

Mr Sean Sloan
Deputy Secretary
Fisheries & Forestry
Department of Primary Industries & Regional Development

Dear Sir,

Following last week's meeting on Thursday 12 September 2024, the FOVB has considered some of the many points that yourself and others in the leadership team talked to. The FOVB would like to add further comment to several of the items discussed as below.

Vacancies

We agree that the email from Shane Howes (PSA) did not list vacancies as contributing to the current work ban. Vacancies, particularly at the DFO level (currently 6 positions) was a significant issue raised at the last JCC of 21 August 2024. Some DFO positions have been vacant for more than 18 months, and the FCULT consulted the FOVB around implementing 'work arounds' with talent pools as they were having issues complying with GSE Act rules given that some FO's had been acting in higher duties DFO roles for so long. We were very specific in our message that these critical front line roles needed to be advertised, and that it was unacceptable on the workforce to have these leadership roles vacant for so long.

The message we received back, was that ultimately you as Deputy Secretary of Fisheries & Forestry, needed to approve the recruitment, and that the FCULT hoped that this would come soon after the final budget was announced. The fact that you were not briefed that this was such a big issue for the membership, contributes to the overarching theme of the membership's frustrations, in that senior bureaucrats don't understand or are not being told of the issues that negatively impact the front line.

Our message remains clear, that the membership has a strong expectation that action needs to be taken as a matter of priority to advertise and recruit to the vacant DFO roles, and that other FO vacancies will follow suit, shortly after. We completely understand that the Department will always carry a certain low number of vacancies. But carrying vacancies in critical front line compliance leadership roles for long periods, contributes to safety concerns, and places enormous pressure on those acting up in these roles as well as the flow on effect. Compliance Officer numbers (specifically the lack of) is very much linked to safety, we don't think this needs to be elaborated on. The nature of compliance work means that when you are down on team members, you are forced to take up the slack which can result in the carrying out duties which usually require more resources to safely achieve.

Finally, the FOVB consider there to be a total of 108 Fisheries Officer positions in NSW. Presently there is 11 Vacancies, 6 of which are DFO ranked positions. We currently have a vacancy rate of 10.1% across the board.

Officer Safety Issues

FO Defensive Equipment

We acknowledge the Department's position that you believe that you have done all that you can to equip Fisheries Officers with improved self-defence capability (OC Spray), and that the Minister for Police has denied the application made by DPI. This is the first we have heard of that denial, contrary to your advice in last week's meeting. To date, the FOVB have been advised "the

hold-up is with Minister Catley". So, it is disappointing that this position was not directly expressed to the workforce in due course.

What we would like to know is, has anyone approached Minister Moriarty and Minister Catley, including our Secretary and lobbied further about the safety concerns of Fisheries Officers to be equipped with this contemporary defensive tools? And how long ago was this decision made, and has it been revisited?

Fisheries Officers Powers

To be clear, the safety concerns with regards to our powers do not solely centre around the Surveillance Device Act limitations, and Fisheries Officers have never sought to be included in legislation permitting telephone interception ("tapping of phones").

The single biggest issue with Fisheries Officer powers lies with the outdated and what you could describe, antiquated powers offered to Fisheries Officers via the *Fisheries Management Act 1994*. Legislation that this Department, this Minister and you as Deputy Secretary *can* actually drive change with. And as John Staines advised, the link between Officer powers and safety is strongly interconnected. The deficiencies of the FMA1994 have been discussed ad nauseum:

