freshwater and cultural fishing inland. We have not had a lot of luck, but we have tried. I'm from Tumut, Wiradjuri-Walgalu land. My seven grandkids are all Wiradjuri, by the way. Cultural fishing in freshwater is also really important, particularly if you get out to Wilcannia and places like that. They'll talk about the Baaka and how important it is to them. Just for the sake of the report, really, but I think it's important to put on the record that there is cultural fishing inland and just how important it is to those communities. Would that be fair to say?

KATHRYN RIDGE: Yes. The exemption that 21AA would bring into the Fisheries Management Act would relate to saltwater, but the inland exemption already exists, which may be why you're not getting submissions to this inquiry. I'm sure Fisheries can point you to the way in which that occurs. But that exemption's already in place.

The Hon. MICK VEITCH: My last question really relates to something I've been asking a lot of people because it relates to something—a lovely fellow pulled me aside in Narooma and explained to me that we focus on the take, on the catch, but in fact cultural fishing is much broader, there's much more depth and layer to what is cultural fishing as it's practised. Can you give us some examples of just how cultural fishing is practised, in your experiences?

JANET HUNT: I'd like to actually talk about cultural burning because I think a lot more people understand about cultural burning than they understand about cultural fishing, and yet it's very similar in a sense. Cultural burning, as white fellows understand it, is often—we understand they do patch burning. But, actually, it's part of the entire system of caring for country. It's related to the soil. It's related to the insects. It's related to the entire ecosystem and their relationship to it to keep it healthy. Again, it's their obligation to do that, to maintain it, to keep it healthy.

Cultural fishing is the same. It's about their relationship with a marine environment, with the ocean, with the shores. Cultural fishing is much, much more than just going out there with a rod or going diving. As we've heard explained, it's about the transmission of an entire culture. It's about looking after your marine environment, understanding it, understanding what's happening to it, making sure that you don't overfish in any particular area, moving on, looking at the seasons, looking at the weather, looking at what's an appropriate time to take anything, also to give back. When you actually take your fish, you throw the guts back into the water to go on feeding. You've got an entire system where, in fact, there's actually no real separation between the person and the country, including the sea country. Again, it's a relational thing.

It's your responsibility, your obligation in the current generation, to look after that country for future generations and to honour the ancestors who are also in that country and related to that country. It's an entire system of spiritual, physical, social relationship. It's also the relationship between people and country and totems, and so on. It's all very integrated and interrelated. The cultural fishing, the actual fishing as we would see it, is just part of that entire system.

The suggestion that the Aboriginal fishers are—the issue is about the sustainability of the resource. I think that is completely misdirected because we have had Aboriginal people down on that south coast, looking after that country and looking after that resource, for thousands of years. It is only really since the industry was really started in the sixties and seventies it actually overexploited the resource entirely. It nearly collapsed in the eighties or late seventies, I think. Then in came licensing. But the Aboriginal fishers were not in a position to get most of those licences. They didn't have the capital and they didn't have the written record of their past diving to enable them. That was a requirement to get the licence. They're still shut out of those licences.

But really their fishing is not that kind of large-scale commercial. It's small scale. We just heard some of the quantities just earlier. It's not a huge catch. As Kathy said, it's already allowed for. When you read those total catch assessments, they talk about the Aboriginal catch. They know it's happening. They can't document exactly what it is, but they make an estimate. It's probably an overestimate. That sort of precautionary principle is already in place, from what I can see. I'm not an expert on fishing, but it seems that that is already being accounted for.

The ACTING CHAIR: Before I throw to the Government, I might throw to Dr Voyer and see if she has anything to add to the questions that have been put on the table so far.

MICHELLE VOYER: Yes. Thanks very much. Not a great deal. I think Janet and Kath have covered it really well. I think this intersection between the models of governance that have been set up and Aboriginal models of governance is a really interesting one. That discussion around relationality is so key to that. The first question picked that up, around how we focus on individual licences and managing the individual, whereas cultural governance practices are very relational and very community based. I think a really fantastic example of this is the beach haul fishing, which a number of Aboriginal people are active in. This is again very focused on

the individual and regulations have come into require that no-one else can, basically, touch the net, apart from the licence holders.

But beach haul fisheries have developed over the last few decades as a form of community engagement and practising culture and passing on knowledge, where the entire mob would come down and help pull in the nets and share out the fish. That is a really fantastic example or a terrible example, depending on your perspective, how the individual licensing system has come into direct conflict with this relational approach. I mentioned in my opening statement there's so much that we can learn from thinking through this relationship approach and how that might apply in our own context, in a non-Indigenous context, because I think there's really a lot we can take from it.

The Hon. TAYLOR MARTIN: A question for Dr Hunt. At the bottom of the second page of your submission, you state:

I suggest that compliance actions taken against Aboriginal people for fishing in line with their law and culture since 2009 have conflicted with Commonwealth and NSW law. This is because the Native Title Act 2003 overrides the Fisheries Management Act (FMA) and allows people to practice their law and culture in line with their native title rights and interests.

Would you mind just expanding and elaborating a bit more on that? It is a theme that came up particularly on our trip down to Mystery Bay.

JANET HUNT: Before saying this, I should say I am not a lawyer and I think you will be having some native title lawyers and experts later in the day, so perhaps you can ask that question to them as well. But my understanding is that legislative precedent is already set under native title that you can fish and gather for any purpose. There's an Akiba case in the Torres Strait which sets that precedent. There's also a case in South Australia—the Narungga people, I think it is—and that's a case that actually upheld the right of Aboriginal fishers in South Australia to collect undersize abalone, which is interesting.

The Hon. TAYLOR MARTIN: It is interesting because that was going to be my next question.

JANET HUNT: I think there's already plenty of legal precedent there that the Native Title Act actually does give the fishers at the South Coast the right to fish and dive and collect for any purpose. Now, they've got a native title claim. I think that was put in in 2017, so it's progressing. These things take a very long time, but it is a registered claim, so there's a prima facie case there that they can prove their connection to that country and the continuation of their lore and culture. Actually, I think we've heard today some good evidence of the continuation of that lore and culture. The point I was trying to make earlier was that there is a whole system of lore and culture. It is a governance system. It is a natural resource management system that they have and they can articulate that in a different way from the way the Department of Primary Industries would articulate that in terms of bag limits and size.

They have a whole set of rules which are oral tradition rules about what you take, what you don't take, when you take it and so on. That is their governance system. That is their marine management system. They will be able to demonstrate that to the native title tribunal and I think that's where the native title right—it overrides the Fisheries Management Act. That's what the process in 2004 was about. It was a process led by the National Native Title Tribunal to try to bring State and Territory fishing laws in line with the Native Title Act, which had then already been in place for, what, 10 or 11 years. And there was a clear problem emerging.

The New South Wales Government actually agreed, along with other jurisdictions, to implement those Indigenous fishing principles, which are in my submission. That's what section 21AA was meant to do. It was meant to help to align the Native Title Act with the State Fisheries Management Act. Clearly, what's happened is that the New South Wales Government, for whatever reason, has not actually completed that work. They need to do that as a matter of urgency because the harm that's being perpetuated at the moment is too much. It's really too much for people at the South Coast. It's extraordinarily unjust.

The ACTING CHAIR: Does the Government have any further questions?

The Hon. TAYLOR MARTIN: I was going to follow up on the smaller undersize abalone, but you touched on that. Thank you.

JANET HUNT: I think you could ask the NTSCORP or one of the lawyers about that case. I'm sure they'll be able to give you more detail.

The Hon. MICK VEITCH: Dr Hunt, I think you might've been using law, L-A-W, and lore, L-O-R-E, in that presentation. You're talking about traditional—

JANET HUNT: Traditional lore and custom: L-O-R-E.

The Hon. MICK VEITCH: That's right—just for the benefit of Hansard.

The ACTING CHAIR: Because we've still got a few more minutes left, I might actually run through each witness and see if there was anything that people wanted to make sure was put on the table at this inquiry that they haven't been asked a question for. I know, Dr Hunt, you did give an idea about some of the recommendations you'd like to see come from this inquiry, but maybe talk about some of those recommendations that everyone would like to see but also any aspect that you feel we haven't actually addressed within the questioning. I'll start with Dr Hunt.

JANET HUNT: I'd just like to pick up on a couple of questions you asked to the AIATSIS witnesses, because there was a question about how many Yuin people there were on the South Coast. The fact is that that answer can't be given. Because you can give data on the census in terms of how many people have—Aboriginal and Torres Strait Islander people live on the South Coast but the ABS does not actually collect data by nation group. That question can't be answered actually. There was another point—

The Hon. SCOTT BARRETT: Chair, can I pick up on that? That was my question.

The ACTING CHAIR: Certainly, Mr Barrett.

The Hon. SCOTT BARRETT: I did figure that that would be a difficult number to find. The main question I was actually after was what proportion or what percentage of that population engage in cultural fishing and also what proportion of them would benefit from cultural fishing.

JANET HUNT: I don't think we know the answer to that either.

The Hon. SCOTT BARRETT: Yes, it was an optimistic question.

KATHRYN RIDGE: I think it depends on which species. I think for the higher value species like abalone and lobster, because they're largely obtained by diving, it's a very small percentage. Because you have to be particularly fit, as you heard from Mr Carriage, and you have to be knowledgeable of the tides and the currents in the water, it's a very dangerous occupation and you cannot go diving on your own for safety reasons. So everything has to align for that type of fishing to actually be able to occur. Other fishing like line fishing from the shore and in the estuaries is a lot easier.

The Hon. SCOTT BARRETT: When you say higher value, do you mean cultural value or financial value?

KATHRYN RIDGE: Financial value. That's where there's a lot of resource conflict at the moment.

JANET HUNT: I think the other question that you asked AIATSIS was about their survey and whether people had raised the issue of 21AA in their surveys. But I am familiar with their work and I don't think that was a question that was asked. They were trying to look at what are the cultural values that are extant in the South Coast people's fishing practices. I don't think they asked about it.

The Hon. SCOTT BARRETT: I don't think that was my question but thank you anyhow.

JANET HUNT: Sorry, I misunderstood your question.

The ACTING CHAIR: Professor Barclay, is there anything else that you feel that we haven't addressed yet that you'd like to put on the table or any recommendations that you'd like to see from this inquiry?

KATE BARCLAY: I just wanted to note that it was a real shame that Natalie Kwok wasn't able to appear today and just recommend that people do read her excellent report and submission to get those insights.

The ACTING CHAIR: Ms Ridge?

KATHRYN RIDGE: I agree with that recommendation. One of the questions you had on the South Coast community round table was essentially what are the elements of the lore and custom and her report goes through those sort of normative aspects of lore and custom that are well understood and Fisheries has a lot of that material, as does the State through the prosecutions that've occurred. That's what her submission brings out really beautifully.

The ACTING CHAIR: Dr Voyer, did you have anything else that you felt that hadn't come up today in the questioning or anything that you'd like to address or recommendations for the inquiry?

MICHELLE VOYER: Only in that Aboriginal people should be very heavily involved in the co-design of any recommendations going forward. I think there is a tendency—I think as the white governance system, for want of a better word, we are still making that transition from thinking about Aboriginal fishers and cultural fishers as stakeholders into this space to recognising them as rights holders and partners. That's something that is still a work in progress and anything that this Committee can do to further advance, that would be very welcome.

The Hon. PETER POULOS: Chair, just a quick question to Ms Ridge. I was just interested in some of your responses. In particular do you have any advice for this Committee in terms of how we can all move forward in raising awareness about how sophisticated these relationships amongst the Aboriginal community are and how cultural fishing is just one component of this generational conversation, and if you dismantle the system, is it fair to say you dismantle their identity and their attachment to country?

KATHRYN RIDGE: It's a really important question. The rights that Aboriginal people are asserting are fundamental human rights. They're important for all of us as a nation. The preamble to the State constitution has some very important things to say about Aboriginal peoples' rights. On occasion, if you look at the Biamanga-Gulaga Aboriginal lease, you'll see some really clear examples where the State has been able to acknowledge the sophisticated lore and custom of Aboriginal peoples in particular contexts. But there is still this residual fear of being able to have an open, positive engagement with Aboriginal people, I think because they're worried about a compensation liability. It's a perpetual barrier.

My research is not limited to cultural fishing. You see the same negative, conflict-driven dialogue, unfortunately, in cultural water allocations. You also see the same dynamic, where you have repeated State and Federal investment in COAG agreements or State laws or strategies where there is this commitment to delivering Aboriginal people cultural water. There has even been \$40 million allocated, some years ago now. But when it comes to actually giving Aboriginal people their rights with respect to cultural heritage, water or fisheries, it never seems to happen. I think there's a very deep question about how we treat our First Nations peoples still in this country despite it being 30 years after Mabo and despite all the wonderful commitments successive Parliaments have given to the correct approach to respecting fundamental human rights. But we don't actually create the space or invest the time to do it now.

If every time the Parliament was asked, for example, to give out a new right to an existing industry, stopped and said, "Hang on, have you given something to the Aboriginal people yet? We're not going to pass a law giving out new licences." Some 30 tonnes of abalone were given out this year to the industry and no-one stopped to ask, "Hang on, we've had successive Indigenous fishing strategies that promised a commercial component to South Coast people." If the Parliament had a practice of regularly asking, as part of the Closing the Gap initiative that the Premier has wonderfully committed to very publicly—that discipline of always asking the question and asking in estimates, "What have you done?" Those sorts of accountability measures are really important to driving change. This is a very broad and deep change.

