REPORT TO
WESTERN ROCK LOBSTER COUNCIL AND THE WESTERN AUSTRALIA FISHING INDUSTRY COUNCIL
29 NOVEMBER 2017

THE POTENTIAL FOR A NEW STATUTORY MANAGEMENT AUTHORITY

A SCOPING STUDY FOR THE WESTERN AUSTRALIAN FISHING INDUSTRY
FINAL REPORT
SUGGESTED CITATION FOR THIS REPORT

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EXECUTIVE SUMMARY

ACIL Allen Consulting has been commissioned by the Western Rock Lobster Council and the Western Australian Fishing Industry Council to conduct a scoping study on the advantages and disadvantages of a Statutory Management Authority for fisheries and the fishing industry in Western Australia.

What is a Statutory Management Authority?

Statutory Authorities are widely used to manage assets independently from government and industry. Assets managed by authorities include natural resources (e.g. water services, fisheries, and conservation estates) and collective funds (e.g. research levies and superannuation contributions). They are based on the principle that the various and at times competing interests are best managed by a separate independent entity, potentially in a more cost effective way.

Such authorities require authorising legislation along with funding, capability and appropriate accountabilities to provide agreed functions that include:

— determining sustainable use levels (e.g. fish harvest use)
— allocating and managing use of the asset (e.g. harvest licencing and compliance)
— financing research and development initiatives and capability to improve sustainability, productivity, profitability, biosecurity, integrity and competitiveness

There is a high level of discretion available to ensure an Authority is fit for purpose.

Under what conditions would an Authority suit Western Australia?

The study found accountability for industry funding of fisheries management and the need for improved collaboration are the central drivers for a Statutory Management Authority (and indeed any other industry structure). This could also be achieved through a non-legislated coordination framework or improving current arrangements or through consideration of alternative arrangements such as co-management. The merit of a Statutory Management Authority compared to alternatives, including co-management arrangements should be based on the following criteria:

— **Accountability:** An independent Authority provides a mechanism for both industry and government to ensure key functions are accountably and transparent managed in a way that strengthens collaboration and reduces conflict.

— **Flexibility:** The Authority must have the independence to adaptively improve and renew the services underpinning its functions, drawing on a sound financial base and effective liaison.

— **Efficiency and effective use of resources:** The Authority must be incentivised to make best use of available resources and of sufficient size to cover the costs of its existence. This must be underpinned by a performance system to monitor and evaluate effectiveness and efficiency.
1 INTRODUCTION

1.1 Background

Statutory Authorities are widely used to manage assets independently from government and industry. Assets managed by authorities include natural resources (e.g. water services, fisheries, and conservation estates) and collective funds (e.g. research levies and superannuation contributions). They are based on the principle that the various and at times competing interests are best managed by a separate independent entity, in a more cost effective way. Such authorities require authorising legislation along with funding, capability and appropriate accountabilities to provide agreed functions.

This question of whether Western Australian fisheries might be best served by a Statutory Management Authority has been considered several times in the past.

In 1994 the Western Australian government considered a Statutory Management Authority under its review of the Fisheries Portfolio. The decision was taken to retain a single but restructured Department.

In 1998 the Western Australian Fishing Industry Council (WAFIC) provided a case to government for the establishment of a Statutory Management Authority. At this stage WAFIC was advised that from a government perspective, neither the then Minister for Fisheries nor those principally responsible for the machinery of government supported any shift of (the then) Fisheries WA’s role and functions to that of a statutory model.¹

On 4 December 2002 the Minister for Agriculture, Forestry and Fisheries, The Hon. Kim Chance MLA, announced an inquiry into the desirability and feasibility of establishing a Statutory Management Authority to administer the State’s fisheries resource. The government’s response to the Inquiry was to retain the status quo and the Department of Fisheries was maintained.

1.2 Purpose and structure

ACIL Allen Consulting has been commissioned by the Western Rock Lobster Council and the Western Australia Fishing Industry Council to conduct a scoping review into the advantages and disadvantages of a Statutory Management Authority for fisheries and the fishing industry in Western Australia. This report is structured as follows:

Chapter 2 provides an overview of the Western Australian industry, its value and its structure. Chapter 3 defines statutory management authorities, their structure, functions and forms and provides some case studies and Chapter 4 summarises the key findings and criteria for considering establishing an authority.

This section provides an overview of the Western Australian fisheries and fishing industry to identify key considerations for establishing a Statutory Management Authority…

2.1 Value and volume

The Gross Value Product (GVP) of wild catch and aquaculture in Western Australia was over $550 million in 2014-15 (see Figure 2.1), over 30 per cent of national value.²

The Western Australian commercial fishing industry employs approximately 4,000 people directly and another 5,000 indirectly employed in associated and support services. It is estimated that over 600,000 Western Australians participate in recreational fishing each year, generating an economic value of $569 million and up to 7,000 jobs.³

FIGURE 2.1 GROSS VALUE PRODUCT OF WILD CATCH AND AQUACULTURE IN WESTERN AUSTRALIA, 2001-02 TO 2014-15

² Data from: http://fish.gov.au/Summary/Data-tools/Gross-Value-Production
While fishing is often referred to as an industry in practice fishing consists of a number of different wild catch and aquaculture industries. See Figure 2.2 and Figure 2.3.

