

## **Baton and handcuff work instruction 2021**

### **2.21.1 Batons and Handcuffs**

#### **2.21.1(a) Fisheries Officers and Requirements Relating to Batons and Handcuffs.**

1. The authorisation of Fisheries officers to possess and use extendable batons and handcuffs in NSW is clear, however the lawfulness of Fisheries officers to possess and use them in other state jurisdictions, or under other legislation is complex and is in some cases unlawful. This work instruction has been written to outline and simplify, as best as possible, the lawfulness of officers to be able to possess and use batons and handcuffs under the different circumstances they may encounter during duties.
2. The issuing of batons and handcuffs to Fisheries officers is subject to each officer first having been appropriately trained in the care and use of these implements. Officers are required to maintain their competency through regular (at least every 2 years) refresher courses.
3. Fisheries officers are only trained
  - a. to use batons for self-defensive purposes.
  - b. to use hand cuffs to affect an arrest (it is acknowledged that hand cuffs can assist with self-defence when it comes to handcuffing an aggressive offender for the safety of the officer/s).
4. The possession and use of extendable batons and handcuffs in NSW have been approved for the protection of officers. Under no circumstances are these implements to be used for any purpose other than for self-defensive whilst on duty.
5. The use and safe custody of batons and handcuffs remains the responsibility of the officer to whom they are issued. It is essential that officers keep their baton and handcuffs secure at all times.
6. Batons and handcuffs are not to be used to facilitate a seizure.
7. Batons and handcuffs are not to be used to detain a person unless the officer's safety is or has been at risk from assault by that person.
8. In any circumstance where an officer draws their baton or handcuffs ready for use in what could be considered a threatening situation, the officer must as soon as practicable, verbally notify their respective Supervising Fisheries officer and an incident notification should be lodged (as a dangerous occurrence) via the CAMMS WHS Incident Reporting system. A copy of the Incident Notification should be sent to the relevant Program Leader and the Director Fisheries Compliance.
9. A written briefing must also be forwarded to the relevant Program Leader up the officer's chain of command as soon as possible. This report may be used for staff debriefing of incidents, to address officer welfare and to address any WHS concerns.
10. It should be noted that Fisheries officers are unable to wear batons or handcuffs when entering a NSW court. Under s.8 of the *Court Security Act 2005* prohibits possession of a restricted item (e.g. baton, handcuffs or knife) in court premises unless the prohibited weapon is an item to be an exhibit in the proceedings.

#### **2.21.1(b) Authority for Fisheries Officers to Possess and Use Batons and Handcuffs.**

1. In NSW, handcuffs and extendable batons are classed as prohibited weapons under the *Weapons Prohibition Act 1998* (WP Act). A person must not possess or use a prohibited weapon unless the person is authorised to do so by a permit under the *Weapons Prohibition Regulation 2017* (WP Regulation) or otherwise exempt from the requirement to hold a permit.

2. Under cl. 2(1)(d), Schedule. 1 of the WP Regulation, a Fisheries officer within the meaning of the *Fisheries Management Act 1994* (FM Act) is exempt from the requirement under the WP Act to hold a permit to possess or use extendable batons and handcuffs when acting in the course of employment. In addition, the Commissioner needs to be satisfied that the officer has been trained in the use of the prohibited weapon.
3. In November 2020 an amendment was made to Schedule 1 of the WP Regulation making Fisheries officers exempt from the requirement for a permit to possess or use a prohibited weapon (batons and handcuffs) when they are acting as authorised officers under the following acts;
  - (a) *Biosecurity Act 2015*,
  - (b) *Marine Estate Management Act 2014*,
  - (c) *Marine Safety Act 1998*,
  - (d) *National Parks and Wildlife Act 1974*,
  - (e) *Rock Fishing Safety Act 2016*.

As with the FM Act, the Commissioner needs to be satisfied that the officer has been appropriated trained.