- The power to inspect catch - NSW Fisheries Officers must be the only FOs in the world who cannot inspect a bucket or a bag of fish a fisher is carrying without meeting the highest standard of belief first. Surely that's an embarrassing position for this Government and it is placing FOs at risk of exceeding their powers given it's such a confusing and complex piece of legislation. If Fisheries Officers are exceeding their powers, or double guessing their powers constantly, then this has major safety implications.
- The power to stop a vehicle - This Government introduced quota managed fisheries across multiple commercial fishing sectors, however there was no commensurate action to simultaneously address severe shortfalls in associated FO powers. Due to the manner in which quota reporting rules were constructed in NSW, which in many aspects has resulted in legislating a number of loopholes towards enforcement of quota reporting, FOs are now required to monitor catch after a fisher has departed from a point of landing in a motor vehicle. FOs in NSW do not have a power to stop and inspect a motor vehicle to simply monitor compliance, instead they require the highest standard of belief first that there is an offence which is almost impossible to do without effecting an inspection! This basic power to compliment quota monitoring, along with the lack of any safe/modernised method to conduct a vehicle stop (short of jumping in front of a moving car with a small handheld sign saying 'Stop Fisheries'), makes that part of our work completely unsafe.
- Power to require telco information - in 2014 Fisheries Officers in all States lost the ability to apply for retrospective telecommunications data via the changes to the Federal Telecommunications Act. Shortly after this time *each* Australian State/Territory changed their respective Fisheries Management legislation so that they could re-gain that important intelligence/evidence access. It is now 10 years since, and NSW DPI Fisheries is the *only* jurisdiction in Australia where FOs are unable to access this basic, but invaluable source of intelligence to better detect non-compliance. This lack of access to telco data, can now only be partially filled by putting officers in tight covert positions to make visual observations of POIs and their houses which enormously reduces Officer capability and overall safety.

- The power to use basic visual/evidence gathering aids such as; binoculars, hand-held cameras (incl. Body worn cameras), trail cameras, etc. NSW FOs continue to navigate complex and clunky work instructions when using basic surveillance devices like cameras, binoculars and body worn cameras because our government has not contemporised fisheries legislation to support their lawful use. This continues to force FOs to second guess their powers and their ability to enact them, and it means that Officers often must put themselves in more compromising positions to achieve admissible visual observations of fishing and marine park offending, which further compromises FO safety.
- Contemporary levels/standards of belief in access to information and to enact powers - The FMA1994 needs to review the standards to be consistent with other Fisheries Acts in the country, and other NSW regulatory Acts. The '*reason to believe*' proof is the highest standard and it applies across the current fisheries legislation, and it makes it very difficult for Fisheries Officers to confidently enact powers and require information, which further compromises FO safety.

Contemporary Powers to Investigate

You openly acknowledged that you have no appetite to contemporise our ability to undertake investigations, which is immensely disappointing for the membership to hear. NSW is supposed to be the 'Premier state', yet we are embarrassingly basic when comparing our access to contemporary investigative mechanisms and strategies to Fisheries law enforcement agencies across all other Australian jurisdictions and most other westernised countries. Why is it that bureaucrats and Governments of other jurisdictions place a higher level of importance on providing their respective FOs, with the contemporary investigative and safety tools that they need to effectively and safely do their job, than as is the case here in NSW? We are not asking for the powers of a spy agency, we are simply seeking the ability to be lawfully approved under the Surveillance Devices Act, to undertake basic retrospective telecommunications information requests, and to be given a chance to do the job that the NSW community expects that we can do.

The recent Court of Criminal Appeal decision in layman's terms, indicated that the only chance for NSW DPI Fisheries to tackle outright Abalone trafficking was to catch the perpetrators *selling* Abalone. Do you think that Fisheries Officers in NSW have sufficient resources and capabilities to monitor for trafficking? Because the Membership of the FOVB most certainly do not. It adds insult to injury, every time a senior leader or Minister or Member of the Government makes claims that FOs in NSW are well placed to tackle trafficking in Abalone or any other species for that matter. The simple fact is, that FOs in NSW are the least equipped to address trafficking in fish and threatened species that any other Australian jurisdiction.

Further to this, it has been explicitly explained to members of the FCULT and the operational team involved in Strike Force Rubra, that, that level of operation (involvement from NSW Police) will never happen again, principally because it was so resource intensive on Police MAC, who's primary responsibility is not to investigate illegal fishing related crimes. So, to dismiss the need for FOs powers to be contemporised with the caveat that you see that role for joint taskforces with NSW Police, is frustratingly dismissive and it will result in a negative impact on the future of high value fish species stocks across NSW.

Trial of VMS

You made mention that VMS was being trialled on several vessels. That this won't happen overnight, but that NSW will work towards it.

In response, we understand that the current trial is associated with a Commonwealth Government (Parks Australia) funded arrangement due to the impending transition across all Commonwealth Marine Parks to require all commercial fishers to operate VMS when transiting parks. More broadly however this is a matter which the membership has been relaying as being a major barrier to officer safety and to the efficient and effective delivery of services for many, many years. The fact that a fully operational and tried and tested VMS system is already in operation out at the Lord Howe Island Marine Park, does make members pose the question as to why a trial (which is costly), needs to be carried out at all? Additionally, given that most other jurisdictions have already done the heavy lifting in this space, it again poses the question of, why is NSW dragging the chain here and having to trial it all again?