Wild catch account for the largest volume of product harvested. Crustaceans are the largest product by quantity and value. Aquaculture which includes for example pearls, crustaceans, molluscs and fish is high value but considerably lower volume compared with wild caught product.

A direct consequence of this diversity is that each fishery will have differing management requirements and ability to pay.

**FIGURE 2.2 QUANTITY BY MAJOR CATEGORY**

**FIGURE 2.3 VALUE BY MAJOR CATEGORY**

SOURCE: DATA FROM FISHERIES RESEARCH AND DEVELOPMENT CORPORATION
2.2 Industry structure

The diversity is reflected in the structure of the Western Australian Fishing Industry Council (WAFIC) as shown in Figure 2.4. The Council was created by industry in the 1960s and represents the interests of the seafood, pearling and aquaculture industries. Members include regional fishing, industry associations and exporting companies.

The Council works in partnership with government to set the directions for the management of commercial fisheries in Western Australia with respect to: securing resource sustainability and equitable access, cost-effective fisheries' management, promoting a safe, environmentally responsible and profitable way for business and promoting investment in industry research and development.4

Other areas of involvement include:

— resource access and industry sustainability
— industry and stakeholder communications and engagement
— building community support
— building organisational capacity.

FIGURE 2.4 STRUCTURE OF WESTERN AUSTRALIAN FISHING INDUSTRY

More than forty organisations are involved in industry representation

2.3 Government structure

Fisheries are managed under the *Fisheries Resources Management Act 1994*. On 1 July 2017, The Department of Fisheries became part of the new Department of Primary Industries and Regional Development (DPIRD).

The new department amalgamates the Department of Fisheries with the Department of Regional Development and the Department of Agriculture and Food, and staff from the Regional Development Commissions. Currently, the relationship could be categorised as per Figure 2.5 below.

Due to the recent change in government and the amalgamation it is difficult to provide detail on expected policy directions or other arrangements at this stage.

2.4 Funding

In 2010, Western Australia changed from an activity-based cost recovery regime to an access fee system where each fishery in Western Australia pays a fixed proportion (currently 5.75 per cent) of their gross value of production, towards fisheries management costs as well as industry consultation. Previously, Western Australia’s commercial fisheries paid fees based on a model that distinguished between “major” and “minor” fisheries. This meant Licensees in “major” commercial fisheries contributed on a full cost recovery basis to the costs of managing their respective fisheries, while licensees in “minor” fisheries paid fees on the basis of a percentage of Gross Value of Product (GVP) of their fishery.

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3 STATUTORY MANAGEMENT AUTHORITIES

This section describes what a Statutory Management Authority is and provides case studies on how they are used to manage fisheries and other resources. The key features that need to be considered in a WA Statutory Management Authority for fisheries are identified.

3.1 What is a Statutory Management Authority?

In its broadest sense a Statutory Management Authority is a separate legal entity created by specific legislation. It can have any governance arrangements as drafted in the legislation and can include a board, advisory committees and other arrangements. In its broadest sense, it can be a public servant who reports to and can be directed by the Minister under the provisions of the Public Sector Management Act 1994. A Statutory Management Authority operates at arm’s length from the Minister and is governed by its own enabling legislation. Any directives given by the Minister to such an Authority would require formal processes and are subject to parliamentary scrutiny. The existence of statutory authorities reflects decisions by government over time where it has been desirable for particular activities to operate outside a traditional departmental structure.

3.1.1 What are its roles, functions and form?

The roles, functions and form of a Statutory Management Authority are determined in the legislation that establishes the entity. Functions can be many and varied but traditionally statutory authorities are established to carry out a single or primary role such as management or marketing (which may comprise of many parts) which is subject to varying degrees of ministerial control specified in legislation.\(^8\)

\(^8\) This may also be defined as corporatisation. Corporatisation usually refers to the process of establishing a government business as a separate legal entity with more clearly specified objectives and usually a requirement to operate along private sector lines, including the payment of tax or tax-equivalent payments.

Under the *Fisheries Resources Management Act 1994* the objectives of the legislation are primarily:

— ecologically sustainable development
— equitable or ‘appropriate’ resource sharing
— provision of community benefits
— conserve/protect fish stocks, habitats and ecosystems
— promote sustainable fishing
— optimise net economic returns\(^{10}\)

Many of these objectives in Western Australia are common amongst many other jurisdictions, additional functions across other jurisdictions’ legislations are presented in Table 3.1.

<table>
<thead>
<tr>
<th>Objective</th>
<th>Commonwealth</th>
<th>NSW</th>
<th>VIC</th>
<th>QLD</th>
<th>SA</th>
<th>TAS</th>
<th>NT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Encourage or facilitate participation*</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Efficient and effective cost management*</td>
<td>✓</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cost recovery, finance and levy collection</td>
<td>✓</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Recognising and/or promoting indigenous cultural fishing</td>
<td>✓</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Increasing competition</td>
<td>✓</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Increase community understanding</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>Promote recreational opportunities</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Promote viable fishing</td>
<td>✓</td>
<td>✓</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Conserve threatened species</td>
<td>✓</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Accountability of decision makers to community and fishers</td>
<td>✓</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Assist with restructure of the commercial industry</td>
<td>✓</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Reduce shark attacks</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>✓</td>
<td></td>
</tr>
</tbody>
</table>

Note: * both these functions are part of the Western Australian Aquatic Resources Management Bill 2015

Source: Adapted from Productivity Commission, 2016

Other possible functions of Statutory Management Authority’s, not specific to fisheries but related, may include:

— Licencing and compliance
— biosecurity preparedness and response
— integrity and quality assurance systems.

