

4 THE COMPOSITION OF ADVISORY BODIES

The importance of the composition of statutory fisheries advisory bodies and the method of appointment to such bodies received considerable attention during the Inquiry. This chapter outlines evidence received in relation to the method used to appoint advisory body members and the importance of ensuring that interests other than those of commercial or recreational fishers are represented in the new advisory body system.

4.1 Representation of Non-extractive Users on Advisory Bodies

The Standing Committee received evidence supporting the notion that the composition of advisory bodies must reflect the public nature of the resource and the role determined for the relevant body defined by legislation. For example, Dr Young stated:

... fisheries management cannot be narrow, and consider only a particular species in my territory to make sure that it is all right. You have got to encompass those larger issues, such as how do you share between recreational and commercial fishing; how do you look after nursery areas; how do you get that broader issue? That concomitantly means that the stakeholders who are going to be represented on the committees will have to be broadened accordingly.¹

This section presents evidence in support of the inclusion of conservation, aboriginal, tackle industry and fishing media representatives within the advisory body system.

4.1.1 Conservation Representatives

¹ Evidence of Dr Young, 14 February 1997, p. 43.

MAC Regulation 261(3) requires the appointment of at least one conservation representative from a panel nominated by the Nature Conservation Council. The draft *Advisory Council Regulations* generally provide the Minister with *discretionary* power to appoint conservation representatives to Advisory Councils.

Mr John Conner, Executive Officer, Nature Conservation Council, expressed concern with the effectiveness of token conservation representatives comprising a minority on advisory bodies. Mr Conner suggested that a single Advisory Council, from which issue-specific sub-committees could be formed, would allow conservation interests more equal input into the advisory process. Mr Conner stated:

Often it is the case that conservation representatives are in the minority on many committees—a single voice as opposed to many others. ... A more efficient way would be with subgroups working on various issues, which may be conservation or habitat protection and sustainable fisheries targets, for example, where there would be better representation and more equivalent representation on those sorts of adequately resourced subgroups.²

Despite this concern, Mr Conner admitted that the fishing industry is relatively open to environmentalist input:

... In my experience the commercial fishing industry has been far more open to constructive dialogue with the environment movement than many other extractive resource industries I have come across. It recognises that the most important elements are habitat protection areas and that if we cannot work together on that, the fishing industry has no future and no sustainable base from which that resource emanates. Of course, there are conflicts when it comes to actual setting of fishing targets and

² Evidence of Mr Conner, 13 February 1997, p. 22.

practices. I expect those discussions to continue to be robust.³

The inclusion of conservation representation in the advisory body system received support from Mr Baker:

I believe that there is a need for conservation representatives on these advisory bodies. I believe quite strongly that we need someone there but at the same time I believe that the person representing the conservation side of it needs to know a lot about Australian fish and fish populations because it is different to most other fish populations throughout the world.⁴

Dr Young recommended that advisory bodies should include as members individuals with conservation management skills rather than those with extreme views. When asked to elaborate, Dr Young stated:

... it would be better to have a qualified natural resource conservation manager who is familiar and in touch with all of those issues than someone such as a paid professional lobbyist from an extreme conservation group.⁵

The Department of Land and Water Conservation expressed interest in being represented in the advisory body system. Mr Michael Geary, Acting Director, Coastal, Floodplain and Riverine Resources, stated:

My concern with this from a Departmental standpoint would be that Land and Water Conservation is meant to be the State's natural resource manager. ... We are, therefore, concerned about the activities of the fishing industry, and the Department of Fisheries and its relationship with the fishing industry, because they are one—and I make the

³ Evidence of Mr Conner, 13 February 1997, p. 22.

⁴ Evidence of Mr Baker, 13 February 1997, p. 41.

⁵ Evidence of Dr Young, 14 February 1997, p. 43.

point that they are only one—of the users of those natural resources. That is why my organisation has an interest.⁶

Mr Geary also shared Mr Conner's concern in relation to nominal conservation representation within the advisory body system:

My experience, ... and times are changing, tends to be that a nominal environmentalist can be put on a group so that you can believe you have had some environmental input. In fact, you do not really get any, because the nominal environmentalist can be as loud as it likes but its advice does not get through. That is why I am saying it might be preferable to look at a separate group that gave ecologically and sustainability-focused advice.⁷

4.1.2 Aboriginal Representation

MAC Regulation 261 provides for the appointment of persons representing indigenous Australians to each Management Advisory Committee while the draft *Advisory Council Regulations* give the Minister a discretionary power to appoint aboriginal representatives to Advisory Councils.