Those opportunities would then allow media units in the Minister's office to sit down with people like Uncle Kevin Mason and say, "We would like the Mystery Bay camp to have its own cultural catch." Because that is one of the oldest Aboriginal fish traps on the South Coast; it's a registered Aboriginal place. "We think it's important enough and significant to all of us as a society that we want to give you a specific amount." That would allow you to then have a very positive ABC media story and that would be educative. It's about building it into how we administer the laws and how we drive accountability through the agency. And get over the fear of compensation because I think there's such an important upside to all of us, and particularly to our environment and our cultural heritage, if we allow that full expression of Aboriginal peoples' rights. It's not to be feared. It's actually a great value-add to our community.

The Hon. PETER POULOS: And, by extension, to the Aboriginal community and their welfare; their wellbeing.

KATHRYN RIDGE: That's correct.

The ACTING CHAIR: Dr Hunt, you had something additional to say?

JANET HUNT: Yes. I just thought it might be worth underlining how inconsistent this all is with the Closing the Gap commitments of the New South Wales Government, and to put it into that framing. The New South Wales Government has committed to the 17 national Closing the Gap targets. They include, obviously, improvements in health, improvements in employment and reducing incarceration. What's going on down the South Coast is quite seriously running counter to all three of those goals. You've got a situation down the South Coast where Aboriginal people are—it's not a rich area and the Aboriginal people are among the poorest in that community. It's really important that their whole fishing economy—their whole livelihood of fishing—is supported, not criminalised, because that will lead to improvements in health. It will lead to fewer of them being incarcerated. It will lead to greater opportunities for them to enter employment. If they've been fined and they can't pay their fine, they can't get their driving licence. If they can't get a driving licence on the South Coast, the chance of them being able to get a job is very low. They can't even get to a workplace let alone carry out the work.

There's a whole lot of things that flow from these prosecutions and persecution—harassment—that is going on that are actually working quite severely against the stated policies of the New South Wales Government.

The New South Wales Government has for a long time also supported the right to self-determination. That is stated policy. What these people have been saying for decades now is they want the right to practice their culture. It's not a big ask. That's part of their self-determining right. It's an internationally recognised right. I think it's really important to point out how contradictory what is going on at the moment with the prosecutions is to the stated goal of the New South Wales Government itself and, indeed, the nation in terms of overall reconciliation. I just wanted to underscore that.

That's one of the reasons why I think compensation needs to be considered. If people have this right under native title, why have they been persecuted and prosecuted, had their vehicles and diving gear taken off them, and paid very large fines relative to the income that they get? That needs to be compensated because it seems to me what's been going is entirely unjust when they actually do have that right as native title holders. They shouldn't have to prove it in court each time as an individual. The documents are all there. The native title claim is in, it's registered and it's accepted. If someone says, "I'm a Walbunja man," that should be enough. To be told that you've got to be black in order to be Aboriginal on the South Coast of New South Wales is ridiculous. I just wanted to underline that. I think there should be compensation because they've been unjustly prosecuted.

The Hon. SCOTT BARRETT: Ms Ridge, you mentioned before that there were 30 tonnes of licences given out this year.

KATHRYN RIDGE: No, it was an increase in the total allowable catch. The reason why it was given this year was because there was a COVID impact on the fishery. But that tells you very clearly that fisheries management and the fisheries scientists don't think that there is a resource constraint on being able to increase the catch at that scale. In that context, I think it's quite important.

The Hon. SCOTT BARRETT: Has that 30 tonne now expanded that total allowable catch all the time or just for this year?

KATHRYN RIDGE: I think it's for this year. In fact, I think it was for last year and it's now gone into this year as well.

The Hon. SCOTT BARRETT: Do you know what the total allowable catch is?

KATHRYN RIDGE: It is about 100 tonnes per annum at the moment. It goes up and down according to the circumstances, but for the last few years it's been around 100 tonne, apart from this year.

The Hon. SCOTT BARRETT: Would you be able to have a stab at how much you reckon is taken by First Nations people?

KATHRYN RIDGE: I can tell you that the Aboriginal cultural fishing take for abalone that's allowed in the Total Allowable Catch Committee estimates is one tonne. The reports that I've reviewed, which are all publicly available, say that they believe that catch is under. It has never been exceeded, to their knowledge. You need to get the numbers from Fisheries on what their current estimates are, but I don't think they have particularly good numbers on that. But generally the industry, at that committee level, has agreed that it has probably not been exceeded. The 20 to 40 tonnes is the range between which they include illegal and unregulated catch. That includes catch of the type that you had at the previous panel where it's above what Fisheries deems to be a commercial catch, which is above 50 abalone.

The Hon. SCOTT BARRETT: Just for my benefit, what's the weight of 50 abalone?

KATHRYN RIDGE: It depends on their size, as you know, but it's—

The Hon. MICK VEITCH: We can ask Fisheries this afternoon, Scott.

KATHRYN RIDGE: Yes, I think you should probably—

The Hon. SCOTT BARRETT: That's helpful, thank you.

The ACTING CHAIR: Thank you all for coming today and attending the hearing, and thank you to Dr Voyer online as well. Committee members may have additional questions after the hearing, and the Committee has resolved that the answers to those will be returned within 21 days. I don't think there were any questions on notice today, but if there are additional questions then the secretariat will contact you regarding those questions. Thank you again for your evidence today.

(The witnesses withdrew.)

(Luncheon adjournment)

Mr DANNY CHAPMAN, Chair, New South Wales Aboriginal Land Council, affirmed and examined

Mr TONY McAVOY, SC, Barrister, and Representative of the Aboriginal Legal Service (NSW/ACT), affirmed and examined

Ms MISHKA HOLT, Principal Solicitor, NTSCORP, before the Committee via videoconference, affirmed and examined

The ACTING CHAIR: Welcome back to our inquiry into the commencement of the Fisheries Management Amendment Act. I now welcome our next witnesses. I allow witnesses to give a short opening statement. Mr Chapman, did you have anything prepared that you wanted to present to the Committee?

DANNY CHAPMAN: Yes, we've got a brief statement. It's a broad statement. I shall read it. Good afternoon, everyone. My name's Danny Chapman. I'm the chair of the New South Wales Aboriginal Land Council, and I'm also the elected representative for the South Coast region. I'm a proud saltwater man from the Walbunja tribe of the Yuin nation. I'd like to acknowledge and pay my respect to the Gadigal people of the Eora nation, on whose lands we are today, and thanks very much for the invitation. As you know, I appeared on the South Coast in a very different role. Now, my role here today is for the New South Wales Aboriginal Land Council.

NSWALC has advocated for many decades for Aboriginal cultural fishing rights. We have constantly called for the immediate commencement of section 21AA. We've also called for the prosecution of Aboriginal cultural fishers to immediately stop. The Government has had more than a decade to work with us to get this right. What we have seen during this time is ongoing prosecutions and the Government wasting time and resources, and all the while our people's cultural fishing practices have not been able to be undertaken without fear of prosecution. Over the past decade we have seen the bureaucracy undermining the commencement of section 21AA at every turn.

In 2009 Parliament did not stipulate that the commencement of section 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 the commencement of section 21AA. NSWALC queries whether government departments have been attempting to stall Parliament's intent. We note the New South Wales Government have said that they have shown intent to commence section 21AA through the implementation of Aboriginal cultural fishing interim access arrangement. This is a policy document only and does not address the extent of cultural fishing issues. Intent without action is merely words.

NSWALC has continually requested information from Government on why section 21AA has not commenced and on local management plans and, despite numerous requests, information has been very limited. To be clear, NSWALC's longstanding position is the local management plans are not a substitute for commencing section 21AA, and the commencement of section 21AA must not be contingent upon local management plans. Local management plans 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.

Contrary to the New South Wales Government's submission, the New South Wales Government is not working with NSWALC in the development of local management plans. In fact, the Government has denied NSWALC access to view draft management plans or meeting minutes relating to the LMPs. We have had to resort to freedom of information requests in an attempt to get basic information. The Government has denied us access in response to these requests. The New South Wales Government has an obligation to meet its commitment outlined in the National Agreement on Closing the Gap. Nevertheless, despite the Government's commitments to reduce incarceration rates of Aboriginal people, to recognise Aboriginal people's rights and interest in the sea and to transform the way government and its agencies work, the New South Wales Government continues to criminalise Aboriginal cultural practices.

We have noted an interesting trend more recently: While in some instances custodial sentences may not have been handed down by the courts, financially debilitating fines of \$35,000—around that area—have now been implemented or handed down by the courts. For example, these fines have been issued and prohibitions made so that our people cannot go near the water. So on top of the fines, what they've done is they've said that you can't go near the water for up to seven years on one instance and five years on the other instances—any water controlled by the department. NSWALC is disappointed that Fisheries continues to demonstrate an unwillingness to align the agency's work to Closing the Gap commitments. By failing to commence section 21AA, and continuing to prosecute Aboriginal cultural fishers, the New South Wales Government is not making good on commitments to Closing the Gap.

Aboriginal cultural fishing rights has always been at the bottom of the list for the government, with recreational and commercial fishers taking priority. This can be seen in the structure of the bureaucracy and in the approach of the New South Wales Government regarding balancing the need to protect fish stocks. In response to this, it should be recognised that Aboriginal people make up just over 3 per cent of the population, with only a small percent of that comprising fishers. By comparison, there are around one million recreational fishers in New South Wales, not including people under 18 or pensioners, and a very sizeable commercial fishing industry. It is important to note that self-regulation occurs through Aboriginal lore and customs, which impose 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 over thousands of years, is a tool to manage fishing resources. If you want to talk about commencing this, we're ready to engage. Thank you.

The ACTING CHAIR: Thank you, Mr Chapman. Mr McAvoy, do you have a short opening statement you'd like to give?

TONY McAVOY: I do, on behalf of the Aboriginal Legal Service, and there are short comments I'd like to make in addition to my written submissions. Firstly, on behalf of the Aboriginal Legal Service, I thank the Portfolio Committee No. 4 for allowing the ALS to give evidence. We acknowledge that we are here today on the lands of the Gadigal people. The Aboriginal Legal Service is a proud Aboriginal community controlled organisation and the peak legal service provider for Aboriginal and Torres Strait Island adults and children in New South Wales and the ACT. The ALS' vision is to achieve social justice and equity for Aboriginal and Torres Strait Island people, families and communities.

We also undertake vital policy and advocacy work to reform the systems that disproportionately impact Aboriginal lives. This piece of legislation does exactly that. The Fisheries Management Act criminalises Aboriginal people for practising our culture. While the Fisheries Management Act has taken some necessary steps to address this systemic racism, there is still action that needs to be taken as a matter of urgency, and the ALS welcomes the changes to the introduction of the objects to the Act. However, we strongly urge the New South Wales Government to commence section 21AA without delay and to commence section 21AA without any further regulations, specifically without any regulation that places limitation on the application of section 21AA (1). We urge the New South Wales Government to ensure that the burden of proof is on the Crown with respect to an alleged contravention of section 21AA, and we urge the Government to resource the Aboriginal Legal Services as an Aboriginal community controlled organisation to provide the culturally safe representation to Aboriginal people fishing for cultural purposes who are being prosecuted under the Fisheries Management Act.

We also ask the Government to review all fines and prosecutions of Aboriginal people under the Fisheries Management Act. The seriousness of possible sentencing outcomes that follow a successful prosecution under the Fisheries Management Act emphasise the requirement for Aboriginal and Torres Strait Island people to obtain legal advice and to access culturally specific legal services. The New South Wales Government has publicly committed to achieving better life opportunities and physical, mental, cultural and spiritual wellbeing for all Aboriginal and Torres Strait Island people as part of the Closing the Gap agreement. The Government has already committed to that. The commencement of section 21AA is an opportunity for the New South Wales Government to make progress on this commitment by discontinuing the practice of criminalising Aboriginal peoples' traditional rights and customs. Thank you for that opportunity.

On my own behalf, apart from being a barrister of the Supreme Court of New South Wales, I'm a Wiridi man. I'm a traditional owner in Queensland, and I come here as a person that appears regularly for Aboriginal people on the South Coast in respect of these Fisheries prosecutions, as does the co-author of our submission, Mr John Waters, SC. Some things that we examine in life require us to take a really fine-grained, close look to understand the DNA of what's causing it to happen. But other things require us to just step back a little bit and see it in a broader context. My submission to you is that, in trying to figure out what has happened with section 21AA, you need to take a step back. And you need to look at the way in which the New South Wales Government has systemically dealt with matters of Aboriginal advantage. One of the clearest examples—and I don't wish to tread on Mr Chapman's territory—is the Aboriginal Land Rights Act of 1983. That was passed by Parliament with the intent of bringing justice to Aboriginal people in New South Wales, and yet here we are with 40,000 claims unresolved and no clear pathway to getting those resolved at any time.

If that was an isolated event, you could say, "Oh, well. That happened." But then in 1996 the National Parks and Wildlife Act was amended to create an Aboriginal ownership of national parks scheme, and in that amendment there were five national parks listed for transfer to Aboriginal people, as Aboriginal-owned national parks. As of the present day my understanding is that two of them still haven't been transferred. In 2001 we saw the passage of amendments to the National Parks and Wildlife Act to provide amendments for the cultural heritage protection regime. They were never sent to the Government for proclamation, and they were subject to a repeal

Act in 2010, if I'm correct. And here we have, in 2009, these amendments to the Fisheries Management Act which are directed at a particular cause and, again, they haven't been acted upon.

It is proper for this Committee to ask the question, "What is going on in the administration of this Government that matters done for the benefit of Aboriginal people are routinely overlooked by the administration?" Because it looks and smells like systemic discrimination against Aboriginal people. And you need to ask yourself, if this Parliament is a parliament for all people in New South Wales, how is it that, when the Parliament decides that things ought to be done to alleviate the disadvantage that has been caused by the occupation of their lands, the administration doesn't carry out Parliament's will? Thank you.

The ACTING CHAIR: Thank you so much for that. Ms Holt, do you have a short opening statement that you'd like to give to the Committee?