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\(^{10}\) Productivity Commission, 2016, Marine Fisheries and Aquaculture, Inquiry Report No. 81, December 2016, p 62.
The form of the Statutory Management Authority will depend on its role and function. Key design considerations include:

- single or multi-purpose/function
- single or multi-commodity/industry
- independent or government subsidiary
- voluntary or compulsory membership
- full or partial cost recovery
- fee for service or levy
- voluntary or compulsory levies
- funder, provider or both.

In the case of Western Australian fisheries and the fishing industry the Statutory Management Authority would be funded by industry fees and could be a multi-purpose/function Statutory Management Authority in line with the multiple objectives under the *Fisheries Resources Management Act 1994*.

The advantage of a multi-purpose/function and/or commodity form is that the Statutory Management Authority achieves sufficient economies of scale and scope to cost effectively manage fisheries. However a multi-commodity Statutory Management Authorities will face the challenge of being able to balance the specific requirements of different fisheries. Care needs to be taken to avoid establishing internal conflicts of interest when a Statutory Management Authority is responsible for managing competing objectives.

A critical consideration is clearly establishing the basis on which the Statutory Management Authority will be financed. Industry can contribute through a combination of levies or fee for service mechanisms to cover costs that benefit industry on a full cost recovery basis. Generally unless industry contributions are compulsory the Statutory Management Authority will face considerable financial risk and additional promotional costs given industry may choose not to pay.

There is scope for government to contribute additional funds for public benefits, although these don’t necessarily need to be allocated to the Statutory Management Authority if there is a cost effective alternative.

The question of whether the Statutory Management Authority should be an independent body or government subsidiary is a matter of preference. If the Statutory Management Authority is an independent body then it would need to be owned by industry. For example the levy payers of industry owned Research and Development Corporations are the members/shareholders.

A final consideration is whether the Statutory Management Authority should be a funder or both a funder and provider. A funder form is simpler in that the Statutory Management Authority is only responsible for contracting services to deliver on its objectives. This allows the Statutory Management Authority to use competitive market forces to contract the best available provider and avoids potential conflicts of interest where it needs to choose between contracting its own capability or an external provider. In practice the market for much of the specialist expertise required is thin and there is limited choice of providers. To overcome this the Statutory Management Authority could provide a number of services itself which will require additional governance requirements.

### 3.1.2 Type of legislation

Fisheries are legislated under the *Fisheries Resources Management Act 1994* and *Pearling Act*, and these Acts would allow for the operation of a proposed authority.

In Western Australia a Statutory Management Authority would like fall under the *Statutory Corporations (Liability of Directors) Act 1996*, where corporation means any body corporate established for a public purpose by a written law, but does not include a local government.
As at September 2016 there were 28 statutory authorities under this Act, the most relevant of these (i.e. for primary industries and or allocative resources) are presented in Table 3.2 below. The Potato Marketing Corporation has been recently dissolved.

**TABLE 3.2 WESTERN AUSTRALIAN STATUTORY AUTHORITIES IN SIMILAR INDUSTRIES**

<table>
<thead>
<tr>
<th>Statutory Management Authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>Forest Products Commission</td>
</tr>
<tr>
<td>Potato Marketing Corporation of Western Australia</td>
</tr>
<tr>
<td>Western Australian Meat Commission</td>
</tr>
<tr>
<td>Western Australian Meat Industry Authority</td>
</tr>
</tbody>
</table>

**SOURCE:** SCHEDULE 1, STATUTORY CORPORATIONS (LIABILITY OF DIRECTORS) ACT 1996.

Financial accounting systems are often subject to the *Financial Administration and Audit Act* and a Chief Executive may be appointed under the *Public Sector Management Act 1994*.

Examples of other types of industries with statutory arrangements in Western Australia include:

- ports and shipping
- cemeteries
- land development
- insurance commissions

3.1.3 **What is a typical governance structure for a Statutory Management Authority?**

The structure of a Statutory Management Authority must reflect the objectives of the Statutory Management Authority as agreed with the government through the responsible Minister.

Typically a Statutory Management Authority’s governing structure may comprise one or more of the following:

- one or more commissioners
- a CEO
- a board of directors.

Where a board exists:

- if the portfolio secretary is a member, they may or may not have full voting rights
- directors may be or may not be representational
- the mix of executive and non-executive directors will vary from authority to authority.  

Potential efficiency gains can be realised through an independent expertise based Board and a more efficient administration as a result of the introduction of market mechanisms in the delivery of services.

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11 Ibid.
Box 3.1 below presents five principles of good governance for Statutory Management Authorities.

**BOX 3.1 PRINCIPLES OF GOOD GOVERNANCE FOR A STATUTORY MANAGEMENT AUTHORITY**

The following five principles distil lessons from good practice in corporate governance, applying the learnings to governance of industry-based levy systems, and can be applied to any governance structure.