The involvement of aboriginal representatives in the advisory body system received support from a number of industry representatives, such as Mr Snape, who suggested that the present lack of such representation has resulted in management decisions adverse to aboriginal interests⁸.

NSW Fisheries are in the process of developing an Indigenous Fishing Strategy. Dr Glaister said this would :

... lead to a better understanding of Aboriginal fishing interests in New South Wales and, conceivably, to the

⁶ Evidence of Mr Geary, 13 February 1997, p. 15.

⁷ Evidence of Mr Geary, 13 February 1997, p. 19.

⁸ Evidence of Mr Snape, 14 February 1997, pp. 23-24.

development of specific rules for Aboriginal fishing which recognise their historic and cultural interests in our fisheries resources.⁹

When questioned about the Department's efforts to ensure aboriginal representation in the proposed advisory body system, Dr Glaister described some of the difficulties encountered in this process:

Soon after I was appointed as Director of Fisheries I had a meeting with Aden Ridgeway, the Chairman of the New South Wales Aboriginal Land Council. His advice was that the New South Wales Aboriginal Land Council would not be appropriate as a body to consult with, given that only a few of the members were from coastal New South Wales and did not have a lot of interest in fisheries matters. I asked him about the regional land councils as being a potential source. Again he said that because of the way the boundaries of the regional land councils were established, he did not know whether they would be consistent with fishery areas. For example, the ocean haul fishery or estuary fisheries were not consistent with particular regional land council boundaries. He said that we would probably need to negotiate on a local basis. We are attempting at the moment, with the cooperation of the Department of Aboriginal Affairs and some other groups that have been set up by other departments, to see if we can come up with a consultative mechanism that will suit us.¹⁰

The Standing Committee sought from NSW Fisheries, both in writing and verbally, copies of the aforementioned Indigenous Fishing Strategy and associated correspondence between the Minister for Fisheries and the Minister

⁹ Evidence of Dr Glaister, 13 February 1997, p. 51.

¹⁰ Evidence of Dr Glaister, 13 February 1997, pp. 61-62.

for Aboriginal Affairs. As of 4 July 1997 the Standing Committee had not received a response¹¹.

4.1.3 Recreational Interest Groups

MAC Regulation 261 provides for the appointment of persons from “such other groups as the Minister considers appropriate”. The draft *Advisory Council Regulation 229E* provides for representation on the Advisory Council on Recreational Fishing of non-fisher groups with pecuniary interests in recreational fishing activity. These groups are the recreational fishing tackle industry, the fishing media, and the charter boat industry. When asked why representatives of the fishing tackle industry should be included in the membership of the Advisory Council, Mr Bruce Schumacher, Chairman of the proposed Advisory Council on Recreational Fishing, replied:

The industry can have a lot of input as it sees trends that are not perceived by others... [recreational fishers] are not fishing so much in salt water but in fresh water, they are not taking as many fish because they are adopting more catch-and-release practices, and there is even a perceived fear of pollution, that the fish they catch may not be able to be eaten. There is a change in the way that people are fishing. That information has come from the tackle industry because it knows what is being sold, what people are buying and what tackle people are using. The boating industry does the same types of surveys: there has been a change in the types of boats that are being used—there are more fresh water boats than salt water boats. It is important to have that input.¹²

¹¹ The Standing Committee received a package of such correspondence from NSW Fisheries on 10 July 1997. This did not contain either the actual or draft Indigenous Fishing Strategy.

¹² Evidence of Mr Schumacher, 14 February 1997, p. 29.

When asked why media representatives should be included in the Advisory Council, Mr Schumacher suggested that they could also be of use to fisheries managers through their access to the vast number of recreational fishers:

... we have a problem, particularly with the recreational fishing industry, because we have no funds and we have a lot of difficulty getting our information to the public. I refer to decisions that are made by ACRF, the advisory council. I know that the Minister has his own publicity people, but it is not good enough to get to 2.75 million anglers. Using the media can be a good way of getting those decisions publicised.¹³

4.2 Method of Appointment

The mechanism for appointing members of advisory bodies proved to be a contentious issue during the inquiry. The *Advisory Bodies Act* provides for the majority of Management Advisory Committee members to be elected with the remainder being appointed by the Director of Fisheries, whereas all members of the proposed Ministerial Advisory Councils are to be appointed by the Minister. The Standing Committee heard many views expressed in relation to a number of methods of appointing advisory body members, particularly direct appointment by the Minister or Director, appointment by selection panel, statutory appointment of persons nominated by specified groups, and direct election.