MISHKA HOLT: Yes, please. Firstly, on behalf of NTSCORP Limited, I'd like to acknowledge and pay my respects to the Bundjalung Widjabul, the traditional owners of Lismore, where I appear from today, and also to the Gadigal people where both the Committee and the other witnesses appear from. I acknowledge the Chair and the Committee members of the Legislative Council's Committee No. 4. I also acknowledge Daniel Chapman, the chairperson of NSWALC, and senior counsel Tony McAvoy and the expertise they bring to the hearing today. I also acknowledge the chairperson and board of NTSCORP Limited and NTSCORP CEO Natalie Rotumah, who unfortunately is unable to appear today and gives her apologies. NTSCORP is the native title service provider for New South Wales and the ACT, funded to represent the interests of traditional owners who hold or may hold native title rights or interests and to assist traditional owners exercise their rights under the Commonwealth Native Title Act. NTSCORP welcomes this opportunity to appear before the Committee today to discuss the commencement of schedule 1 to the Fisheries Management Amendment Act 2009, more commonly referred to as section 21AA.

Traditional owners in New South Wales have a strong connection to their land, seas and waterways, including through the traditional practice of cultural fishing. Section 21AA was enacted to recognise and protect our Aboriginal cultural fishing and to ensure cultural practices are not criminalised. The fact that such a protective measure has still not commenced some 12 years later is an indictment on the New South Wales Government. There is a fundamental structural issue with the management of the fishery resource in New South Wales, which uniquely discriminates against Aboriginal people. It means Aboriginal people are excluded from the lucrative working opportunities provided by commercial fishing whilst also bearing the brunt of an increasingly punitive fisheries management regime for simply undertaking ancient cultural fishing practices.

The negative impact of the failure to commence section 21AA has been well-documented and only worsened as Aboriginal peoples native title rights and interests have been recognised by the courts. By the operation of section 287 of the Fisheries Management Act. That Act does not and cannot affect or regulate the exercise and enjoyment of native title rights. In addition, section 211 of the Commonwealth Native Title Act applies to exempt native title holders from the operation of the Fisheries Management Act in certain circumstances. These Acts were confirmed by the High Court in *Karpany v Dietman*.

The NTSCORP has experienced there has been a substantial failure by New South Wales Fisheries to recognise and administer the Fisheries Management Act in a way that provides traditional owners the protection afforded by section 211 of the Native Title Act or section 287 of the Fisheries Management Act. This has resulted in extensive prosecution of traditional owners undertaking cultural fishing and an over-representation of Aboriginal people subject to charges under the Fisheries Management Act. It represents a widening of the gap rather than a closing of the gap.

NTSCORP submits that the immediate commencement of section 21AA without regulations is necessary to [inaudible] Aboriginal fishers—a matter in itself that may lead to further litigation and a potential compensation liability for the State. NTSCORP implores the Committee to recognise the unique nature of Aboriginal cultural fishing; uphold the original intention of section 21AA; fulfill its obligations under Closing the Gap agreement; 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 take fish and to take marine resources. We submit that the Committee should do this by recommending the immediate commencement of section 21AA without regulations, by removing restrictions on Aboriginal cultural fishers and Aboriginal cultural fishing activity, and by placing a stay on the prosecution of Aboriginal cultural fishers. I thank you for the opportunity to make this statement.

The Hon. MICK VEITCH: Thank you for your attendance today and your in-depth submissions. Some of the testimony the Committee has heard today and at the roundtable discussion has been quite troubling, certainly for myself and no doubt other Committee members. I have a question for Mr McAvoy. Many submissions talk

about the operation of section 211 of the Native Title Act. Will you explain to the Committee how that confines the application of the Fisheries Management Act in New South Wales? How does that work?

TONY McAVOY: The Native Title Act 1993 is Commonwealth legislation. It was introduced with accompanying State legislation. In New South Wales we have the Native Title (New South Wales) Act 1994. Because a large part of the native title rights impact and are overlaid on areas of State sovereignty, there needed to be a national system which provided for the recognition of native title. However, because of the operation of the Commonwealth Constitution, of course the Commonwealth legislation takes precedence. Section 211 of the Native Title Act provides for certain classes of activity to be exempt from the requirement for licences or permits. That was added with the intent of ensuring that Aboriginal people were not regulated by permit systems out of the exercise of these very, very fundamental rights of hunting, fishing and obtaining sustenance.

So it is that the Fisheries Management Act, in providing for offences for taking and possessing fish without a permit, falls within the parameters of section 211, if that defence is raised. In order to make out the defence, an accused must satisfy the magistrate that the class of activity, in this case fishing, was conducted in the exercise of a native title right. For Aboriginal people on the South Coast, in particular where I've worked, that means not only satisfying a magistrate that the right to fish exists as a proposition, as the existence of a right, but that the accused was a person who was entitled to exercise those rights and that the fishing practice that was being undertaken was in exercise of those rights. The expense of running such a defence is substantial.

There is a matter in which I am presently involved that is part heard. We have been going for four days and it is listed for another five days in the Local Court, and that's not unusual. What happens is if the defence is made out, then there is no offence for which a person could be prosecuted because they can't be regarded as fishing without a permit or otherwise in breach of section 17 or 18. That's a protection for Aboriginal people but it seems to me that section 21AA provides a more easier, accessible defence and it represents New South Wales acknowledging that there are cultural fishing practices undertaken by Aboriginal people in New South Wales. If that is what is being done, then people should not be prosecuted. It ought to be a much simpler process whereby, properly, the onus ought to be on the prosecution to prove that they're not fishing culturally. The accused in these cases can bring evidence as to the acceptance by their community of that particular activity as an act which is part of their cultural fishing activities and that should satisfy a magistrate, and the matter should be able to be dealt with in a day rather than nine days of community expense in a Local Court with many lawyers and prosecutors and expert witnesses.

The Hon. MICK VEITCH: Earlier today we also heard from some individuals who have been charged with, I think, trafficking. Can you explain in your experience how that works as it relates to cultural fishing of abalone because a proposition was put that just because they have abalone in their possession doesn't mean they had the intent to sell at some point to a restaurant or on the black market or somewhere. Can you explain to the Committee how the offence of trafficking relates to abalone?

TONY McAVOY: It's an offence under the Fisheries Management Act. If you approach it from the perspective of Aboriginal lore and custom on the South Coast, which the Native Title Act invites you to do—in fact, section 21AA invites you to do—that numerical restriction that is placed upon the number of catch or size of catch in the Fisheries Management Act doesn't exist. There is a right that is possessed, in my view, by all south coast traditional owners to take fish for end purpose. That means that if they want to access fish for barter or for trade, then that's their entitlement to do that. The evidence, I must say, tells us that they've been doing it for thousands of years. The criminalisation of the taking and possession of abalone and other fish species in recent times is a very late interference in something that is of huge antiquity. I'm not sure that I answered your question.

The Hon. MICK VEITCH: I think what you've got was quite valuable. The last matter that I'd like to raise with you before I hand over to others is, in your experience, how often are charges withdrawn during the court process?

TONY McAVOY: Over the last eight years, since 2014, I've been involved in nine matters, and none of them has proceeded to a decision. All have been withdrawn. That in itself, in my view, is a form of oppression, because the act of withdrawing the proceedings after everyone has had to go through the whole cost of preparation is a form of punishment. There were some measures in place to make sure that there was an appropriate assessment early in the process, but they've fallen by the wayside. What I've come to know recently is that New South Wales Fisheries officers are not trained to make any assessment on the spot as to whether an Aboriginal person is fishing for cultural purposes or not. The consequence of that is that they are bound by their instructions to forfeit the catch and to seize the gear. That is also a form of oppression.

It's no wonder that Aboriginal people on the South Coast are resistant to Fisheries and object to having their gear searched, because they understand that it doesn't matter what they say, the Fisheries officer is going to take their catch and seize their gear and tell them they can sort it out in court. Then it goes on for years. They're

usually not charged until the last month before the two-year expiration period runs out. I think in all cases that I've been involved in it's been within the last few months. Some of it has been within the last week. Then you have to go through the court processes. The court processes take another year, because you're setting the matter down for hearing. So a person has the prospect of being charged and then the process of going through the court for three years of their life, not knowing whether they're going to be convicted and possibly sent to jail or receive a huge fine. That is oppressive. This is not happening by accident, in my view.

The Hon. TAYLOR MARTIN: Would either of you like to make comment in regard to the LMP approach, the local management plan, particularly what's been happening up in the Tweed with the trial?

TONY McAVOY: That's yours, Danny, I think.

DANNY CHAPMAN: I want to say off the bat that the LMP processes and all that stuff have never been—NSWALC has never endorsed them. Being the Chair of the Aboriginal Fishing Advisory Council from 2010 up until recently, I can tell you that the Aboriginal Fishing Advisory Council has not approved them either. Fisheries have bought the LMP documents and personnel involved in the discussions to the Aboriginal Fishing Advisory Council. When I've asked Fisheries that these agreements, if that's what you want to call them—when are they going to come back to the Aboriginal Fishing Advisory Council and the Aboriginal community so that we can have a look at them, so that we can give some sort of approval or otherwise to these agreements? Fisheries have said in the meeting that that is not required. The Aboriginal Fishing Advisory Council, which advises the Minister directly on Aboriginal fishing, is not required to have a look and approve or otherwise these fishing LMPs. When I was told that, I was fairly stunned about that. They're talking about doing another process outside what's already been agreed to.

The Hon. TAYLOR MARTIN: When you say "outside what's agreed to", you mean section 21AA?

DANNY CHAPMAN: Yes, I do. But it goes outside the Aboriginal Fishing Advisory Council. In 2009 when the Government amended the Fisheries Management Act they inserted in there sections—they set up the Aboriginal Fishing Advisory Council as a mechanism to advise the Minister on all things on Aboriginal fishing. The process what we're talking about with the LMPs has gone outside of that process, for whatever reason. The other things that the local fishing management plans don't do is they don't give legal protection for any of those people who sign up for that. In other words, it's pretty much at the whim of compliant officers and government in relation to their agreement, and that can change overnight at the stroke of a pen. There is no legal protection at all in relation to that. It's run by secrecy. I ask you, sir—I can't see your name.

The Hon. TAYLOR MARTIN: Taylor.

DANNY CHAPMAN: You're on here, and I guarantee that you haven't seen it either. We're told that some of the processes that lead up to these agreements, if that's what you want to call them, are done by very few people in the community.

TONY McAVOY: The United Nations Declaration on the Rights of Indigenous People, to which Australia is an endorsee, speaks clearly about the right of Indigenous peoples to put their full prior and informed consent to administrative acts which affect their rights and interest. It also speaks about the need for the observance of the political structures and the representation that the Indigenous peoples choose for themselves. This type of activity, where small sections of the committee are broken off and entered into agreements which are not done in the context of the broader community, we've seen many, many times. It is a standard tactic in terms of trying to undermine the broader rights of Aboriginal people, and that's what's happening in this case.

MISHKA HOLT: If I might, on behalf of NTSCORP I'd like to make a brief comment in relation to—

The Hon. TAYLOR MARTIN: Please, of course.

MISHKA HOLT: I think the starting point for understanding what's happening with the local management plans is [inaudible] itself, which sees that there may be provisions made for the management of cultural fishing, but certainly not that there must be provisions made. New South Wales Fisheries are determined that they were going to try to implement regulations which would impose bag and possession limits. NTSCORP considers this as one way to undermine 21AA itself—is to impose sections 17 and 18 of the Fisheries Management Act, as it would apply with bag and possession limits to cultural fishing. When that wasn't a successful process, Fisheries NSW took what had been a discussion around local management plans, which NTSCORP and NSWALC had clearly articulated—both in person with the Minister and with Fisheries NSW, and also in writing—that local management plans should not have a bag and possession limit.

What they would be is a goodwill movement from the community to say that the management of the fishing resource is something we can contribute to by talking about, for example, habitat and things that negatively impact the fishing resource, to talk about various environmental impacts and to have regard to Aboriginal people's

own way of self-regulating fishing activity. They were never intended to have bag and possession limits. Fisheries has adopted this process where the third attempt at bag and possession limits is to try to do local management plans. I would like to say that NTSCORP can talk with some specificity around that but, unfortunately, despite requests, we've been refused access to the local management plans, so we're not sure what it says. But it's also, more importantly, what we would consider to be a fairly redundant process because a local management plan has no way of being legally effective. It can't impact Aboriginal people exercising their native title right. You have to ask yourself what's the point of even trying to pursue that and how is it going to be given legal effect?

We are concerned with the way it's been conducted and, certainly, the lack of scrutiny that the peak Aboriginal bodies have been allowed to have an overview of that. I would also say that I don't think communities have been afforded any independent legal advice. Whether you could consider these free, prior and informed consent, I think, is at large. Largely, NTSCORP would make the submission that local management plans aren't necessary. There are two areas in New South Wales where the seaward extent has had native title recognised—that's for Bundjalung people of Byron Bay and for Yaegl people in and around Yamba. In those areas where native title has been recognised and people have the right to fish, there has been no demonstrated evidence of any negative impacts on the fishing resource. The reason for that is that native title is merely a recognition of a pre-existing native title right. Communities are not doing anything different to what has happened for millennia.

This attempt to try to manage the fishing resource at the end of Aboriginal community fishing is the area likely to have the least impact on managing the fishing resource. The commercial industry has the largest take and has the most impact on the fishing resource. To look at Aboriginal people, who represent a small portion of the population in New South Wales and, on top of that, only a certain proportion of those fishers are adults—but not exclusively—who are doing fishing on behalf of their community, we're looking at a very small number of people who are targeted in the name of managing the fishing resource, where it's likely to have the absolute least impact. We don't think local management plans can have legal effect. They're certainly not appropriate, in our view. They don't have the intention that Fisheries NSW indicates that they would.