1. **Clarity of purpose**: a key principle when designing governance arrangements is ensuring the organisation has clear intent and direction.
2. **Ensuring equitable rights for payers and beneficiaries**: fundamental to sound governance is establishing equitable property rights for the interested parties.
3. **Adaptability and flexibility**: good governance is sufficiently flexible and adaptable to provide guidance even in the context of changing needs.
4. **Accountability and transparency**: a sound governance framework clearly sets out a hierarchy of accountabilities and ensures the organisation is transparent to its stakeholders about its performance and management.
5. **Effective and efficient use of resources**: good governance supports the organisation to operate effectively and efficiently in pursuit of its objectives.

**SOURCE: ACIL ALLEN CONSULTING**

Another potential disadvantage to a Statutory Management Authority model is the risk of politicisation occurring at the Board level through:

— the members of the Board being representative rather than skills based
— Directors holding conflict of interest which are not properly declared or managed
— nominations committees not being made up of the right people
— voting rights are not properly set up.

This can be managed in several ways and the issues surround politicisation of the Board and how to manage them are provided below with some examples provided in Box 3.2 overleaf.

1. **Implement the Australian Stock Exchange (ASX) principles of good corporate governance:**

   The ASX has eight principles of corporate governance, these include:
   
   i) Lay solid foundations for management and oversight
   ii) Structure the board to add value
   iii) Act ethically and responsibly
   iv) Safeguard integrity in corporate reporting
   v) Make timely and balanced disclosure
   vi) Respect the rights of security holders
   vii) Recognise and manage risk
   viii) Remunerate fairly and responsibly

2. **Clarify roles and responsibilities to ensure conflict of interest is minimised using methods to split accountability:**

   Often there are many roles and not enough people (or the right people). This can lead to issues of conflict of interest if the roles and responsibilities are not clearly identified and structured. This can be managed by ensuring that members of peak industry bodies are not the same people on the Board of the Statutory Management Authority. An example of where this is done well by Wines of Western Australia is provided in Box 3.2 overleaf.

3. **Avoid undertaking highly political activities:**

   Ensuring that chosen activities are not political and that if they are, there are strong rules in place to help manage the political dimension such as only addressing one politically charged issue at a time.

   An example of where this is not done well in the Australian Wool Innovation is provided in Box 3.2 below.
Western Australian Wine Industry – separating roles and responsibility to minimise conflict of interest

In Western Australia, state and regional wine industry development is partly financed by a state industry levy. The roles and responsibilities of collecting/distributing and expending the funds are managed separately by the Agriculture Produce Commission and Wines of Western Australia respectively. An individual can sit on the Board of one but not both organisation. This provides individual and organisational structural separation to provide increased governance accountability and reduce conflict of interest and politicisation. Under these arrangements:

Wines of Western Australia
– determine fee for services through annual consultation with producers
– provides support to WA producers and regional associations in the sustainable development of their region
– advocacy and representation on behalf of WA producers
– sustainable funding model facilitates increased co-investment with government agencies

Agricultural Produce Commission
– collects and distributes funds, freeing industry resources to focus on core business
– provides increased level of governance and accountability on the allocation and use of funds.

Australian Wool Innovation (AWI) – recommendations for change

AWI runs concurrent activities with a political dimension which has led to politicisation of the AWI Board. These activities include the existing directors sitting on the nominations committee, allowing the use of proxies for board elections and conducting the levy poll R&D and marketing funding at the same time. In the 2012-15 Performance Review the following were recommendations were made for improvement in governance and accountability with respect to the Board. Specifically the AWI Board should:

1. work closely with the AWI Independent Governance Advisor in the course of the next Review period to evolve to a full skills matrix to be included in in the Board Charter, reviewed annually, and used in the Nominations Process.
2. work with the AWI Independent Governance Advisor over the course of the next Review period to formalise a revised Governance Policy. The Policy will specifically address how the Board intends to manage any Conflicts of Interest.
3. work closely with the AWI Independent Governance Advisor in the course of the next Review period to formalise succession planning for the Board and key executive functions.
4. work with the Independent Governance Advisor to formalise within 12 months an all-encompassing Deed of Delegation to the CEO.

3.2 Case studies

Four case studies, two from fisheries (Queensland and the Commonwealth) and two from other Western Australian primary industries are provided below.

3.2.1 The Queensland Fisheries Management Authority

The Queensland Fisheries Management Authority (QMFA) was established in 1995 under the Queensland Fisheries Act 1994 as a Statutory Management Authority to manage and protect fisheries resources in conjunction with the Chief Executive of the Department of Primary Industries.

The QFMA’s primary function was “to ensure the appropriate management, use, development and protection of fisheries resources.”

The QFMA’s functions were to formulate regulations, management plans and declarations “having regard to the principles of ecologically sustainable development”. The QFMA was responsible for managing both commercial and recreational fishing.

The introduction of the enabling legislation at the time resulted in the establishment of the QFMA board to consist of eight expertise-based members rather than representative members. These competencies included expertise in natural resource management, financial management, public administration, recreational and commercial fishing, and fisheries sciences. An expertise-based board was considered to be more beneficial than the previous representative arrangement. Under a representative board, it was extremely difficult for board members to agree on minor matters, and members’ focus on the common good nature of the resource was sometimes compromised due to conflicting interests.

In devising management plans, the QFMA established and sought consultation from Management Advisory Committees. The QFMA was not bound by advice from Management Advisory Committees but QFMA had to explain to the Committees how it diverged from its advice and express reasons why.

The QFMA also established Zonal Advisory Committees to provide a forum for regional communities to address local matters.