The membership is not satisfied that the current trial is being delivered, in any way, in a manner that seeks to improve fisheries and marine park law enforcement service delivery. The FOVB is not supportive of the trial being managed by the Commercial Fisheries Unit, VMS is a compliance management tool, the data that it collects is sensitive and it must primarily be managed under the compliance umbrella. The trial to date has evidenced, the fact that the Commercial Management Unit will act to avoid compliance input, FOs have not even been advised which vessels (apparently there is 20?) that the trial is being conducted on. We believe that the trial. The 'secretive' nature of the trial and the separation of it from fisheries compliance makes the membership feel as though there is an unwritten agenda to exclude compliance at all costs. We have raised the alarm on this matter several times including at the recent JCC, to absolutely no avail.

Re: Further explanation of factors justifying the current FOVB work bans.

As requested by you on Thursday 12 September 2024, the FOVB provide the following further detail on how the current work ban as implemented by the Fisheries Officer membership, relates to the various long-standing issues of Fisheries Officer welfare and safety. Ultimately, these activities subject to the recent work bans encompass many (if not all) of the wide-ranging safety concerns our members have.

It is the firm position of the FOVB, that all fisheries and marine park law enforcement services bring with them an increased level of risk to officer safety and wellbeing. The law enforcement role is generally becoming more and more onerous and fraught with danger as time moves on. The illegal component of the client base is becoming more and more brazen, general levels of aggression in society appear to be on the increase and the fisheries space is being increasingly encroached upon by organised crime.

Whilst law enforcement across the fisheries and marine park context is challenging at the best of times regardless of the jurisdiction that one finds themselves working in, the main sticking point in NSW, that makes the situation even more pronounced, has resulted from decades of little to no action to modernise law enforcement capability. FOs in NSW do not have contemporary powers, investigative tools or self-defence capability to properly, safely and efficiently investigate, monitor for and enforce compliance with the relevant legislation.

Factors that cause the inspections of trawlers at night to be unsafe:

- Commercial fishing boats are no longer required to be licenced and labelled with an identifying number issued by DPI so FOs can't identify the boat owner, fisher or crew through this means. FOs don't have sufficient real time access to the ASMA database so FOs can't identify the owner, fisher or crew through this means. Visual identification of the fisher and crew at night on a moving trawler is almost impossible. Being that FOs can't identify persons who may pose a threat, FOs can't properly risk assess before boarding a trawler at night.
- Persons can attain a commercial fishing licence without providing 100 points of identification so FO can't be sure of the fisher's true and verified identity. Being that FOs can't be sure of a fisher's identity and the threat that they may pose, FOs can't properly risk assess before boarding a trawler at night.
- Crew are not required to be licenced or registered, and persons with fisheries or criminal convictions including convictions for obstructing, abusing, threatening and assaulting FOs are able to work as crew in NSW. This threat is exacerbated by the fact that FOs have no power under S258 to require the master of a boat being used for commercial fishing to provide information concerning the boat or its crew. This power was lost as a result of legislation changes made during the BEP. Being that FOs are unable to determine if crew have a history of violence and the threat that they may pose, FOs can't properly risk assess before and after boarding a trawler at night.
- Lack of a fit and proper person assessment process, for all participants within the commercial fishing sector. The lack of any such legislated process means that the commercial fishing sector in NSW is now an employer of choice for people who have

questionable criminal histories and/or affiliations and links to organised crime. The lack of process means, that at this current point in time FOs are not able to properly or appropriately risk assess clients. FOs are aware of numerous persons in the last 3 years alone who have joined the commercial fishing sector, in particular the trawl and hauling sectors, and who have alleged links with organised crime. A legislated National Police criminal history check and national fisheries and marine parks prior history check upon application to determine if a person should be allowed entry into the commercial sector would improve FO safety and at least enable FOs to better profile whom they were required to deal with on a regular and ongoing basis.