There is also a 'note' relating to the amendment that specifies – '*an exemption from the requirement under the Act for a permit to possess or use a prohibited weapon does not itself authorise the use of the weapon as enforcement powers are conferred and limited by the relevant Act.*'

4. Legal advice has been sort to clarify the 'note', which specifies that if a situation arises where a Fisheries officer has the genuine need to defend themselves against an aggressive offender, when they are lawfully exercising a function under any of the listed Acts, they can lawfully use their baton and handcuffs. To reiterate, their use is only for self defence purposes, which is no different under the FM Act.
5. Some Fisheries officers, depending on local factors and operational requirements, are authorised or able to be authorised under other legislation that isn't subject to the WP Act exemption. These include the *Fisheries Management Act 1991* (Commonwealth), *Environmental Protection and Biodiversity Conservation Act 1999* (Commonwealth Marine Reserves) and other state's fisheries Acts. For guidance on the use and possession of baton and handcuffs in those jurisdictions see the below table for guidance.
6. Any applications for weapons permits in other jurisdictions should be co-ordinated by Fisheries Compliance Management and any request should be made by a Fisheries officer via a briefing note.

**Table – Legislation, Powers and Baton and Handcuffs Use and Possession**

<b>Legislation</b>	<b>Powers</b>	<b>Baton and Handcuffs Use and Possession</b>
Fisheries Management Act 1994	Part 9 (Enforcement).	Yes, under WP Act Permit Exemption
Marine Estate Management Act 2014	Part 6 (Enforcement).	Yes, under WP Act Permit Exemption
Rock Fishing Safety Act 2016	Section 6 (Authorised officer may demand name and address).	Yes, under WP Act Permit Exemption
Biosecurity Act 2015	*Part 7 (Compliance and Enforcement).	Yes, under WP Act Permit Exemption





		<p><b>Acting as a warranted Australian Capital Territory Fisheries officer</b></p> <p>No, as ACT Fisheries officers cannot lawfully possess or use batons.</p>
Commonwealth Marine Reserves	<i>FM Act &amp; *Environmental Protection and Biodiversity Conservation Act 1999</i>	Yes, under Crimes of the Sea Act 2000 (Commonwealth) and where powers are used in conjunction with FM Act.
Commonwealth Territories (e.g. Booderee National Park or Wreck Bay Village)	<i>*Environmental Protection and Biodiversity Conservation Act 1999</i>	<p>No, if enforcing NSW legislation. Note current advice is that Fisheries officers cannot exercise any powers under NSW legislation in Wreck Bay Village, Booderee National Park, or anywhere else within the Jervis Bay Territory (including the Commonwealth waters of Booderee National Park at the southern end of Jervis Bay).</p> <p>Yes, if enforcing Commonwealth legislation at these locations – (see Commonwealth Fisheries)</p>
Commonwealth Places (e.g. Beecroft Peninsula)	<i>Fisheries Management Act 1994</i>	Yes, under WP Act Permit Exemption
Commonwealth Fisheries	<i>*Fisheries Management Act 1991</i>	<p><b>Acting as a warranted Commonwealth Maritime Officer</b></p> <p>Yes, those NSW Fisheries officers that have AFMA authorities under the Commonwealth <i>Fisheries Management Act 1995</i> are authorised to carry batons and handcuffs under the s89A(s).</p> <p>All NSW Fisheries officers that have AFMA authorities are also appointed 'maritime officers' under the Commonwealth <i>Maritime Powers Act 2013</i> (MPA). They are appointed under this Act by the CEO of the Australian Fisheries Management Authority who has delegated authority.</p> <p>Under s104 of the MPA the Minister (or delegate) may appoint a person as a maritime officer for the purpose of authorising the exercise of powers in relation to a specified law, or international agreement or decision. In the case of NSW Fisheries officers, via their authorisation under the as AFMA, they are appointed to exercise powers in relation to the <i>Fisheries Management Act 1991</i>.</p> <p>By being duly appointed under s105 of the MPA authorises them to carry arms, the same as what they are authorised under their normal capacity as an officer of the Commonwealth or a State or Territory.</p>

		* Note that some AFMA warrant cards possessed by NSW Fisheries officers do not specify that they are authorised officers under the MPA. AFMA are currently addressing this issue.
Other legislation	*Subject to relevant powers of the authorising legislation.	Subject to whether in conjunction with FM Act duties and where preconditions exist for both acts and officer acts in both capacities. Contact FCU Management for clarification.