The functions of the QFMA did not extend to matters within the Department’s functions under the same legislation. The Department’s activities include the management of fish habitat protection, prevention control and eradication of disease in fish and the management of aquaculture.

In addition a Queensland Fisheries Policy Council was established as a representative body of stakeholders to advise the Minister on strategic policy issues affecting fisheries resources rather than operational matters. The Council was chaired by the Minister.

In 2000, the QFMA was disbanded. The Fisheries Act 1994 is now administered solely by the Chief Executive of the Department of Primary Industries. The reasons behind the failure of QFMA have been cited as:

- lack of clarity on roles and responsibilities causing confusion amongst stakeholders\(^\text{12}\)
- accountability and communication issues
- intensity and political sensitivities of competing interests especially recreational, environmental, indigenous and tourism interests
- government being unwilling to delegate any significant and politically sensitive fisheries policy and decision making to the Statutory Management Authority.

This was highlighted by the legislative design for commercial fisheries management which effectively required the QFMA to carry out its activities in conjunction with the activities of the Department of Primary Industries.

3.2.2 The Australian Fisheries Management Authority

In 1992, the Australian Fisheries Management Authority (AFMA) was established as the Commonwealth Statutory Management Authority responsible for the management of Commonwealth

fishery resources under the Fisheries Administration Act 1991 by applying the provisions of the Fisheries Management Act 1991. AFMA manages fisheries within the 200 nautical mile Australian Fishing Zone and, in some cases, by agreement with the Australian States.

The rationale for establishing AFMA was:

— administrative flexibility under a Statutory Management Authority is greater relative to a government department.

— The existence of clear objectives in the legislation requiring AFMA to pursue the delivery of cost effective and efficient fisheries management whilst taking into account conservation issues.

The AFMA model can be summarised as follows:

AFMA was created as a professional statutory body, at arm’s length from government, that could undertake the government’s responsibilities for fisheries management in an open and accountable manner, and provide sound long-term natural resource management. This is a significant departure from fisheries management under a minister/government department framework. The main elements of the AFMA model include the organisation’s day-to-day independence from the Minister, a strong partnership approach with key stakeholders, specific accountability requirements and rights-based management arrangements. Together these elements provide effective, transparent and publicly defendable management of Commonwealth fisheries.

AFMA Annual Report, 2000-01

On 1 July 2008, new governance arrangements for AFMA came into effect. The existing board of directors was replaced with a commission, responsible for domestic fisheries management, and Chief Executive Officer, responsible for foreign compliance and assisting the commission. The Commission is responsible for domestic fisheries management while the Chief Executive Officer is responsible for foreign fisheries compliance, under direction from the Australian Government.

The Chief Executive Officer is also a commissioner. The new arrangements also brought the agency under the Financial Management and Accountability Act 1997 and the Public Service Act 1999. All Commissioners, apart from the CEO, are appointed on a remunerated, part-time basis.

3.2.3 Examples from other industries

BOX 3.3 WESTERN AUSTRALIAN MEAT INDUSTRY AUTHORITY

The Western Australian Meat Industry Authority (WAMIA) is established by the Western Australian Meat Industry Authority Act 1976.

WAMIA has an independent Chairman appointed by the Minister and Members representing producers, processors, retailers, industry employees and government and reports to the Minister for Agriculture and Food; Transport (the Minister).

The board consists of seven members appointed by the Minister and the Director General or an officer of the Department of Agriculture and Food (DAFWA) nominated by the Director General.

The functions of WAMIA under the Act are:

— to review facilities for, and the operation of, establishments related to the sale, slaughter and processing of animals and meat

— manage the Muchea Livestock Centre

— undertake any other functions as directed by the Minister.

WAMIA is subject to the direction of the Minister in the performance of its functions.

The activities of the WAMIA are funded through charges at the Muchea Livestock Centre, revenue from livestock services, and rentals and fees charged for the approval of meat processing establishments.

WAMIA’s financial accounting system is subject to the Financial Administration and Audit Act and a Chief Executive appointed under the Public Sector Management Act 1994 manages the Authority.

SOURCE: WAMIA, ANNUAL REPORT, 2015-16
### BOX 3.4 WESTERN AUSTRALIAN FOREST PRODUCTS COMMISSION

The Western Australia Forest Products Commission (FPC) is an autonomous commercial entity governed by an independent Board of Commissioners and accountable to the Western Australian Government through the Minister for Forestry. The FPC was established in November 2000 by the Western Australian Government, as a Statutory Management Authority governed by the Forest Products Act 2000 and sections of the Forest Management Regulations 1993.

The Board of Commissioners possess a diverse range of skills and experience to manage the variety of issues on which they provide direction.

The functions and principles of the FPC are legislated in Section 10 of the Forest Products Act 2000 and includes:

- supporting industry development
- advising the Minister on forestry policy
- performing commercial functions of growing, harvesting and selling forest products.

Section 12 of the Act specifies the principles of performance against these functions, the FPC must try to ensure that a profit consistent with the planned targets is made from forest products while ensuring:

- the long-term viability of the forest products industry
- the principles of ecologically sustainable forest management are applied in the management of indigenous forest products located on public land.