- Lack of VMS results in officers navigating huge areas of ocean waters at night in relatively small patrol vessels in an effort to simply locate ocean prawn trawlers. This extra time spent searching for trawlers at night on ocean waters places Fisheries Officers at unnecessary risk. Estuarine and ocean prawn trawlers equipped with VMS would enable FOs to identify boats, fishers and crew before boarding. FOs can't properly assess the risk before boarding a trawler at night if they can't identify the fisher or crew.
- Inadequate real-time officer welfare monitoring system for the night boarding of trawlers. FOs are discouraged from making a customised welfare check before they perform work other than "in response to a rapidly evolving situation". The current officer welfare monitoring system is placing Fisheries Officers at an unacceptable risk when performing work such as the boarding of trawlers at night.
- Reduced staff numbers due to vacancies is impacting on the safety of FOs when performing work such as the boarding of trawlers at night. Boarding trawlers involves FOs separating and is resulting in officers being left one up in a dangerous work environment. The FO vacancies are placing FOs at an unacceptable level of risk when boarding trawlers at night.
- FOs boarding of trawlers at night coupled with the inability to conduct a proper risk assessment regarding the fisher/crew means that risk of assault is difficult to gauge. FOs are not equipped with adequate self defence capability for work where the risk of assault is uncertain. The risk to FOs is exacerbated by the remote environments where trawling occurs, the limited withdrawal/escape options, the consumption of drugs by fishers/crew, the presence of knives/firearms, and the fact that many commercial fishing sectors inclusive of the trawl are now known to be infiltrated with people who have direct links to organised crime.

Factors that cause the inspections of haulers at night to be unsafe;

- The identification of registration plates on vehicles used in hauling operations at night and over a distance is very difficult so identifying the fisher or crew through this means is unlikely. Even if FOs were able to establish a vehicle registration, FOs don't have real time, on water/in field and afterhours access to vehicle registration checks (Drives 24) so FOs can't identify the fisher or crew through this means. Vehicles used in the ocean haul fishery must clearly display the FB number however visual identification of this display at night and over a distance is very difficult so identifying the fisher or crew through this means is unlikely. Being that FOs can't identify persons who may pose a threat, FOs can't properly risk assess before approaching a hauling operation at night.

- Commercial fishing boats are no longer required to be licenced and labelled with an identifying number issued by DPI so FOs can't identify the boat owner, fisher or crew through this means. FOs don't have real time access to the ASMA database so FOs can't identify the owner, fisher or crew through this means. Visual identification of fishers and crew at night on beaches and in estuaries is very difficult before inspecting the persons. VMS is not available in NSW like it is in other States and overseas jurisdictions so FOs can't identify the boat owner, fisher or crew through this means. Being that FOs can't identify persons who may pose a threat, FOs can't properly risk assess before approaching a hauling operation at night.
- Persons can attain a commercial fishing licence without providing 100 points of identification so FO can't be sure of the fisher's true and verified identity. Being that FOs can't be sure of a fisher's identity and the threat that they may pose, FOs can't properly risk assess before approaching a hauling operation at night.
- Crew are not required to be licenced or registered, and persons with fisheries or criminal convictions including convictions for obstructing, abusing, threatening and assaulting FOs are able to work as unlicenced crew in NSW. This threat is exacerbated by the fact that FOs do not have the power under S258 FMA94 to require a commercial fisher to provide information regarding their crew. Being that FOs are unable to determine if crew have a history of violence and the threat the crew may pose, FOs can't properly risk assess before approaching a hauling operation at night.
- Lack of a fit and proper person assessment process, for all participants within the commercial fishing sector. The lack of any such legislated process means that the commercial fishing sector in NSW is now an employer of choice for people who have questionable criminal histories and/or affiliations and links to organised crime. The lack of process means, that at this current point in time FOs are not able to properly or appropriately risk assess clients. FOs are aware of numerous persons in the last 3 years alone who have joined the commercial fishing sector, in particular the trawl and hauling sectors, and who have alleged links with organised crime. A legislated National Police criminal history check and national fisheries and marine parks prior history check upon application to determine if a person should be allowed entry into the commercial sector would improve FO safety and at least enable FOs to better profile whom they were required to deal with on a regular and ongoing basis.
- Inadequate officer welfare system for the inspection of haulers at night. FOs are discouraged from making a customised welfare check before they perform work other than "in response to a rapidly evolving situation". The current officer welfare system is placing FOs at an unacceptable level of risk when inspecting haulers at night.
- Reduced staff numbers due to vacancies is impacting on the safety of FOs when performing work such as the inspection of haulers at night. Hauling operations generally involve large numbers of fishers/crew where FOs are far outnumbered. The FO vacancies are placing FOs at an unacceptable level of risk when inspecting haulers at night.
- FOs inspecting haulers at night coupled with the inability to conduct a proper risk assessment regarding the fisher/crew means that risk of assault is difficult to gauge. FOs are not equipped with adequate self defence capability for work where the risk of assault is uncertain. The risk to FOs is exacerbated by the remote environments where