4.2.1 Direct Appointment by the Minister or Director

Criticisms of Ministerial appointments to the proposed Advisory Councils centred around the possibility of members being appointed for political reasons rather than their ability or knowledge. The most vocal opposition to Ministerial appointments came from within the commercial fishing industry. For example, Mr Snape stated:

¹³ Evidence of Mr Schumacher, 14 February 1997, p. 29.

The objection is once again that they are ministerial appointees and you must have the confidence of industry. It is very easy for a Minister to appoint someone and that person then has allegiances to the Minister and not to industry. Industry must appoint their own delegates and their own representatives.¹⁴

The Nature Conservation Council also expressed concern about the opportunity for politicisation of the selection process through Ministerial appointments.

Mr Conner stated:

... I am concerned about a simple clause that gives the Minister total discretion as to the appointment of other people or interest groups, but it is not transparent and I do not think that it provides the best people. In fact, unfettered discretionary appointments would more likely result in the selection of individuals who are least able to give the solid, robust and independent advice that these structures need so much.¹⁵

Despite this criticism, there was some support for Ministerial appointments. Mr Schumacher, referring to the proposed Advisory Council on Recreational Fishing, argued that the Minister should be able to seek advice from whoever he wishes, adding “if the Minister makes a mistake then it is his fault, his problem”¹⁶. Mr Schumacher also pointed out:

... I do not believe the Minister is there to manage the industry, he is there to manage the resource, and they are totally different things. The industry can have one point of view whereas the Government that is supposed to be maintaining that resource for everybody, not just the users, can have a totally different point of view. I believe if the

¹⁴ Evidence of Mr Snape, 14 February 1997, p. 20.

¹⁵ Evidence of Mr Conner, 13 February 1997, pp. 28-29.

¹⁶ Evidence of Mr Schumacher, 14 February 1997, p. 27.

Minister does not select his committee and if the committee is selected by the industry, it can be a very biased committee that is presenting the Minister with advice.¹⁷

Dr Glaister also supported the right of the Minister to select the people from which he will take advice in the management of the fishery, stating:

... at the end of the day the Minister is the one who needs to decide on how a fishery is to be managed. That is the basis of the Westminster system. As I understand it, the buck stops at the Minister.¹⁸

4.2.2 Appointment by Selection Panel

Supporters of appointment by an independent selection panel generally argued that this would ensure that advisory body members would be appointed at “arm’s length” from the Minister as a result of their expertise, not their political leanings or popularity.

Mr Roberts supported the method of selection used by the Commonwealth to appoint individuals to the Fisheries Research and Development Corporation (FRDC). Mr Roberts claimed that this selection method had been very successful in providing stability to the membership of the FRDC and explained the system thus:

A couple of key organisations in the various commodities nominate people to an interview panel. That interview panel advertises throughout Australia. People who are interested in being appointed to those committees or councils apply. The interview panel goes through the normal interview process and recommendations are made to the Minister.¹⁹

¹⁷ Evidence of Mr Schumacher, 14 February 1997, p. 27.

¹⁸ Evidence of Dr Glaister, 13 February 1997, p. 77.

¹⁹ Evidence of Mr Roberts, 13 February 1997, p. 4.

Mr Roberts also expressed support for the Ministerial right of veto over recommended appointees provided within the FRDC system, stating:

In the period that I have observed the Fisheries Research and Development Corporation only once in a period of 10 to 15 years has the Minister rejected the nomination from the interview panel. That person was rejected because he was under investigation by the Federal police on a matter entirely unrelated. The interview panel had absolutely no idea of that at the time of its nomination to the Minister.²⁰

4.2.3 Statutory Appointment of Persons Nominated by Specified Groups

Statutory appointments to advisory bodies also received support during the Inquiry, generally as a method of ensuring representation of key stakeholders.