**SOURCE:** FOREST PRODUCTS COMMISSION, ANNUAL REPORT 2015-16, AVAILABLE AT: HTTP://WWW.FPC.WA.GOV.AU

### 3.3 Why Statutory Management Authorities succeed and why they fail

For a Statutory Management Authority model to be successful it is essential that the following criteria are addressed:

- enabling legislation that is:
  - unambiguous, avoids confusion, and clearly defines the roles and functions of the Statutory Management Authority
- clear objectives in the legislation to ensure the pursuit of the delivery of cost effective and efficient management.
- an ‘arms length’ approach by Government and the Minister to ensure that independence is maintained at all times.
- adequate consolidated revenue funding for any component of the business that is not fully cost recovered.

As evidenced by the case studies above the Statutory Management Authority structure, as applied to fisheries, appears to fail due to:

- competing complex objectives e.g. conservation versus commercial objectives
- a lack of clarity around roles and responsibilities causing confusion amongst stakeholders
- government unwillingness to delegate
- accountability and communication issues.

### 3.4 What are the pros and cons of, and alternatives to, a Statutory Management Authority?

When comparing a Statutory Management Authority with a departmental structure there are several pros and cons.
3.4.1 Pros

— administrative flexibility under a Statutory Management Authority is greater relative to a government department
— being arm’s length from the Minister assists in creating a commercial culture, as there is minimal day-to-day Ministerial intervention in operational aspects
— transparency and direct stakeholder dialogue
— strategically (and operationally) more flexible when governed by a Statutory Management Authority board of experts
— the political dimension of government ownership may help to achieve a sense of equity and protect the common interest across a diverse group of beneficiaries

3.4.2 Cons

Disadvantages of a Statutory Management Authority model is that it requires:

— Parliament to enact legislation and this is usually a resource and time intensive process
— accountability and performance reporting frameworks to ensure the ability of levy payers and beneficiaries to hold the scheme to account
— consideration of vested interest issues to ensure equity.

Box 3.5

**STATUTORY MARKETING AUTHORITIES – PROS AND CONS**

Following the findings of the Hilmer Review in 1993, the National Competition Council conducted a series of reviews seek to determine whether mandatory arrangements are the best way of achieving benefits for agricultural producers and the community. The NCC outlined the following pros and cons for Statutory Marketing Authorities in agriculture:

**Pros**

Mandatory collective arrangements through a Statutory Marketing Authority result in the largest possible number of growers pooling produce to achieve reduced costs for growers through economies of scale as well as the best possible prices, particularly in overseas markets. Benefits include:

— maximise grower income
— ensure stable product prices, production levels and grower incomes
— achieve price advantages or premiums based on market power, particularly in export markets
— achieve economies of scale in the marketing of Australia’s agricultural products, particularly in export markets
— assist in countering the market power of perceived corrupt buyers and sellers, particularly heavily government subsidised international competitors

**Cons**

Alternatively, many are opposed to the perceived ‘one size fits all’ approach of compulsory Statutory Marketing Authority. Costs include:

— reduced freedom of choice for how, when, and to whom, they sell their products, and reduced freedom to negotiate sale prices
— less control by growers over their business decisions including production, marketing and risk management
— reduced freedom for growers to specialise in high quality crops and get prices that reflect this higher quality
— increased share of a grower’s returns taken up by administration costs
— less incentives and opportunities for individual farmers and rural communities to undertake more innovative marketing and to invest in higher-value and/or niche post farm production
— less variety of products and increased surety of supply leading to growth in industries which are major consumers of agricultural products such as food processors.
— cost to consumers through less choice of products available.

SOURCE: NATIONAL COMPETITION COUNCIL, 2000, AVAILABLE AT: HTTP://NCC.NGC.AU/DOCS/CICOMAG-001.PDF

Box 3.5 above summarises the pros and cons for statutory marketing authorities which were commonly used in agricultural industries prior to 2000. These structures were essentially devolved
following the Hilmer Review in 1993 as there were seen to be anti-competitive in nature and contrary to the national push for deregulation and privatisation.

3.4.3 Alternative structures to an Statutory Management Authority

An alternative arrangement could be establishing an industry owned structure like in the national Research and Development Corporations (RDCs) case. Of the original 15 RDCs there are only five remaining statutory authorities. The remaining ten are industry owned. These industry bodies can be declared in legislation or prescribed in regulations for a range of purposes.

Box 3.6 below provides insights into the case for statutory ownership when compared with industry ownership under RDCs.

**BOX 3.6 STATUTORY OR INDUSTRY OWNERSHIP – THE CASE OF THE RURAL RESEARCH AND DEVELOPMENT CORPORATIONS**

Historically, the Rural Research and Development Corporations (RDCs) were set up as statutory authorities or corporations, established under legislation and owned by the Commonwealth. However, over time many of the RDCs have evolved to become industry-owned not-for-profit companies set up under the Australian corporation law.

**Advantages, disadvantages and governance implications**

An industry-owned corporation, transparently bound by the requirements of corporate law, has the advantage of being independent and thus free from political influence. This set-up can free the scheme to focus on its purpose, without getting diverted to cater for other needs or interests. Further, this independence can help the scheme be more operationally flexible in structuring its activities to best meet the needs of the scheme participants.

In contrast, a statutory corporation may be strategically more flexible than an industry-owned scheme. For example, expansion or amalgamation of scheme coverage to other industries can be achieved through exercising ministerial powers in the case of a statutory corporation, but is likely to require extensive negotiations in the case of an industry-owned scheme. Operational flexibility may be supported through appropriate delegation of powers to the board and management.