The Hon. TAYLOR MARTIN: Thank you very much.

DANNY CHAPMAN: They were both elegant answers on both sides of me.

The Hon. TAYLOR MARTIN: And yours, Danny.

DANNY CHAPMAN: Can I take the elegance out of it and say that Fisheries has found a way to split Aboriginal communities up. At the same, they have found a way to convince you people that they're actually doing something in Aboriginal fishing, without commencing the will of the Parliament.

The Hon. SCOTT BARRETT: I have a couple of questions, as a way of trying to find a way forward. Mr Chapman, you said you were an elected representative of the South Coast. Is that correct?

DANNY CHAPMAN: Yes. Elected to represent them on the New South Wales Aboriginal Land Council.

The Hon. SCOTT BARRETT: Would you be able to have a stab for me at how many people—I'm talking about abalone—are collecting abalone on more than five days a year? Keep it to the nearest 50 or the nearest 100.

DANNY CHAPMAN: Would I like to have a stab at that? I'd like to have a think about that.

The ACTING CHAIR: You can always take it on notice, Mr Chapman, if you need some time to think about it. You can take the question on notice and provide us an answer at a later date.

DANNY CHAPMAN: My area runs from Eden to Wollongong, which is fairly significant. And it's the area that most prosecutions occur.

The Hon. SCOTT BARRETT: Just a ballpark—maybe it's to the nearest 1,000, I don't know. It's just to give me some idea and educate me a little bit on that. Mr McAvoy, you talked about fishing for cultural purposes. You did touch on the trade and barter in that thing. How far do we take that? Do we want to include commercial purposes in that?

TONY McAVOY: Thanks for the question. At the level of legal principle, the Aboriginal people on the South Coast have the right to take any fish species for any purpose. That's what their native title claim is, and it's passed through the registration test applied by the National Native Title Tribunal, for what that's worth. It may have to ultimately be determined by a Federal Court judge. At the level of principle, it is for any purpose. I might expand on that. That single type of determination had been made in the Torres Strait. In the Torres Strait, they have been negotiating an Indigenous land-use agreement—a settlement agreement—which allows for the Torres Strait Islanders to have a fair share of the commercial fishery as well as exercising their domestic take. If the

New South Wales Government was serious about its obligations to the Closing the Gap process and serious about its obligations to respecting the rights of Aboriginal people to undertake their fishing rights, it would have started negotiations towards a form of settlement by now—or a long time ago.

I can say this to you: I gave evidence in this place in about 1997 about the Fisheries Management Act—about the need for some strategic plan as to how the rights of New South Wales Aboriginal fishermen were going to be accommodated. The fact that I'm back here 27 years later is outrageous. The Government has to stop approaching this as if it is the owner of the resource and the Aboriginal people are taking its resource. The Aboriginal people are the owners of the resource. It's their resource, and they have got a right to take it. Once Fisheries comes to terms with that, we can have some negotiation about what that looks like. In the Northern Territory, they have been negotiating a fisheries agreement for some years following the Blue Mud Bay decision. That's where we're going to end up here in New South Wales, and DPI can continue to put its head in the sand or it can decide that it wants to negotiate towards some proper and just outcome. I'm sorry. I know you wanted to ask a follow-up question.

The Hon. SCOTT BARRETT: The purpose of this is so we can find a way forward. Sorry, I haven't done anything since 1997. I have only been here for a couple of months. My next question is—just so I've got this right, you're advocating for First Nations people to be able to use the resource as they like, be it commercial, personal, barter and trade or whatever—no bag limits?

TONY McAVOY: I'm sorry, and I do not wish to be disrespectful, but I think you missed what I've just said. It's not me advocating; it is their right under Australian law. It is their right. I'm not advocating for it; I'm saying this is the law.

The Hon. SCOTT BARRETT: So that is no bag limits, no possession limits. What about size limits? Do you think we should have no size limits? Sorry, according to that right, should we not have size limits?

TONY McAVOY: There are no general size limits that you can apply to the taking of any fish species where there's a recognition of the Aboriginal people's rights to take that resource and manage that resource.

MISHKA HOLT: If I may make a brief comment just in relation to that question. Maybe the best way to understand it is to say that under the Federal legislation for native title, it's an Aboriginal community's traditional system of lore and custom that dictates how those resources are used. So, for example, the South Coast people, they claim the right to take resources for any purpose. It's well documented both in the evidence of South Coast people, who I understand the Committee have had the opportunity to hear from South Coast people themselves. It's also well documented by anthropologists in the ethnography that the commercial right is not something new; it's a right that has been exercised by Aboriginal people in New South Wales since before white settlement.

The idea for native title, the principle and the premise is that your pre-existing native title under your traditional lore and custom is what's recognised by the court. This was looked at, and is perhaps something that some follow-up information could be provided to the Committee. There was a Federal Court case in 2021, which precisely looked at this matter and is *Rainbow on behalf of the Kurtjar People v State of Queensland*, and in that matter the Federal Court made it very clear that it's the native title holders themselves who regulate and determine how that right's exercised. I think you're attempting to understand it in the language of the Fisheries Management Act, but it needs to be understood in the language of Aboriginal people's traditional system of lore and custom, which does have in-built mechanisms to sustainably manage the resource.

The Hon. SCOTT BARRETT: There could be some traditional lore that could I guess assist with the size limits so we're not damaging the resource that way.

The Hon. TAYLOR MARTIN: To manage it—

MISHKA HOLT: Yes, so it's a matter for communities to self-regulate, and they do and it's well documented through the State, these mechanisms that communities have in place for millennia to ensure that that resource is sustainably managed.

The Hon. SCOTT BARRETT: Thank you. That's useful.

The Hon. PETER POULOS: Ms Holt, first a question to you and perhaps Mr McAvoy might be able to assist. Is it more the conversation now needs to be that government agencies ought to recalibrate their thinking to be in alignment with native title and Closing the Gap commitments?

MISHKA HOLT: I think fundamentally—I was involved, as was Mr McAvoy and Mr Chapman, in the Fisheries Management Amendment legislation when it passed in 2009 in the work that led up to it. I guess we all felt that that was the watershed moment where there was a recognition from government about what needed to change to reflect the rights and interests of Aboriginal people in New South Wales. That's part of what is so

disappointing and disturbing about the lack of implementation because that is something at a bureaucratic level that the views and opinions have not changed even though Parliament well debated that matter and formed a view that things should change.

Across Closing the Gap there are commitments to increase the legal rights of Aboriginal people, to decrease the incarceration rates, to do things that positively build culture, and yet we sit here with a mechanism that was brought before Parliament and passed in 2009 that was intended to do that very thing and it's being opposed. There does need to be a reckoning, and this is across the board. This is in native title, in cultural fishing, in Aboriginal cultural heritage, in land rights. Across the board in matters involving Aboriginal people in New South Wales, there really does need to be a reckoning about a change in government. Aboriginal people have had to bend and shape to government since settlement and it is now time—with the coming together of Aboriginal and non-Aboriginal people and in Closing the Gap and in all of the things that are changing in our society—to say, "Government needs to change and the bureaucracy needs to change."

TONY McAVOY: I'll only add that it's in the Aboriginal Legal Service submission that the NSW Bureau of Crime Statistics and Research shows that between 1996 and 2020 there were 30 custodial sentences, 23 custodial alternatives, 93 community-based orders, 279 fines of the most impoverished sector of the New South Wales population, and the Centre for Aboriginal Economic Policy and Research in their submission, in their research, has shown that although Aboriginal people make up 4 per cent of the people living on the South Coast, they've accounted for 80 per cent of the jail terms for Fisheries offences since 2009. It's an outrageous disparity, and I was here I think probably two years ago giving evidence about the incarceration rates in this State and the promise that the Closing the Gap process had in terms of trying to change the direction in which the continuing process of colonisation over the lands of Indigenous people keeps incarcerating Aboriginal people.

I'll just add, one of the other hats I wear is as co-senior counsel in a truth-telling commission in Victoria, the Yoorrook Justice Commission. It's a royal commission in Victoria, and that truth-telling commission will be looking at the ways in which government has failed to protect Aboriginal people. I imagine that if such a truth-telling process ever comes to this State, which I'm fairly confident it will, that people who have been involved in this particular system will be subpoenaed and they will be cross-examined about it because there is injustice. There is clear injustice, and the ability to change that injustice sits in the hands of Parliament and the Minister, and you can't shirk that.

The ACTING CHAIR: We have one final question from Mr Primrose.

DANNY CHAPMAN: Just before you do, if this is a Closing the Gap question, I need to say this, Chair, I'm sorry. The New South Wales Government Crown Solicitor's Office has, during this prosecution process and all that stuff, the New South Wales Government's Solicitor General's office has found a way and the courts have found a way not to put Aboriginal people in jail with this Closing the Gap story when they're being prosecuted for fishing. They are being fined, and as most recently fined around about \$35,000 and one just recently a \$30,000 fine, and they are prohibited from going near any water controlled by the Department of Primary Industries, and they're not incarcerated.

You go down and ask them people and they'll tell you that you may as well chuck them in jail, because this is far worse than throwing them in jail. They'll tell you that; they've told me that, because they are now out there in the [inaudible]. They have got no way and means of paying for the \$35,000. How are they going to get their life back on track? How are they going to get their licence next year? How are they going to have a registered car? They're going to have to go into agreements with government to pay them off until later, have a debt until they die because they can't pay them off. The other thing what they've been able to achieve in amongst all this stuff is the water is just over there and they can see it. Their cultural activity is just there. This is worse than a form of incarceration, in my view. This has just got to stop. I don't know; I just can't find the words. I'm really frustrated about the whole lot. Thanks, Chair.

The ACTING CHAIR: Thank you. We might have to put your questions on notice, if that's alright, Mr Primrose? We've run over time.

The Hon. PETER PRIMROSE: Thank you. My only question was—and, please, take it on notice if you wish—are there any legal reasons why the will of the Parliament couldn't be enacted within, say, a month by gazetting the commencement to that section in, say, a month's time?

TONY McAVOY: None.

The Hon. PETER PRIMROSE: Can I ask all three witnesses?

TONY McAVOY: My Chapman can speak for himself. It's a legal question. Ms Holt, I think, should be asked to answer it.

The Hon. PETER PRIMROSE: Yes. Is there a legal reason why you couldn't commence it in a month's time?

MISHKA HOLT: There is no legal impediment from NTSCORP's perspective, no legal impediment whatsoever. We have addressed that matter in our submission.

The Hon. PETER PRIMROSE: Yes, that's why I asked the question. Thank you.

The ACTING CHAIR: Thank you all for attending today and also Ms Holt for coming online. We may have additional questions after the hearing. We've resolved that answers to these—and I note that there was at least one question taken on notice—are to be returned within 21 days. The secretariat will be in contact with you in relation to any further questions. Thank you again for coming today.

(The witnesses withdrew.)

(Short adjournment)

Mr JAMIE DONOVAN, Chair, Bunyah Local Aboriginal Land Council, and Member, Steering Committee for the Birpai Barray (Hastings) Aboriginal Cultural Fishing Local Management Plan Trial, before the Committee via videoconference, affirmed and examined

Mr WAYNE ANDERSON, Member, Aboriginal Fishing Advisory Council, and Member, Steering Committee for the Birpai Barray (Hastings) Aboriginal Cultural Fishing Local Management Plan Trial, before the Committee via videoconference, affirmed and examined

The ACTING CHAIR: Good afternoon. I now welcome our next witnesses. Both of our witnesses are online. Mr Donovan, did you have an opening statement that you'd like to give the Committee?

JAMIE DONOVAN: Yes, I will. Wiyabu. Minyang nyura wuba ling? Barraba yittyir Jamie Donovan. Ngatha Biripi Worimi guri. Ngatha djuyaling Gathang. Yii Barraba barray. Yii Birpai barray. Nyurra yiigu marala barraygu nyaagi ngarragi. Wanyimbuwanyimbu ganyila wanyimbuwanyimbu ganyiy Biripi barray. Gathay nyiirun wakulda. Marrungbu.

I said, "Hello, everybody. How are you all? My name is Jamie Donovan. I am a Biripi Worimi man. I'm speaking to you in the Gathang language. This is my country. This is Birpai country. We've all come here to this country to see, to protect, to remember and to think. Always was, always will be, Biripi country. Let us all get back together as one."

I have been a part of the Birpai Barray (Hastings) Aboriginal Cultural Fishing Local Management Plan since the beginning of consultations just over five years ago. As the current chairperson of the Bunyah Local Aboriginal Land Council and also the Mid North Coast Regional Aboriginal Mens Group, it is my view that the Aboriginal Cultural Fishing Local Management Plan has been successful in supporting both our community and third-party interest groups in fostering greater relationships of understanding and acceptance.

Relationship building processes have taken place with the Department of Primary Industries through regular attendance at our community NAIDOC events. DPI compliance officers have worked with our communities to gain greater understanding from us around our cultural fishing needs and the Aboriginal perspective of sustainable fishing practices. We've had some very rigorous conversations around the continuing systemic cultural genocide practices within fishing laws, and we've had some very good, shared cultural understanding where we've seen improved cultural competency through these relationships.

It's been a very caring and nurturing information-sharing process but has always allowed our community to have complete ownership over the outcomes. Ultimately, we now have a plan that has been vetted by all industries and industry-based groups, DPI, the Minister and, most importantly, by our community. We have a plan that is now active and recognises our inherent cultural fishing rights within our designated boundaries. Our community can now safely hunt, gather and collect seafood resources without the fear of prosecution and harassment from DPI compliance officers. The local management plan has been what our community has needed to assure our community's ongoing cultural fishing rights. Marrungbu. Thank you.