Dr Young suggested that for each Advisory Council there should be a mix of statutory appointments and other appointments made through a specified selection process. Dr Young suggested that the statutory appointments should include the Director of Fisheries and other key stakeholders relevant to each Council, while other processes should be employed to appoint persons with particular expertise in areas such as commercial fishing, processing, fisheries law, and fisheries research²¹.

While concerned with discretionary Ministerial appointments, the Nature Conservation Council supported merit nominations from recognised peak bodies. Mr Conner stated:

The NCC supports the accommodation of merit nominations and also nominations from recognised industry and community groups to such an advisory council. Of course, the council puts itself forward as one of those organisations, as it has done for a number of other similar committees.

²⁰ Evidence of Mr Roberts, 13 February 1997, p. 4.

²¹ Evidence of Dr Young, 14 February 1997, p. 45.

With regard to specific merit nomination processes, Mr Conner gave a number of examples:

There are a number of ways in which that can be done. ... I think the *Threatened Species Act* provides for an independent scientific committee, representatives for which are selected from various scientific organisations. ... For a number of organisations such as the EPA board, to which I referred, the process provides for three nominees to be put forward by the Nature Conservation Council and the board selects two.²²

4.2.4 Direct Election

The direct election of advisory body members received strongest support from the commercial fishing industry. For example, Mr Harasymiw stated:

In the same way as any industry organisations, or any organisations whatsoever, fishermen want to be able to democratically elect their spokespeople, and these people should be able to represent all their views—whether they be representative, advisory or just invitations to tea parties. These are the people that they have confidence in, and these are the people who should be allowed to voice opinions on the industry's behalf. In terms of advice, the Minister has many avenues of advice. Naturally, the most important one, from the Minister's point of view, is his department.²³

Despite this support from some in the commercial fishing industry, the direct election of advisory body members received considerable criticism. Dr Young stated:

²² Evidence of Mr Conner, 13 February 1997, p. 29.

²³ Evidence of Mr Harasymiw, 13 February 1997, p. 44.

I am afraid my experience is that Fisheries cannot be managed by a democracy because you will get the lowest common denominator and no-one will be making the tough decisions under those circumstances. Consequently, it is critical to get the very best people around that table. Therefore, one has to have appointments. One can have nominations, of course, but the skills for getting elected to various bodies are not necessarily those that are the best for acting as a manager.²⁴

Mr Roberts also rejected the notion of elected representatives on advisory bodies. Referring to Management Advisory Committees, Mr Roberts said:

The philosophy put forward in our submission is that quite simply a democratic process is not needed for the representatives on MACs. If you want the best people to represent the industry, you do not hold a popularity contest or a democratic process. The model that has occurred at national level and has worked is an interview situation where the best people come through. They may not be the most popular people, but that is the major difference. So I would challenge the philosophy of even wanting democratic participation. The democratic participation occurs by a person's capacity to apply to be on a particular council. It is a democratic right to apply. What happens after that point is another process.²⁵

Mr Roberts later described what he believed to be the major distinction between the suitability of electing members to advisory bodies and electing members of representative bodies. Referring to the oyster industry, Mr Roberts stated:

... the Fisheries Management Act at the moment has two specific committees formed under it. One is the Oyster Research Committee and the other is the New South Wales Quality Assurance Program Committee. Both of them are

²⁴ Evidence of Dr Young, 14 February 1997, pp. 43.

²⁵ Evidence of Mr Roberts, 13 February 1997, p. 6.

appointed by the Minister following interviews by a selection committee. The difference is that they have specific terms of reference whereas the Oyster Farmers Association is in the business of industry politics. These particular advisory committees and other committees are not in the business of carrying out industry politics. The difference between the two is reflected in the position of appointments.

... The people who you want on those working committees, which are the key bodies, are the people who are the most qualified.²⁶

4.2.5 Method of Appointment in Other States

A variety of approaches to the appointment of advisory body members have been adopted by the Commonwealth and other states. The primary method of appointment employed in these jurisdictions include independent selection panel by the Commonwealth and Queensland, and direct Ministerial appointment after calling for expressions of interest in Western Australia, Victoria, Tasmania, South Australia, and the Northern Territory. Chapter Five provides a description of the advisory body structures of the Commonwealth, each state, and the Northern Territory.

²⁶ Evidence of Mr Roberts, 13 February 1997, p. 11.