hauling usually occurs, the consumption of alcohol/drugs by fishers/crew, the presence of knives and moving vehicles, and the fact that many commercial fishing sectors inclusive of the hauling sectors are now known to be infiltrated with people who have direct links to organised crime.

Factors that cause the inspections of inland commercial fishing operations at night to be unsafe;

- The identification of registration plates on vehicles used in inland commercial fishing operations at night and over a distance is very difficult so identifying the fisher or crew through this means is unlikely. Even if FOs were able to establish a vehicle registration, FOs don't have real time, on water/in field and afterhours access to the Drives24 database so FOs can't identify the fisher or crew through this means. Being that FOs can't identify persons who may pose a threat, FOs can't properly risk assess before approaching a hauling operation at night.
- Commercial fishing boats are no longer required to be licenced and labelled with an identifying number issued by DPI so FOs can't identify the boat owner, fisher or crew through this means. FOs don't have real time access to the ASMA database so FOs can't identify the owner, fisher or crew through this means. Visual identification of fishers and crew at night is very difficult before inspecting the persons. VMS is not available in NSW like it is in other states so FOs can't identify the boat owner, fisher or crew through this means. Being that FOs can't identify persons who may pose a threat, FOs can't properly risk assess before approaching inland commercial fishing operations at night.
- Persons can attain a commercial fishing licence without providing 100 points of identification so FO can't be sure of the fisher's identity. Being that FOs can't be sure of a fisher's identity and the threat that they may pose, FOs can't properly risk assess before approaching an inland commercial fishing operation at night.
- Crew are not required to be licenced or registered, and persons with fisheries convictions including convictions for obstructing, abusing, threatening and assaulting FOs are able to work as unlicenced crew in NSW. This threat is exacerbated by the fact that FOs do not have the power under S258 FMA94 to require a commercial fisher to provide information regarding their crew. Being that FOs are unable to determine if crew have a history of violence and the threat the crew may pose, FOs can't properly risk assess before approaching an inland commercial fishing operation at night.
- Lack of a fit and proper person assessment process, for all participants within the commercial fishing sector. The lack of any such legislated process means that the commercial fishing sector in NSW is now an employer of choice for people who have questionable criminal histories and/or affiliations and links to organised crime. The lack of process means, that at this current point in time FOs are not able to properly or appropriately risk assess clients. FOs are aware of numerous persons in the last 3 years alone who have joined the commercial fishing sector and who have links with organised crime. A legislated National Police criminal history check and national fisheries and marine parks prior history check upon application to determine if a person should be allowed entry into the commercial sector would improve FO safety and at least enable FOs to better profile whom they were required to deal with on a regular and ongoing basis.

- Inadequate officer welfare system for the inspection of ICF at night. FOs are discouraged from making a customised welfare check before they perform work other than “in response to a rapidly evolving situation”. The current officer welfare system is placing FOs at an unacceptable level of risk when inspecting commercial fishing operations at night.
- Reduced staff numbers due to vacancies is impacting on the safety of FOs when performing work such as the inspection of inland commercial fishing operations at night. Without VMS and pre-fish reporting it’s rare that inspections of these fishers are planned. The inability to plan means that, more often than not, FOs encounter these fishers unexpectedly and understaffed. Staff numbers on the inland are simply not high enough to perform these inspections at night in a safe manner. The vacancies are placing FOs at an unacceptable level of risk when inspecting commercial fishing operations at night.
- FOs inspecting inland commercial fishing operations at night coupled with the inability to conduct a proper risk assessment regarding the fisher/crew means that risk of assault is difficult to gauge. FOs are not equipped with adequate self defence capability for work where the risk of assault is uncertain. The risk to FOs is exacerbated by the remote environments where inland fishing operations usually occur (poor communications), the consumption of alcohol/drugs by fishers/crew, the presence of knives, firearms and moving vehicles.