Further, a crucial benefit of the statutory corporate form is through the political dimension of government ownership. Levy payers and beneficiaries are disperse groups, with little interest or capacity to effectively protect their own interests as shareholders in an industry-owned corporation.

However, delegating ownership to peak industry bodies (trade unions and business representative groups) is problematic on two counts.

Firstly, not all employees or employers are members of a representative body. Therefore, the ability of levy payers and beneficiaries to hold the scheme to account would be dependent, not on their participation in the industry, but membership of the respective representative bodies.

Secondly, vesting ownership in the hands of a few representative bodies would lead to a concentration of power in the hand of a few, creating of perverse incentives.

A recent example was the transition of the horticultural Research and Development Corporation (Horticulture Australia Limited) from representative bodies’ to levy payer owned Horticulture Innovation in 2014. Under the Australian rural R&D model R&D and marketing levies are collected from industries and disbursed by independently managed organisations on behalf of industry and the Commonwealth (who also match the R&D levies). Prior to the reform the horticulture RDC, Horticulture Australia Limited (HAL), was owned by the peak industry bodies for levied horticultural industries. The organisations were funded by HAL to consult with industry and could also receive funds from HAL to undertake work, creating a conflict of interest. In response to considerable concern and discussion the decision was made to establish a new organisation, Horticulture Innovation Australia, owned by levy payers rather than peak industry bodies to remove the conflict of interest.

Another alternative structure would be some form or hybrid or co-management like structure between fisheries and the fishing industry and the government. Co-management is a partnership approach that requires mutual trust and respect between the parties across multiple levels. It’s not a traditional management form in fisheries management but if a collaborative culture exists among the industry and the managing agency it may be an option worth considering.

Co-management has been recently trialled by AFMA and requires:

- a clear willingness on both sides
- identification of mutual benefits from co-management activities
- an identifiable group
- a high level of representation by the group
- evidence of a good governance structure within the group
- evidence of capacity to undertake fisheries management services

AFMA’s approach was supported by legislative amendment to facilitate formal co-management arrangements, including in some cases the delegation of functions and powers.

Box 3.7 below provides an overview of the key findings of the Fisheries Research and Development Corporation (FRDC) and AFMA’s work on co-management for fisheries as may relate to Western Australia. Box 3.8 overleaf highlights a recent success in co-management for fisheries in South Australia.

BOX 3.7 RECOMMENDATIONS ON CO-MANAGEMENT FOR FISHERIES

- Agencies should seek whole-of-government policy support for co-management as a legitimate fisheries management framework.
- Flexible funding models are needed to maximise cost efficiencies from co-management arrangements. Government agencies are subject to far greater accountabilities and rules than private enterprise.
- Cost recovery models appear to make co-management can be more complicated and industry finds it difficult to fund co-management voluntarily, despite the potential for cost saving.
- It is recommended that alternative funding models are needed to achieve the full benefit from industry providing fishery management services.
- Regulatory frameworks, for example, policies and management plans need to be as aligned as possible to facilitate co-management strategies being trialed and adopted in any fishery.
- The prospect of co-management is made more complex where management arrangements across fisheries are different and where management within the fishery are overly prescriptive.
- Co-management implies industry taking on a greater role and exercising leadership in the fishery. This would be subdued under complex and prescriptive arrangements
- Co-management may not result in benefits in all fisheries and given the demonstrable pre-conditions for successful engagement in co-management, not all fisheries will be able to adopt co-management.
- Industry needs to organise itself to support fishery representative organisations. It has been demonstrated that a competent industry organisation is a critical pre-condition for successful co-management.

While delegating functions is depicted as the extreme end of the co-management continuum, this should not imply that the functions to deliver good fisheries management must be undertaken in a prescriptive way. To do so may inhibit innovation, limit efficiency and constrain policy outcomes.

Co-management could be delivered in a way that invokes innovation and best-practice in the industry.

SOURCE: FRDC AND AFMA, 2015, CO-MANAGEMENT IN COMMONWEALTH FISHERIES, FRDC PROJECT NO 2008/045

BOX 3.8 SPENCER GULF PRAWN FISHERY – CO-MANAGEMENT IN PRACTICE

The South-Australian government has handed over management of a sensitive prawn fishery to industry through a “delegated co-management regime”. The industry spent 50 years building trust and establishing successful management plans and harvest strategies.

Under the radical changes, industry will now for the first time lead real-time operational at-sea decision-making based on research and annual monitoring.

Spencer Gulf and West Coast Prawn Fisherman’s Association executive officer Simon Clark said greater autonomy meant a lot to the industry, which would still be required to operate responsibly and within legislative requirements.

Fisheries Minister Leon Bignell said the management change was “monumental”.

“This is the first time anyone in Australia has delegated some of the powers held by the fisheries minister to the people who are running the fishing fleet out on the water,” Mr Bignell said.

“It is a monumental decision and a reflection of trust and a close working relationship.

“They (fishers) have proven themselves time and time again during the last decade and as a result, we believe some of the decisions about the operation of the prawn industry are best left to the industry itself.” The new arrangements will make it easier for industry to make real-time decisions while out on the water, within the bounds of an agreed management plan, Mr Bignell said.