\*Separate authorisation must be obtained and current.

### Special Instruction

This instruction is specific to situations where fisheries officers cannot lawfully possess or use batons and handcuffs as per the above table. Fisheries officers should not patrol in locations where they cannot possess or use batons and handcuffs without prior approval from their relevant SFO or Program Leader. Officers are still able to lawfully enter these locations, they just cannot possess or use their appointments and will not have the full suite of powers normally available to them. For example, duties like covert observations may be approved where there is little or no risk to an officer's safety. Approvals will be assessed on a case by case basis.

FCU Management are seeking a resolution to the issue, however this will not be a quick process as it will involve lobbying Department's and Ministers from other states, plus ultimately changing legislation.

Fisheries officers are inherently good at identifying work arounds. For example, where a boat based recreational fisher was known to be landing prohibited sized fish taken in NSW waters into Booderee National Park, an officer could stop and search the trailered boat once it was back in NSW. Officers can stop a boat on a trailer being towed by a vehicle without any reason to believe that there is anything onboard connected with a fisheries offence. The officer is acting within their powers if they only search the vessel and not the vehicle (they could search the vehicle if they had reason to believe that there was something in it connected with an offence).

### Relevant Legislation

*Control of Weapons Act 1990 (VIC)*

<https://www.legislation.vic.gov.au/in-force/acts/control-weapons-act-1990>

*Court Security Act 2005 (NSW)*

<https://www.legislation.nsw.gov.au/view/whole/html/inforce/current/act-2005-001>

*Crimes of the Sea Act 2000 (COM)*

<https://www.legislation.gov.au/Details/C2019C00248>

*Environmental Protection and Biodiversity Conservation Act 1999 (COM)*

<https://www.legislation.gov.au/Details/C2021C00081>

*Fisheries Management Act 1994 (NSW)*

<https://www.legislation.nsw.gov.au/view/html/inforce/current/act-1994-038>

*Fisheries Act 1994 (QLD)*

<https://www.legislation.qld.gov.au/view/html/inforce/current/act-1994-037>

*Fisheries Act 1995 (VIC)*

<https://www.legislation.vic.gov.au/in-force/acts/fisheries-act-1995/097>

*Fisheries Act 2000 (ACT)*

[www.legislation.act.gov.au/a/2000-38](http://www.legislation.act.gov.au/a/2000-38)

*Fisheries Management Act 2007 (SA)*

<https://www.legislation.sa.gov.au/LZ/C/A/Fisheries%20Management%20Act%202007.aspx>

*Fisheries Management Act 1991 (COM)*

<https://www.legislation.gov.au/Details/C2021C00075>

*Maritime Powers Act 2013*

<https://www.legislation.gov.au/Details/C2015C00015>

*Prohibited Weapons Act 1996 (ACT)*

<https://www.legislation.act.gov.au/a/1996-75>

*Summary Offences Act 1953 (SA)*

<https://www.legislation.sa.gov.au/lz/c/a/summary%20offences%20act%201953.aspx>

*Weapons Act 1990 (QLD)*

<https://www.legislation.qld.gov.au/view/pdf/inforce/current/act-1990-071>

*Weapons Prohibition Act 1998 (NSW)*

<https://www.legislation.nsw.gov.au/view/html/inforce/current/act-1998-127>

*Weapons Prohibition Regulation 2017 (NSW)*

<https://legislation.nsw.gov.au/view/html/inforce/current/sl-2017-0456>