The ACTING CHAIR: Thank you, Mr Donovan. Mr Anderson, did you have an opening statement that you'd like to give the Committee?

WAYNE ANDERSON: Yes, please. Guudji Yiigu. Wiyabu. Greetings. Hi. Ngatha dyuyabu Birrbay Birrbayga barrayga. I speak to you in Gathang on Birpai country. Ngatha yitirr Wayne Anderson. Ngatha Djariigaba yalawayn Gurukga. Ngatha Birrbay/Warrimay guri. My name is Wayne Anderson. I was born in Taree and now live in Port Macquarie. I am a Biripi Worimi Aboriginal man. Wanyimbuwanyimbu ganyila wanyimbuwanyimbu ganyiy Birrbay barray. Always was, always will be, Birpai country. Barray marrung yiigu. Country good here. It is very good country. Barraygaray dhaanbaan bila, yurra, gurrwa, djuukan, wati, makurr, bulgarr, buna, guribiyn—country having strong sky, sea, sun, river, fish, mountain, beach, Aboriginal people. Marrungbu Dangaygal bimayguba, bangayguba, gumbaguba. Thank you to our Elders, past and present. Gathay nyiirun wakulda. Let us all go as one. Marrungbu. Thank you.

I speak to you in Gathang and English to highlight that the New South Wales Government is strongly supporting the revitalisation of Aboriginal languages. What comes with this revitalisation and re-establishment of being able to speak their language is health, strength and a sense of peace with what things have happened in the past. I am a 65-year-old man. I grew up in a family of saltwater people. My family passed onto me a strong connection to the sea, rivers, lakes and creeks of this country. My family taught me how to fish, crab, prawn, oyster, pipi, collect abalone, catch beach worms with my fingers, collect bait, read the water and environment conditions, respect Elders, have fun being with others when doing these things, catch and collect food for others. I have a sense of responsibility of whatever I catch that this is to be shared with family. For some species, I am the only one to be catching and distributing that fish. I am the bait catcher for our family gatherings.

I am a father, an uncle, a grandfather, as well as a Guri, a Bingay and a community Elder, who is passing on as much knowledge as I can to those willing to learn. I also accept, as an Aboriginal man, that there are things that I am unable to eat, including fish, because of culture and commitment to the lore. I am here today to support a process that will return to the Aboriginal people of New South Wales the right to use cultural fishing and cultural fish management practices in an environment that respects Aboriginal people and Aboriginal culture. I am looking forward to the New South Wales Government strongly supporting Aboriginal cultural fishing and Aboriginal cultural fish management practices. Marrungbu. Thank you.

The ACTING CHAIR: Thank you both. I'm going to throw it open to questions from the Committee. I'll throw it over to Labor to begin.

The Hon. MICK VEITCH: Thank you both for your opening presentation. Mr Donovan, how does the local management plan operate for cultural fishing? We've heard a bit about these fishing plans, but how does it work? What are the arrangements that you've put in place?

JAMIE DONOVAN: Essentially, what we've been able to negotiate with the DPI are our bag limits that sit outside the current recreational requirements when we're catching or fishing for cultural purposes or cultural activities. In our current fisheries environment, the waterways of the Hastings and the Camden Haven network where the fisheries plan covers are actually restricted fisheries areas. What this plan does is removes those restrictions and allows Aboriginal people to hunt and gather anywhere within those waterways. So it removes those restrictions, as I said, around compliance. We don't have to go hunt and gather out of fear of being harassed by DPI compliance officers when we're trying to collect food sources for our family and for community events.

The Hon. MICK VEITCH: Does it just relate to the catch, to the take? Does it talk more as well about waterway management and land management around the waterways, or is it specifically very much about bag limits and the like?

JAMIE DONOVAN: In the plan, it's in regards to the process of catching as well. So we've got access to use nets as well. Currently the Hastings River is locked out for commercial fishermen and netting. We've got access to be able to do that for cultural events. Obviously in the early stages of the plan itself, part of the plan is that we will monitor and record all catch takings and stuff from the designated area within the boundaries. Over time we'll be able to track that data—species caught, the number of and the impact.

The Hon. MICK VEITCH: Mr Donovan or Mr Anderson, has the local fishing management plan changed the way in which you interact with DPI Fisheries? If so, how?

WAYNE ANDERSON: I'm happy to answer that. It has been a long process. This started in 2017 and we had it signed off by the Minister in June this year, so it has only been in operation for a very, very short period of time. But one thing that has happened through this process is that the relationship with the community and DPI has developed a really strong and trusting relationship, especially for the personal people involved from DPI. I won't mention any names because I'm not sure whether I can do that here. But the other aspect which has come from this is also a stronger sense of community. We have two LALCs—Aboriginal land council groups—in our local area that are involved with this plan. That's Birpai LALC and Bunyah LALC. These communities are so much stronger because of this plan now. We have a sense of being united and have a sense of working together, so it has been a really strong process not only in terms of the Aboriginal people but also for the whole community.

The Hon. MICK VEITCH: In relation to the plan and the way it has been in operation for a little while, how is the broader local community involved in this as well? Has it enhanced the relationship with the local community up there with the broader community or vice versa?

JAMIE DONOVAN: I think we haven't really seen any negative impacts. As Uncle Wayne said, it has only been in play now for the past two months or so. There's a lot of public notification that's going to happen. DPI are placing signage at all the major boat ramps within the Hastings and the Camden Haven network so that recreational fishermen are able to see and be aware that cultural fishing may be taking place within the waterways. Part of the approval process—as I said before, this plan had to go via our local recreational fishermen lobbying group and local commercial fisheries groups, so they are aware that the plan was being considered and that it has now been released and launched. Those groups know that it's happening. As I said, in a lot of the discussions we are a very small minority of the community, and the impact that our community would have in this particular space in comparison to those commercial fishing entities is very minimal.

The Hon. TAYLOR MARTIN: Thank you both for making time this afternoon. Mr Anderson, it was very interesting to hear your recount of, although it is shore operation, how the local management plan is going up there. With the experience you had, what would your advice be to others throughout New South Wales who are grappling with this issue and whether they should have an LMP in their area or not?

WAYNE ANDERSON: Jamie and I spoke about this briefly the other day. We're very conscious that the model that we have will suit our communities. It's a very small area and we made a conscious process that really we were very much a test case, along with Tweed, and that what we need to do is give the community comfort in terms of moving forward in the process and to give realistic boundaries to the project. We only include the two LALC boundaries. In other communities, their areas would cover a much larger area. But what we have always said when we started this project—now that we have it implemented, we're a community that will be able to support other communities if they would like to move in this direction. We are certainly not saying that you have to move. But if you wanted to move in this direction, our community would be happy to support you.

The Hon. TAYLOR MARTIN: Mr Donovan, anything to add?

JAMIE DONOVAN: As Uncle Wayne said, it's a conversation that we both had recently in regard to—our LMP is targeted on a very small cluster of our Birpai traditional boundaries. This plan only covers the northern boundary of Birpai country. It doesn't cover the whole Birpai nation. So there are other complexities around this plan. As cultural fishermen, we can't step outside the boundaries that are designated in this plan, even though we are both Birpai and Worimi men. Our country extends a lot further than what this plan does, so we're still restricted to the two river systems that are identified in this plan. In terms of moving forward, this was, given our current living arrangements—we live on country in northern Birpai country. It was a commitment that we were going to make to our communities to give them access to an inherent fishing right that they would not have had, and still don't have, under the former 2009 fishing amendment Act.

The Hon. TAYLOR MARTIN: Thank you. Would you be able to elucidate a bit more on the differences between what operating under section 21AA might be versus the LMP that you're trialling there?

JAMIE DONOVAN: To be honest, I haven't really got my head completely around the section 21AA stuff.

WAYNE ANDERSON: Is that about section 37 and applications through the [inaudible]? Is that what you're referring to?

The Hon. TAYLOR MARTIN: Whatever you would like to talk to, whether it is in regards to how the proposal was under the 2009 legislation and how it is playing out for you there with your LMP. Basically, to boil it down, what are the benefits that you see with this trial versus any other alternative?

WAYNE ANDERSON: If we refer to the fishing restrictions that are stated in the interim access process—

The Hon. TAYLOR MARTIN: Yes.

WAYNE ANDERSON: —and what it does, it opens up a higher level of catch available for Aboriginal people compared to non-Aboriginal people. But what it omits to talk about there are the cultural practices involved by Aboriginal people that are not available. For example, it is illegal for an Aboriginal person to actually hold a spear in their hand and to spearfish. It is illegal to actually build structures which traditionally were there, such as fish traps, which in many cases have been destroyed illegally. It would be illegal for us to actually go out and re-establish those without permits. It would be illegal for us to go out in large groups and put fishing methods together in a teaching practice and in a collection practice.

So the interim model is only there as a process to increase the number of fish. It doesn't address the cultural practices that Aboriginal people want to include; and in our case, with our plan, it does include more cultural practices, it does include those things which we do want to do and, as we go along, we are going to find that there may be other practices that other community members will want to bring back as part of their family business. So the 2009 has a big gap, a huge gap, if you want to respect Aboriginal culture.

JAMIE DONOVAN: I guess to add to that too, the difference being the 2009 Act was done in 2009. We are now in 2022. We have access to our fishing rights that that Act would have given us back to 2009, we have access to that right now, whereas other communities don't, and that was a benefit for us.

The Hon. SCOTT BARRETT: Can I just ask—sorry, just a technical thing as we look to go forward in the other one—how do you manage size limits underneath the LMP? Is that something you guys self-manage?

JAMIE DONOVAN: Yes, part of that compliance, working alongside compliance and stuff like that as well, so the recording of fish take sizes and numbers. But, again, Aboriginal people have been sustainably living off this country for 60,000 years. We are the masters of sustainable living and practices. You guys got your bag limits and worked all that sort of stuff out from our traditional cultural practices. Our community, in terms of our take limits, we don't take undersized fish or fish outside of our seasonal requirements. So it is something that for a long time we have been practising those rights.

The Hon. SCOTT BARRETT: Yes, it is not just open slather. There is lore around it—as in your lore—around size limits in particular and other methods.

JAMIE DONOVAN: Yes, 100 per cent, and particularly around spawning season and stuff like that. We are not here to just go in and rape and pillage, as you would see through trawlers and all that sort of stuff. Our catch take limits are based around cultural needs and events and functions.

The Hon. SCOTT BARRETT: Mr Anderson, what has the involvement been or the discussions of this LMP through the Aboriginal Fishing Advisory Council that you are on?

WAYNE ANDERSON: The Aboriginal Fishing Advisory Council had our first meeting in the formation of the [audio malfunction] we introduced in our first meeting this year. It was again talked about in the context of if communities were interested in moving forward with such a plan, rather than a process of saying that this is something that communities have to do. So it was a knowledge-sharing session with AFAC, and I was lucky to be there. I am lucky to be a member, so I could answer questions from people who were there. It was just one of those things that were shared, so it was good to be able to share that.

The Hon. SCOTT BARRETT: So you are in a trial process. I know it is only early stages, but are you expecting to continue to roll this on?

WAYNE ANDERSON: That is a Government decision.

The Hon. SCOTT BARRETT: Sorry, would you like to see this roll on?

WAYNE ANDERSON: Absolutely. I would like to see this process be perpetuated forever. I think one of the things that [audio malfunction] the numbers within the plan to catch are [audio malfunction] but the thing within the plan is that it acknowledges that cultural practices has a sharing process in fishing. So as I deliberately spoke about in my introduction, I have responsibilities of catching fish for family. So when Wayne Anderson goes fishing, a good percentage of that catch goes to other members of family. When we have bigger gatherings of family, there is a greater pressure to be polite and to feed people. So this document, which is the cultural fishing plan, has numbers which are far greater than the interim numbers, but those numbers are only needed when you are operating with a cultural practice in that you are not catching fish just for yourself, because what you are doing is you are catching fish for a family group or a social gathering and other responsibilities with it.

The Hon. MICK VEITCH: Is the plan publicly available?

JAMIE DONOVAN: It is my understanding that it is.

The Hon. MICK VEITCH: Is there a review period? How long is the plan for?

WAYNE ANDERSON: I believe it is for two years. Part of that process is because within the development of the plan we had the impacts of COVID, as everyone has, so everything was held up. So the time frame which the plan was hoping to be could have been longer—if the COVID process hadn't slowed us down. But at this stage it is a two-year process. Certainly that's a very small period of time. But in terms of starting the process, let's start.

The Hon. MICK VEITCH: Is the view to roll the plan over for a longer period of time? Is that where your conversation or consultation is at?

WAYNE ANDERSON: Jamie?

JAMIE DONOVAN: I think moving forward, post the review, as a community member I would like to see that this plan not so much be rolled over but just become a normal part of our fisheries process. It is not living under a plan where we have got to continually monitor. I just think the restrictions that have been removed from us—and this is one argument that we had put quite vigorously at nearly every meeting when we were in the consultation phase was around access to pipis. These are a food source that have been abundant for Aboriginal people for thousands of years, and we have middens in our local community that are carbon dated to over 10,000 years that validate this.

The early conversations that we were having was that, "You will not be allowed to have pipis. They are prohibited for anyone in New South Wales to take and to eat." Under this plan it gives us the right—even though we have been eating them. Those sorts of restrictions upon our cultural practices—we were being told by a government agency that we couldn't continue to hunt and gather a traditional food source that our people have continued to eat for thousands of years, with no real justification other than that somebody got sick in a restaurant in Sydney and there were concerns around toxins in the water.

The Hon. MICK VEITCH: The other question I had is around the training for DPI Fisheries officers as a part of this process. Was there training for the DPI officers? If so, hopefully you were involved in that process.

JAMIE DONOVAN: Wayne, do you want to answer that?