SOURCE: MICHAEL OWEN, MINISTER PUTS PRAWN INDUSTRY IN CHARGE OF THE FISHING, THE AUSTRALIAN, 24 NOVEMBER, 2017

AFMA notes some specific benefits of this type of arrangement including:

— development of a research, monitoring and assessment strategy which has allowed the fishery to reduce its costs while still meeting the objectives of the fishery’s harvest strategy

— identifying barriers to participation in and/or maximising benefits of, co-management such as:

  — increase cost savings from co-management activities if the industry self-funded those activities and thereby were able to minimise AFMA’s involvement in the activity and associated costs.

Industry bodies find it hard to collect funds voluntarily from all fishery participants, but AFMA finds it difficult to reduce overhead costs in program areas where only one industry body undertakes the service on behalf of its members.14

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4.1 Accountability and collaboration are the key drivers

There are two central drivers behind whether a Statutory Management Authority might be appropriate for Western Australia’s fisheries and fishing industry. The first is a question of whether there is sufficient accountability to industry for the financial contributions made through levies for fisheries management. The second is whether an Authority will improve collaboration and coordination between all the parties and interests involved in managing fisheries and fishing industries? It is unusual for a Department to be employed to manage an activity where all the operating costs are provided by the industry. This goes some way to provide rationale for the delegation of accountability for expenditure from the Minister to a Statutory Management Authority to occur when the total funding of a government regulated activity is provided by the served industry. In practice there is likely to be interoperability between publicly and industry funded operations of the Department. This makes it challenging to transparently separate services and accountabilities. On top of this, the establishment of a fully industry-funded Statutory Management Authority would also need be consistent with previous Western Australian government’s policy on Statutory Authorities. That is:… A Statutory Management Authority should be established only if its proposed functions cannot be performed by a department or it would be inappropriate for them to be performed by a department.

Machinery of Government Taskforce (2001)

A recurrent theme across the case studies reviewed is that effective collaboration between industries and government is the key to successful fisheries management. If the trust and collaboration is not present then it does not matter whether there is a Statutory Management Authority or not. Therefore the central proposition lies in whether delegating functions to a Statutory Management Authority will improve collaboration to a greater level than the current arrangements, resulting in better fisheries and fisheries management?

This question is discussed against three criteria to outline the advantages and disadvantages of a Statutory Management Authority: accountability, flexibility and effective and efficient use of resources.

Accountability

A Statutory Management Authority will improve accountability to both industry and government if appropriately structured. The key to doing so lies in providing a clear purpose and independence for the Authority. That is deciding what functions will be delegated? For example delegating the licencing framework to the Authority would provide clarity of purpose. The QFMA experience also highlights that establishing an Authority with multiple objectives which compete against each other and have differing stakeholder interests can reduce accountability. This could be overcome by providing for a developmental approach where additional objectives are added over time. Accountability would need
to be embedded in the Authority’s governance structure and include mechanisms to transparently consult and report to industry and government.

The key advantage of an Authority is that it provides a single point of accountability for the delegated functions. This could also be achieved by improving existing accountabilities and using a non-legislated framework, such as the co-management framework implemented by AFMA.

**Flexibility**

The flexibility of a Statutory Management Authority stems from its independence. In principle the Authority should have higher degrees of freedom on how best to deliver on its functions. In practice this depends on the availability of discretionary funds and whether its stakeholder liaison mechanisms are more efficient than current arrangements.

The level of discretionary funds is largely reliant on how functions are delegated and the pricing principles underlying income received. If functions are tightly prescribed then the Authority will have limited ability to introduce more cost effective ways of delivering on its services. Similarly if funds received only cover current costs there is not provision for development and renewals.

Efficient stakeholder liaison relies of strong relationships and the effectiveness of mechanisms used. In the design of the Authority it will be important to replace rather than supplement existing mechanisms and allow the new arrangements to embed before pursuing efficiency.

**Effective and efficient use of resources**

This must be a core proposition of a Statutory Management Authority. It is based on the principle that an independent entity has the flexibility and incentive to be more efficient and effective than current arrangements.

It is important to recognise that an Authority will incur considerable costs that may be greater than the current arrangements. This includes the cost of governing and managing a separate organisation with appropriate accountabilities that can easily account for 10-20 per cent of expenditure. Such costs are justified so long as the net benefit is greater than current arrangements. That is the Authority is more effective and efficient in the use of available resources.

Achieving sufficient scale and scope is important to spreading fixed costs across larger income and achieving efficiencies by providing functions to more industries. There is also a trade-off with providing functions to more industries in that meeting individual requirements increases cost and complexity. A performance framework which monitors and evaluates efficiency and effectiveness is essential. Indeed such a framework would benefit fisheries management even if an Authority was not created.

**4.2 Conclusion**

A Statutory Management Authority is one sophisticated and enduring way to improve fisheries management in Western Australia. Its success needs to be built on demonstrable improvements in accountability and flexibility in a way that strengthen industry and government collaboration to a level that makes better use of resources than existing arrangements or alternatives.

An alternative is to establish a framework for co-management between industry and government. Working together to implement co-management provides a practical way to meet the pre-condition for a new authority (or any new management arrangement) – that is mutual trust and respect.

The recent machinery of government changes and industry interest has created the opportunity to start the process in Western Australia to establish new arrangements either by piloting establishment with an individual fishery or even for the whole sector.

The important first step will be for government and industry to make a genuine commitment through an MOU to establish co-management. This will form the basis for a partnership that is implemented across multiple levels to scope, test and establish the new arrangement over a number of years.
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