WAYNE ANDERSON: Yes. One of the starter points was some cultural awareness training back in 2017, whereby DPI staff came to Birpai LALC. One of the things that was conveyed by the DPI staff was "Why didn't we have this long before?" and "Isn't it nice to be able to have these conversations?" There was a sense of looking forward to the opportunity of being in the community without having the big stick of DPI regulations, and actually enjoying being able to connect with Aboriginal people and finding out what they're doing in their cultural practices. The other aspect within it is that DPI staff will know who are the members of the community who have opted in to be part of the cultural fishing plan. Not everyone will opt in. If they don't opt in, they'll stay for the interim numbers and also the other regulations of fishing. One of the things is that we're building that interaction between the community and DPI. Every time I've met DPI staff so far in everything that we've done, there's always been smiles within the process. It's really actively building a positive trust relationship. Thank you.

The Hon. MICK VEITCH: My last question is probably an obvious one. If you were to go through this exercise again, what would you do differently? What could've been done better?

WAYNE ANDERSON: Jamie?

JAMIE DONOVAN: I think, if anyone can get rid of COVID—that really stopped or halted a lot of the momentum that we'd gathered really early in the piece. Without COVID, we would have had this plan rolled out two or three years ago. But in all honesty I think the process that we have been through, the genuine consultation that I have felt for my community, with DPI, has been second to none. They maintained great communication with us, every step along the way. They made community feel very reassured around the whole process and that our voices needed to be heard. If we weren't speaking up, they were making sure: "Come on. We need feedback." They allowed us the time to consult with our community. So this Fisheries plan is not the Jamie Donovan and the Wayne Anderson consultation plan. There are many, many more members of our community that are involved in this.

We used the relationship with both LALCs to springboard the connection with community and to be able to reach out far and wide with as many Aboriginal families as we can. I really appreciated the fact that the agency that led the plan took that time and respected that time from community and respected that, whatever time frames and restrictions they had, our time frames were not the same. We weren't aligned with that, and they respected that process. It's one thing that I wouldn't change about that. I really strongly encourage that, if any other communities wanted to take this up, they make sure that their voices are heard and that they aren't pushed and pressured into going into anything that they don't want to, because this is something that our community took quite some time to discuss and engage in.

WAYNE ANDERSON: I can add to that. I think DPI picked the right staff to be involved, with the staff that did give the time and commitment and trust to this. It's as much a reflection on their capacities as people. If the wrong staff come into the process, it would be very difficult for those staff and be very difficult for community to develop a sense of trust and have that wellbeing as a result of the whole process. So again I'd like to acknowledge the DPI staff who were involved. They were excellent and great people in terms of supporting a process, so thank you to them.

The Hon. MICK VEITCH: Thanks for all the information you've provided around the local management plan for fisheries. Would you prefer the process you've got now? Or would you prefer that section 21AA just commence in New South Wales?

WAYNE ANDERSON: I'd like to be able to practise my cultural fishing in any family area, anywhere that I'm connected to people. If I go down one side of the Hastings River, I can do cultural fishing. If I go down the other side of the river, I'll be fined. That's the reality of what happens or could happen. It should be opened right up across New South Wales. You just can't have a dotted line and say "Culture here" and a dotted line outside—"Stop your culture." I can't [audio malfunction].

The Hon. MICK VEITCH: What you're saying, Mr Anderson, is that you would prefer section 21AA to commence.

WAYNE ANDERSON: I would like all cultural fishing practices to be open for everyone.

The ACTING CHAIR: Thank you. We've got a couple of minutes left, so I just thought I would open it up to both of you to ask if there was anything else that you wanted to bring to the Committee's attention, that you don't think that we've covered today. I might start with you, Mr Donovan, if there was anything additional that you wanted to put on the record.

JAMIE DONOVAN: In relation to the last question, I'd just like to echo what Uncle Wayne has said. I'm from Birpai and Worimi country. I'm currently sitting on my mother's homelands at the moment. I know now

that I can't go out and fish to my full cultural capacity here in Worimi country. That, for me, spiritually impacts on me and my abilities to be able to go and share that with my children. I'd just like to echo, if that section 21AA is what's going to give all Aboriginal people access to their cultural fishing rights and obligations right throughout the State, then I would definitely back that. But, at this time point in being, with that Act not being in place, this LMP is what our community needs and what gives me access to fisheries to allow me to teach and show my children and the future generations that will continue to carry on my cultural practices into the future the ability to be able to continue practising that.

The ACTING CHAIR: Mr Anderson, did you have anything to add?

WAYNE ANDERSON: Yes. I've got a list here. I've been involved in a number of things. The North Coast regional plan is the latest one that I'm involved with—the North Coast Regional Water Strategy, the marine estate strategy, AFAC, the Aboriginal Fishing Advisory Council. One of the things that strikes me in the operation of the Government is that it's in a process of trying to improve its capacity to be respectful to Aboriginal people and Aboriginal culture. The whole structure, when it comes to working with and getting feedback and supporting Aboriginal people, is a very compartmentalised process. It would be wonderful if, in the process of the [inaudible] implementation of cultural fishing being improved across New South Wales, the other departments of DPI, National Parks, Water all come together and be at the table, to be able to actually find out what will be the impact of this, what will happen when Aboriginal people walk into or go to places to practise cultural fishing. If we continue to compartmentalise, it makes it very difficult for Aboriginal people to still be comfortable, to be able to travel country and carry out cultural practices. Thank you.

The ACTING CHAIR: Thank you, and thank you both for attending today and providing your evidence. The Committee members may have additional questions for either of you after the hearing. The Committee has resolved that the answers to these would be returned within 21 days. But the secretariat will be in contact in relation to those questions if they do arise. Thank you both again for coming here today.

(The witnesses withdrew.)

Mr SEAN SLOAN, Deputy Director General Fisheries, NSW Department of Primary Industries, affirmed and examined

Ms SARAH FAIRFULL, Director, Aboriginal Fishing and Marine and Coastal Environment, NSW Department of Primary Industries, affirmed and examined

The ACTING CHAIR: I welcome our next witnesses. Is there a short opening statement that one of you would like to provide?

SEAN SLOAN: Yes, Chair. Thank you. I'd like to start by acknowledging the traditional custodians of the land we're meeting on today, the Gadigal people of the Eora nation, and pay my respects to Elders past, present and emerging. I'd also like to acknowledge the traditional custodians of the lands of those joining the hearing today in person and online and pay my respects to Elders past, present and emerging. The New South Wales Government recognises the cultural and spiritual importance of aquatic environments and fisheries resources to Aboriginal people, who have been harvesting from and caring for the rivers and oceans for thousands of years. We are actively working with Aboriginal communities and other stakeholders to support Aboriginal cultural fishing within a sustainable natural resource management framework.

One of the key points that I would like to highlight is that DPI Fisheries is a natural resource management agency with an ecologically sustainable development focus. In administering the fisheries legislation, our main focus is on ensuring our fish stocks and the environments and waterways that support them are managed sustainably and shared equitably among all of the people of New South Wales, including current and future generations. With a population of over eight million people living in New South Wales and 80 per cent—or nearly 6.3 million—living on or near the coast, we have an estimated one million recreational fishers, nearly 1,000 commercial fishers and Aboriginal communities practising cultural fishing along the New South Wales coast.

We have a very important role to balance these competing demands, and to ensure the harvest by all fishing sectors from our fish stocks and the pressures on their supporting environments are managed carefully. We have various tools available to manage fish stocks, including catch quotas, take and possession limits, spatial and seasonal closures, gear restrictions and size limits for individual species to ensure they have the opportunity to breed, reproduce and replenish stocks. Since the amendments in 2009 to the fisheries legislation, the department has had a particular focus on supporting the continuation of cultural fishing. The definition of cultural fishing under the Fisheries Management Act 1994 is:

... fishing activities and practices carried out by Aboriginal persons for the purpose of satisfying their personal, domestic or communal needs, or for educational, ceremonial or other traditional purposes, and which do not have a commercial purpose.

I'd like to take the opportunity today to provide clarity on the management of cultural fishing across New South Wales and the department's work on implementing the 2009 Fisheries Management Amendment Act. I'll highlight some of our initiatives to support cultural fishing and increase participation and economic development and involvement by Aboriginal people in fisheries and aquatic resources within a sustainable natural resource management framework. In New South Wales the Fisheries Management Act provides the framework in which to conserve, develop and share the fisheries resources of the State for the benefit of present and future generations.

Upon passage of the Fisheries Management Amendment Act in 2009, the New South Wales Government took immediate steps to commence schedule 1 in its entirety. This includes changes to the legislation to recognise, protect and promote Aboriginal people's cultural, spiritual, social and customary association with the State's fisheries resources; providing permits for cultural fishing; establishing an Aboriginal Fishing Advisory Council; consulting with the council and other key stakeholders on the development of a cultural fishing regulation; and waiving recreational fishing licence fees for Aboriginal people. At this time interim cultural fishing access arrangements were also established to enable higher levels of take for culturally important species. The Aboriginal fishing trust was also later established, which has so far funded 28 projects to support cultural fishing across New South Wales.

All of the 2009 amendments to the Fisheries Management Act have commenced, except for section 21AA. It is my understanding that the intention of the Government has been for section 21AA to commence with a supporting regulation to underpin the conservation, development and sharing of fisheries resources and to enable cultural fishing to operate within the fisheries management framework. From 2010 to 2016 the department worked with stakeholders to develop draft regulations to give effect to section 21AA. This included establishing and working with the Aboriginal Fishing Advisory Council—the AFAC—the NTSCORP,

the New South Wales Aboriginal Land Council and other Aboriginal stakeholders on a draft statewide regulation, which was tabled as an attachment to the New South Wales Government submission.

Since 2016 when AFAC and other key stakeholders advised the New South Wales Government they no longer supported the draft statewide regulation, DPI has been working on alternative place-based arrangements to facilitate cultural fishing, namely local management plans. LMPs provide access to fisheries resources for Aboriginal communities to support their cultural practices and ensure they have greater involvement in local fisheries management, including aspects of self-regulation. Importantly, these plans are community led, with DPI providing support to deliver them. We are currently trialling LMPs with the Hastings community, which you have heard about, and will soon be doing the same with the Tweed Aboriginal community.

Increased access for Aboriginal fishers continues to be supported through the Aboriginal Cultural Fishing Interim Access arrangement, which allows for extended take and possession limits. For example, for culturally important species such as abalone, cultural fishers can take 10 abalone, which is five times higher than the recreational bag limit. Since January 2010 DPI has also issued over 140 cultural fishing permits, which have allowed Aboriginal fishers to take significantly higher catches of culturally important species within a set period using various fishing techniques, including haul nets for the annual mullet run. I'd like to table a summary of these permits to the Committee for information.

In recognition that our role in management of cultural fishing is much broader than managing the harvest, we also have a range of Aboriginal cultural fisheries management and engagement activities underway, including economic development opportunities and capacity building of Aboriginal people in fisheries and aquatic environment management. The department leads the delivery of the 10-year Marine Estate Management Strategy initiative 4, with close to \$8 million already invested and a further \$12 million planned for Sea Country education, training and cultural initiatives to protect Aboriginal cultural values and foster the next generation of custodians. I'd like to table a series of 16 videos that provide firsthand accounts of the positive impacts of these projects.

We have recently established a new Aboriginal Fisheries Officer career pathway program, involving the appointment of Aboriginal Fisheries Officers to assist with Fisheries compliance and community engagement. We have established a project to develop an Aboriginal fisheries harvest strategy framework to guide how we incorporate Aboriginal cultural fishing into all New South Wales harvest strategies. We also have a new project in partnership with the Aboriginal Fisheries Advisory Council, the Fisheries Research and Development Corporation and the Indigenous Land and Sea Corporation to support new Aboriginal community owned and operated fishing, aquaculture or aquatic tourism businesses, both inland and coastal. In the weeks ahead we'll be engaging with Aboriginal communities on the opportunities presented by this project.

I want to convey to the Committee that the NSW Department of Primary Industries is strongly in support of Aboriginal cultural fishing within the broader New South Wales fisheries management framework. Our teams are committed to supporting cultural fishing in New South Wales. We remain open to other ways of doing things. Section 21AA is just one part of a much broader picture. In managing the fisheries resources of New South Wales, the department needs to balance all of the competing interests. We will continue to work with communities to ensure that Aboriginal fishers are able to operate within the fisheries management framework to meet their cultural fishing needs. Thank you.

The Hon. MICK VEITCH: Ms Fairfull or Mr Sloan, I'm not sure whether you've heard much of today's testimony or evidence, or had a chance to review the roundtable at Narooma. But it would be fair to say that I was certainly troubled by some of the evidence we've heard. What is the process for a fisheries officer to determine if someone is claiming native title rights? Is there some sort of instruction or guidance that has been provided to go through that process?

SEAN SLOAN: Thank you for the question. First of all, all of our fisheries officers are trained in the legal aspects of both native title and cultural fishing. We do have specific work instructions that our fisheries officers apply when they interact with Aboriginal people who are conducting cultural fishing, whether it be pursuant to a native title claim or whether it be broader cultural fishing.

The Hon. MICK VEITCH: What is that training? Can you advise the Committee? How does that work? Is it a one-day training session? Is it a month's training somewhere? Does it involve cultural training with the local Indigenous groups? What is the training that you talk about?

SEAN SLOAN: If the Committee would like, I'd be happy to provide some detail on how that training is conducted, but essentially every new fisheries officer that is inducted into DPI Fisheries undergoes specific training, and the training that I mentioned is part of that. There's also a standard cultural awareness training that all Department of Regional NSW staff undergo. I think you heard members of the Hastings community refer to the cultural awareness training that occurred in 2017-18, which was more of an immersive training workshop that

occurred. We have plans to repeat that for the whole of the DPI Fisheries staff as well. That's something that we would plan to do and repeat on occasions every few years because of the turnover in staff across the department.

The Hon. MICK VEITCH: Mr Sloan, I don't know whether you can answer this but I will pose the question anyway: Someone has been pulled over on the side of the road by a fisheries officer and there is a process being undertaken to check the vehicle for abalone. During that interaction, how does the fisheries officer start that process of assessing whether someone actually is claiming native title rights? Does the individual have to say they're claiming native title rights?

SEAN SLOAN: Part of the process, first of all, would be the fisheries officer identifying themselves and then, of course, trying to identify the person that they're interacting with. If they were interacting with a person that was identifying themselves as Aboriginal, and as a native title claimant or fisher, then they have specific work instructions where they will ask a series of questions that aim to identify that individual. When it comes to the situations our fisheries officers are faced with in the field, we don't expect them to be lawyers. We don't expect them to be native title lawyers. It's an extremely challenging role that they have to, in the field, work out how they should respond to certain situations.

If it's very clear-cut, and the species and the quantities of those species are within our interim access arrangements—to take the example of abalone, that limit is 10—then those officers obviously then just move on and let the fisher go about their business. But in the instance where they have got larger quantities that are in that category of being a commercial quantity, that's a very difficult matter for the fisheries officer to work out whether or not that's fishing that's pursuant to native title or whether it could be illegal activity. That's the very difficult situation that we are faced with in those situations. In those circumstances, our fisheries officers have to make a judgement when they're in the field. When they're unsure about what the activity is—whether there is any commerciality or illegal activity occurring or whether it is native title fishing that has occurred—they refer those matters to the courts when they're in that realm. Those matters are obviously difficult judgements for fisheries officers to make. They have a very challenging role.

SARAH FAIRFULL: I could probably just add to that, too, that once the fisheries officer has got some information, they can also check whether they're on the claimant list of a particular claimant that has been registered. There is also talking to their registered native title body corporate or other avenues to make investigation before going down the path of trying to test it through the courts.

The Hon. MICK VEITCH: Does the department undertake a scheme whereby they reward individuals for advising fisheries officers that someone may be illegally obtaining abalone—spotter's fees, dobber's rewards or whatever you want to call them? Do you undertake that sort of process?

SEAN SLOAN: I would have to take that on notice, actually, to give you the correct answer.

The Hon. MICK VEITCH: I would really like that. Thank you.

The Hon. PETER PRIMROSE: I don't.

The Hon. MICK VEITCH: Yes. Can I then go to the next part of this process: confiscation? We've heard a number of people talk to us about their equipment being confiscated, their cars being confiscated. What's the legal premise upon which that occurs?

SEAN SLOAN: Those powers of seizure are powers that fisheries officers have when it comes to serious matters and serious offending. Those powers exist so that a fisheries officer can gather evidence. But also, in the broader picture, there's a model of deterrent that exists when there's a serious offence that has existed and the person doing that offending has the risk that their equipment, including vehicles and boats, could be confiscated. That only occurs at the serious end of offending.

The Hon. MICK VEITCH: The confiscated equipment—does it ever return to the individuals or is it sold?

SEAN SLOAN: It depends, generally, on the outcomes of the prosecution that is proceeding. There are times where it may be returned; there are times where it wouldn't be.

The Hon. MICK VEITCH: When it is sold, what happens to the funds? Do the funds go into a trust? Do they go to consolidated revenue? What happens to the proceeds that are then obtained?

SEAN SLOAN: I'll take that on notice to make sure I give you the correct answer.

The Hon. MICK VEITCH: Thank you. The next part of the process, of course, is that individuals at the serious end that you're talking about will finish up in the court system. We heard today that at least nine cases

were withdrawn at that point. What's the basis for the department making a determination that they should withdraw charges?

SEAN SLOAN: Those matters, once they go into that process, are essentially in the hands of a legal team and prosecutors. Certainly I don't get involved in those matters once they are proceeding to those circumstances. There could be any number of reasons. I could provide a list of the potential reasons that could be there.

The Hon. MICK VEITCH: I'd like that, thank you.

SEAN SLOAN: I can take that on notice.

The Hon. MICK VEITCH: In the instance where a charge is withdrawn, does the department go through an exercise with the Fisheries officers who were involved at the initial point to work through why the charge was withdrawn? Do any of the charges withdrawn relate to the way in which that initial interaction took place—say, for instance, that it's at the side of the road or on a beach?

SEAN SLOAN: Every individual circumstance is different, and it's easiest—there's always a debrief activity that occurs after any of those types of circumstances. They would always debrief on how that situation unfolded and how the matter ended up.

The Hon. MICK VEITCH: Does that involve potential training or further training for individual Fisheries officers around the way that they go about that particular interaction?

SEAN SLOAN: Potentially, and it would obviously depend on the particular circumstance and what the reason for withdrawing the prosecution was. Each one of those circumstances would be different.

The Hon. MICK VEITCH: I can't recall whether you said you would take this on notice, but we heard of about nine cases today. Would you be able to tell us how many have actually been withdrawn by the department, particularly since section 21AA went through both Houses of Parliament? In that time frame, I'd like to know how many cases have been to court and then withdrawn.

SEAN SLOAN: I can certainly provide that figure; I don't have the figure at the top of my head.

The Hon. MICK VEITCH: And also the reasons—that would be pretty interesting to the Committee, I'm certain.

SEAN SLOAN: Yes.

The Hon. MICK VEITCH: I hear your opening comment, and I've read the Government's submission. We previously heard the evidence about the local management plans, but at the end I did pose the question—if those individuals were able to have the local management plan or section 21AA, they would still have section 21AA. I read the submission and I hear your testimony, and the department has put a number of things in place since section 21AA went through both Houses of Parliament. But the reality is the fair weight of evidence before this particular Committee says that section 21AA should be commenced at the earliest opportunity. Does it frustrate the department that section 21AA has not been commenced?

SEAN SLOAN: I start by just reiterating how committed the department is to support cultural fishing. Hopefully not just the statements that I've made here today but the evidence that's out there shows that we are committed to that. A lot of the points that have been raised here so far in the inquiry relate to one species, which is abalone, and a community on the South Coast. We've made the offer already, and I make the offer here again today, that we would like to work with the community to resolve those issues and to find a way forward. There are obviously various ways that we can do that, but we are committed and very open to doing that. I just make that very clear statement.

Yes, it's challenging for the department, because we're charged with managing the natural resource base. That's our fundamental role in government, and we manage it on behalf of all New South Wales stakeholders. We have a number of commercial fishers, recreational fishers and Aboriginal communities and cultural fishers, and we have to balance all of those competing interests. In general terms, commercial fishers have very tight arrangements around how catches are set and how they're monitored, through quota systems et cetera. Recreational fishers generally have the bag and boat limit and possession limit rules. For cultural fishers, because of how unique the practices are, a place-based solution like a local management plan really lends itself to tailoring the arrangements to those local communities, which I think is what the Hastings community—why it's working for them.

Section 21AA has provisions that, if it were enacted without a regulation, would simply exempt Aboriginal people right across New South Wales from sections 17 and 18 of the Act, which is where the take and

possession limits are set up. Essentially, any person that identifies as Aboriginal would be able to conduct cultural fishing without a take or possession limit, and that's the simple effect if that is what happens. As the agency managing the natural resource base, certainly our preference is to manage cultural fishing within the broader framework of sustainability so that the total take for all of these species is managed sustainably. We're talking about all species, not just one, and not just part of the State; we're talking about the whole State and all species. Certainly it's challenging for us, and it is frustrating that we have these circumstances that we've had before the Committee. But we are very committed to working with Aboriginal communities to resolve these issues and also to make sure that we have a sustainable fish stock, not just for now but into the future.

The Hon. MICK VEITCH: This is my last line of questioning before I hand over to others, because I could hog this for the whole time, as you all know. This morning we had the Abalone Association and the Recreational Fishing Alliance before this Committee. They were both very critical—I say "very critical", but they would probably say "critical"—of the communication or lack thereof from the department to themselves. They see themselves as stakeholders in this process. The Recreational Fishing Alliance was very supportive of the cultural fishing process, and their view was that the department could be doing more, particularly educating recreational fishers around cultural fishing so there's a greater understanding here of what is actually being proposed in section 21AA. Do you accept, Mr Sloan, that the communication from the department needs to improve?

SEAN SLOAN: We're always open to suggestions for improvement, so I start by saying that. In terms of how we are communicating at the moment, we have an advisory council for Aboriginal fishing, for recreational fishing and for commercial fishing. Those councils provide advice to the Minister and the department on managing those sectors, and then above those advisory councils there's a Ministerial Fisheries Advisory Council that has all of those sectors sitting at the table. The meeting outcomes and minutes and summaries of those meetings are published on the website after they've been cleared et cetera, so that's one way that information is provided.

When it comes to things like the granting of permits for cultural fishing, which is one of the issues that has been raised with us, we have a situation where sometimes—in fact, in a lot of cases—there are privacy issues that arise with an individual permit for an individual community or area. Sometimes it could be related to—and in most cases is related to—a particular event. It could be a celebration; it could be sorry business; it could be a whole range of things. We're quite conscious in—what would it add to go and consult with recreational fishers when we're dealing with those types of issues? But I think, in terms of how we publish at a sort of a summary level those outcomes, we could probably make that more publicly available.

We do have a website that has all of the information available on cultural fishing, and that's probably something that we could publicise more. We do have a range of public events where our staff go along and actually do talk to the community about cultural fishing and all other types of activities around that. We do make attempts to do this, but I certainly take on board what's been said, and we're open to improving things. I might just invite my colleague Ms Fairfull to see if there's anything that she might add.

SARAH FAIRFULL: I think Jamie and Wayne also touched on the fact that when we were doing the local management plan for the Hastings, we did make an effort to go and talk to the recreational fishing clubs and the commercial fishers up there before the plan was launched, to make sure they were aware of the content and also the interactions that may occur with their activities, and took on board their feedback in finalising the plan. We also, if we're issuing a permit that affects a recreational fishing haven, will make sure we reach out to local clubs. And we have reached out to RFA in the past to let them know the reasons why we've issued the permit for that particular area, and, as Stan has said this morning, they're very supportive of those activities.

We've also been very proactive in talking through our marine park management plan, which touches on the whole coast for five mainland marine parks, and had a concerted effort around Aboriginal engagement as well as engaging with the broader public through that process to make sure they were aware of a particular objective around promoting cultural values within our marine parks as well. So we are always willing to learn and do more, and this is an opportunity to see where we can make some improvements.

The Hon. TAYLOR MARTIN: Thank you for being here this afternoon. Can I just start by asking, how is it the case that we're here at the back end of 2022 discussing why something legislated in 2009 still hasn't been implemented? Are you able to walk us through?

SEAN SLOAN: Yes. I've got a chronology here that I can table for the Committee to be able to see at a level of detail how that has occurred. From 2009, when the amendment Act passed—

The Hon. TAYLOR MARTIN: Before you do go into it, I appreciate the time line and I believe there is something similar, maybe smaller, in the Government's submission. But, if you don't mind, maybe more of an analysis of what has played out rather than just—

SEAN SLOAN: Okay. I should say I wasn't employed by the department at that time. I've been in New South Wales for about two years and this happened before my time, but I've had to become very familiar with this process in my role now. Essentially what happened was there was an effort made, which was between 2010 and 2016, to develop a regulation for cultural fishing. When the amendment Act passed in 2009, the first step and the first task was to set up the Aboriginal fisheries advisory council because the Act actually says you can't put together a regulation without consulting with the Aboriginal fisheries advisory council. So the first task was setting up the council, and that happened.

There was then that six-year period where there was development of a regulation. The Aboriginal fisheries advisory council was obviously leading that process with the department. There was a group of stakeholders bringing to the table commercial fishers and recreational fishers as well to be part of that process, and there was broad consultation with the key stakeholders and the wider community. And at a certain point in time in 2016 the Aboriginal fisheries advisory council and the key Aboriginal stakeholders notified the Government that they no longer supported that approach. From that time forward emerged this concept of having a local management plan, which was a more place-based solution to managing cultural fishing.

I should add as well that back in 2010 when that process started, this interim access or cultural fishing access arrangement was set up. So that was designed to essentially recognise that cultural fishing is completely different to all other forms of fishing and that cultural fishers should not be bound by recreational bag limits. So the default setting was that whatever was there in the recreational bag limit and possession limit arrangements was doubled. By default that was the outcome. So, for example, two rock lobster became four rock lobster for cultural fishers. In fact, we've just recently increased that bag limit to three, so the cultural limit now would be six for rock lobster.

Then for specific species that didn't fall into those default settings—and abalone is one of those—there was a particular limit that was created in that interim access arrangement. So that was designed so that whilst this regulation was being developed there would be something in place. Obviously, during that period the permits have been available as well, and in my short time here in New South Wales I've issued permits for multiple species that allow for the use of nets and that allow for several hundred species to be harvested for a particular event. I know I've gone into a bit of detail there and perhaps gone off track to answer your question, but in the period from 2010 and 2016 everybody was invested in developing a regulation for cultural fishing. That changed in 2016 and the focus shifted to the local management plan place-based solutions.

The Hon. TAYLOR MARTIN: Can I just interrupt to ask why that shifted in 2016? What took place to bring about that change of mindset?

SEAN SLOAN: My understanding at the time was that—and I obviously was not here.

The Hon. TAYLOR MARTIN: Yes, of course.

SEAN SLOAN: I'm just going from records and from advice from staff that were around at that time. But it was that the Aboriginal fisheries advisory council and the key stakeholders felt that having a regulation that was statewide would not meet all those individual community needs and that it would start to fetter the cultural fishing rights and activities that cultural fishers wanted to take out in their respective communities. So a more place-based solution was what was being sought. I think you've heard some of the process that then occurred with the Hastings community in the Tweed, and there was actually a trial that was planned to start inland with, I think, the Moama² community.

SARAH FAIRFULL: Yes.

SEAN SLOAN: That actually fell away through some circumstances that were there at the time. But the Tweed and Hastings have gone forward. The takeaway for me in learning about that process—and I think you heard some of it today from the previous witnesses—is that there's a period of building trust when you work with the community to do what has been done at the Hastings community, and our staff invested in that and spent the time doing that. And after getting to that point of building the trust, you then start working through the detail and the issues. They've done that. Yes, there were disruptions with COVID and other disruptions, but that iterative process of going backwards and forwards with community has taken some time.

SARAH FAIRFULL: Can I just add, too, it's important to recognise that section 21AA only deals with bag and possession limits. It doesn't actually deal with methods or other elements of the regulations. So under

² In [correspondence](#) to the committee, received 27 October 2022, the Department of Primary Industries Fisheries clarified that the reference to "Barmah" should be "Moama".

LMP, as Jamie and Wayne pointed out, we've got 18 saltwater fishing methods you'd recognise and five freshwater fishing methods picked up in that plan. If you commence section 21AA without regulation, it doesn't necessarily deliver an outcome such as that. The other aspect I would point out is that we've also had the Aboriginal Fishing Trust Fund established. We've also been supporting a range of cultural activities across the inland and on the coast, and we've invested close to \$1 million in that in terms of supporting both commercial operations as well as recreational and cultural operations.

The Hon. TAYLOR MARTIN: Thank you both for those very important answers. I have one more and that is—most of the focus of this inquiry has ended up being on abalone fishing on the South Coast. And Mr Sloan, in an answer that you gave to a question from Mr Veitch before, you said that your department is keen to engage and find some solutions there. Would you be able to elucidate on possibly what some pathways might look like?

SEAN SLOAN: There are multiple options. The obvious one is what we've done with the Hastings community, which is to develop a place-based local plan. That can be as short and sharp as working out what the take limit for a particular species should be, or it can be much more comprehensive and cover a wide range of fishing activities and fishing methods et cetera. But if there's one thing that I've learned since I've been in New South Wales and working with Aboriginal communities, it is I wouldn't want to go into that conversation saying what I thought was the best way. I'd rather hear from the community about what they thought was the best way forward. There are multiple ways we can manage and assist communities to manage that access to cultural fishing.

The Hon. MICK VEITCH: Can I just follow up on that? Have you made the approach, Mr Sloan, to the communities on the South Coast?

SEAN SLOAN: Since being here, I've had a number of one-on-one meetings with Aboriginal elders from the South Coast. To be honest, the environment isn't good. And I think that's what the community is hearing here as well. We are, and I am, prepared to sit down and talk through these issues. My team is committed to do that, so that's just the offer that we make. That's there.

The Hon. SCOTT BARRETT: Can I ask about a couple of technical matters I have in my head. Some of the advice before was that we come back to you guys. We have talked about weights of abalone and numbers of abalone. Can we put them together. How many abalone are there in 50 kilos?

SARAH FAIRFULL: Ten is one kilo.

SEAN SLOAN: Yes, it obviously depends on the size of the abalone but a legal size abalone is about 10 per kilogram, is the advice.

The Hon. SCOTT BARRETT: Perfect, that's what I'm after. The cases that we are facing, particularly with abalone, are they because of bag limits, size limits or both? Is it because they are taking too many or because they're getting too small?

SEAN SLOAN: They involve both, but I would say primarily the numbers involved are the ones that have created those serious matters.

The Hon. SCOTT BARRETT: The Committee has just heard from the LMP from Hastings about the self-management of bag and size limits. Are you happy with the numbers they have come up with around that?

SEAN SLOAN: Again, I come back to the process that we have allowed to run with the Hastings community, that was that they have what I will call a self-determined process. It was very iterative between the department and the community. One species that I know has been a bit controversial with other stakeholders is mullock because mullock is currently classified as a depleted stock. We know that there are some concerns about the status of that fishery. For recreational fishers the daily limit for individual recreational fishers is one fish. For the Hastings local management plan, it's 20. That is in recognition that cultural fishing is not just for the individual, but it is for the community. That's something that the community determined. We know that that fishing won't occur every day of the week. We know that that will be something that occurs on particular days and for particular circumstances. That's why those limits are higher than the recreational limit. I should say the starting point for those discussions was the interim access agreement limit. So if you take those limits as a starting point, it is really then how do you work that through at the community level?

The Hon. SCOTT BARRETT: My question is going to jump a bit all over the place. Do the police have the same powers and enforcement responsibilities as fishery inspectors?

SEAN SLOAN: Police are cross-authorised under the Fisheries Act so they have those powers. In terms of responsibilities, our fisheries officers are the ones with the day-to-day responsibility of enforcing the fisheries

rules. Police obviously have other responsibilities and they only become involved when there is some particular set of circumstances that cause police to get involved in an operation.

The Hon. SCOTT BARRETT: The total allowable catch limit for abalone is 130,000 tonnes. Is that right?

SEAN SLOAN: No, the current total allowable catch is 100 tonnes.

The Hon. SCOTT BARRETT: Was there an extra 30 tonnes allocated this year because of COVID?

SEAN SLOAN: No, what happened there was—not for this year but for two years ago, I think originally it came off the back of the bushfires. There is an abalone processing facility that exists at Mallacoota, just over the border in Victoria. The processing facility was burnt to the ground during the bushfires and that disrupted the market for the commercial abalone fishery in that year, and there was under-catch by approximately 15 per cent. In recognition of that occurring—it wasn't a sustainability reason that caused the catch not to be taken, it was a market disruption—essentially there was a carryover of that under-caught quota. That full 100 tonnes wasn't caught in that year, it was added to the quota for the next year. Then in the subsequent year we had COVID market disruption play out. We also had the China trade disruption play out and those market disruptions caused, again, an under-catch of the quota that was set, so there was a carryover of that quota allowed for in that year, but it hasn't carried through to this current season.

The Hon. SCOTT BARRETT: Where do the 100 tonnes end up?

SEAN SLOAN: At the moment there is very little of the abalone catch from around Australia going into China. There is some going to China, which has been the traditional main market for abalone. But, at the moment, most of the abalone that is caught in New South Wales is going into the domestic market because of those disruptions in the market through the trade issues that have emerged.

The Hon. SCOTT BARRETT: Do we generally get those 100 tonnes each year?

SEAN SLOAN: If you go back over the history of the abalone fishery, the quota has been down as low as 70 tonnes, and it has increased in more recent years because the stock is starting to improve. But in a normal year when the markets are not disrupted—the quota is set at what can be sustainably caught. The quota is set by an independent committee that takes into account the best available scientific information and the quota is set on what can be sustainably caught. So in a normal year when there are no market disruptions that quota would be caught.

The Hon. SCOTT BARRETT: When there are 70 tonnes, that is not because they can't find abalone?

SEAN SLOAN: What I am referring to there, and I can provide perhaps a time series of data that shows what the quota was over the years previous to now, but there was a period when the quota was reduced to 70 tonnes because the stock required a lower catch to be set because it wasn't in as healthy a state.

The Hon. SCOTT BARRETT: As we move forward, where would you like to see this issue? Where are we sitting in 12 months' time, three years' time and beyond when it comes to cultural fishing?

SEAN SLOAN: We would like to see ourselves in the situation where we are in a harmonious situation with Aboriginal communities working together. That's certainly our goal. When it comes to how we go about achieving that, as I said, there are multiple ways we can get there. But we would like to work together with each of the Aboriginal communities right around New South Wales to achieve that. We also recognise that interconnected with cultural fishing, which is for non-commercial purposes, there is also a very strong desire and aspiration and need to be involved commercially. We recognise our role in assisting with that and helping and helping to facilitate that.

I mentioned in my opening remarks that we have set up a new project that is a collaboration with the Fisheries Research and Development Corporation and the Indigenous Land and Sea Corporation, to put together case studies here in New South Wales that would be with engaged communities to set up community owned and operated companies that governments, both State and Federal, can invest in. There is a really clear pathway for that. There is a commercial market for fishing entitlements that can be purchased, provided there is a pathway for that to happen for Aboriginal communities. We think through this project that that pathway could be achieved.

The Hon. PETER PRIMROSE: Over the last 13 years the will of the Parliament and the Executive Council hasn't changed because there has been no attempt to repeal section 21AA. We have heard from the people of Hastings where there has been a management plan that they prefer section 21AA to be enacted rather than have the plan as it is. Every Aboriginal person or organisation from whom we have heard is desperately concerned about the criminalisation of their cultural activities, which the Parliament and the Executive Council decided 13 years ago should not occur. At what point and what criteria do you use to say, "Look, they're right" and

recommend to the Government that they should actually do what the Parliament wanted them to do 13 years ago? What criteria has to be reached before you'll accept that and make that recommendation to the Government?

SEAN SLOAN: As I've said previously, there are so many pathways to achieving essentially those outcomes to provide cultural fishing for Aboriginal communities. It's certainly the understanding that I have, having read all the documentation, that the Government's intention was to have a regulation that accompanied section 21AA. That's why there were six years invested in developing that. It's hard to imagine how we could create, at a whole-of-State level for all the species we have across New South Wales, the pathway that you describe without having something that puts together a framework for that. I look at section 21AA and, as my colleague has mentioned, it covers off on the take and possession limits, but it doesn't deal with gear and fishing method. It doesn't deal with size limits. It would essentially allow someone who was based on the North Coast the ability to come to the South Coast, and vice versa. There are complexities to that that need to be worked through.

If we were going down that path, having some recognition that there need to be some limitations on take for various species because of the nature of those species is, I think from a resource management perspective, the right way to go. One of the things I'm also very conscious of is we need Aboriginal communities to have a seat at the table when it comes to managing our fisheries resources. We need them to be working together with the other stakeholders. So we don't envisage an outcome where there's just one stakeholder that's managing the resource, or involved in that resource. We want to bring everybody together.

The Hon. PETER PRIMROSE: I will follow up with a simple point. You want to consult with Aboriginal communities. The Aboriginal communities have told you. As the Parliament said what it wanted, the Aboriginal communities have said what they wanted. They've made it very clear to us. You may say that you don't believe that it's appropriate or that more work needs to be done, but the people you want to consult with have already told you what they want to happen. At what point do you accept that? What has to happen for you to accept the will of the Parliament and the will of the Aboriginal community?

SARAH FAIRFULL: It's actually a really interesting point because at this point we're aware that the peak stakeholder groups and the South Coast are certainly pushing for the commencement of section 21AA, but it's not something that's been consulted with more broadly without regulation to say this is what it actually means for the whole of New South Wales, for all sectors. I think it's important to unpack. Is that what everyone wants when that hasn't actually been put forward as a consultation argument to the community?

The Hon. PETER PRIMROSE: It was decided by Parliament. But, leaving aside that minor irritation, do you have something you want to say?

The Hon. MICK VEITCH: It's been 13 years. How long is it going to take? It's been 13 years.

SARAH FAIRFULL: And cultural fishing has continued, supported by the department through that period.

The Hon. PETER PRIMROSE: And people have continued to be arrested.

SARAH FAIRFULL: When you look at that statewide, those statistics actually don't match up. There is very little on the inland. There are no prosecutions that are ending up in jail on the inland or on the North Coast. This is a specific issue relating mostly to the South Coast with abalone.

The Hon. PETER PRIMROSE: Therefore, your argument is that the evidence we've heard, particularly in relation to fines that people are receiving, is not really an issue that this Committee should be concerned about?

SARAH FAIRFULL: I'm not suggesting that.

SEAN SLOAN: Can I just say, listening to members of the Hastings community and their point about commencing section 21AA for their area, they have worked with the department to establish some limits around the various species that are culturally significant for that part of the State for them. That's difficult to do statewide. That's why, back in 2016, we got to a point where there was a decision collectively made to move away from that approach. So there's got to be some sort of middle ground in terms of how you manage all those species across the State and some level, and then commence section 21AA and enable what everybody seems to be asking for.

The Hon. PETER PRIMROSE: When?

SEAN SLOAN: I don't actually think that DPI is a barrier to that, if that's your question.

The Hon. PETER PRIMROSE: When do you, as the specialist agency, expect that 21AA will be commenced?

SEAN SLOAN: I think that the track we're on at the moment is that the trial for the Hastings and the Tweed would inform how we do that going forward. That was certainly the—

The Hon. PETER PRIMROSE: That's not the question. When, after 13 years, do you expect that the will of the Parliament and the Executive Council will occur? Or will you be recommending to the government of the day that they repeal that particular piece of legislation?

SEAN SLOAN: We haven't made any such recommendation. We advise the Government on how to manage the resources; that's our role in government. When it comes to decisions about whether or not a section of legislation should be enacted, that's not a decision, to be quite frank, that would be a decision for me.

The Hon. PETER PRIMROSE: If I went back and used the power of the House to obtain all the documents in relation to this matter from the department, there would be no document there giving advice to the Government not to proceed with the implementation or timing of section 21AA?

SEAN SLOAN: I couldn't say, to be honest.

The Hon. PETER PRIMROSE: Will you take that on notice, because I'd like to know that?

SEAN SLOAN: Certainly.

The Hon. PETER PRIMROSE: Thank you.

The ACTING CHAIR: If there are no more questions, I would like to thank the witnesses for attending the hearing today. Committee members may have additional questions for you after the hearing. The Committee has resolved that answers to these, as well as the questions that have been taken on notice today, be returned within 21 days. The secretariat will contact you in relation to those questions. Thank you again for attending.

(The witnesses withdrew.)

The Committee adjourned at 16:58.