



Achieving Policy and Law Reform Outcomes in Fisheries Law

Coastal Fisheries Management Legal Development
Forum, Suva, 10-12 February 2016

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EDO NSW

Not-for-profit community
legal centre

EDO NSW ~ FELA

Mission:

Help the **community** use
the **law** to protect the
environment



Core areas of operation

- Litigation
- Policy and Law Reform
- Outreach
- Scientific Advisory Service
- Indigenous Program
- International Program
 - Pacific
 - Mentoring and technical support



Overview of session

1. The policy process
2. Policy tools
3. Overview of Australia's marine management regime
4. Stakeholder engagement case studies:
 - Marine protected areas
 - Fisheries

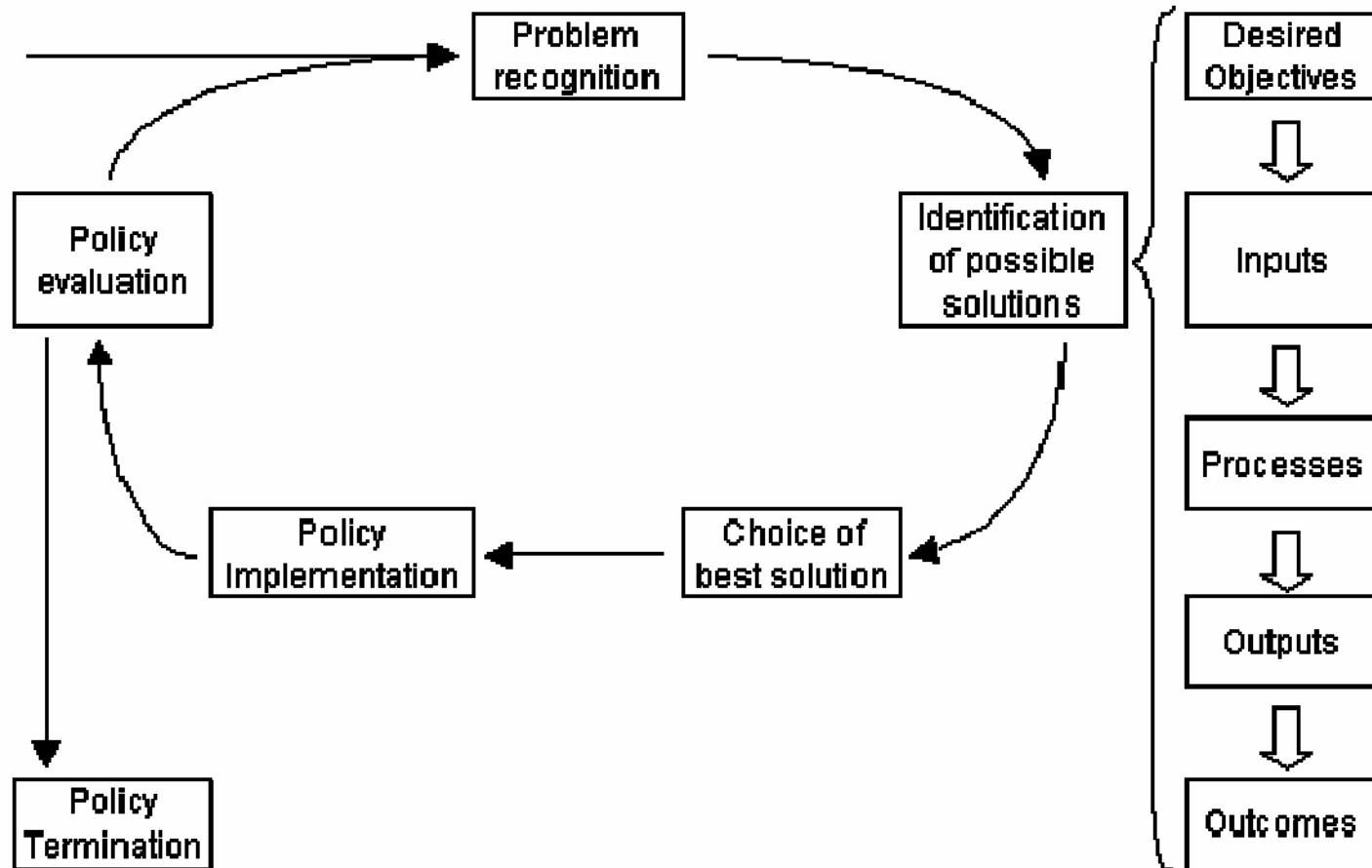
1. The policy process

- What do we mean by ‘policy and law reform’?
 - For our purposes, ‘policy and law reform’ refers to proposals for legislation, regulations and other guidelines put in place by government to prescribe a course of conduct
 - A ‘policy’ can be defined as:
 - ‘a purposive course of action to deliver a positive impact on the community’
 - ‘a course or line of action adopted and pursued by a government, ruler, political party or the like’

Policy development cycle

- A comprehensive policy development process can have a number of complex steps
- Key steps include:
 1. Recognising and defining the problem or issue
 2. Identifying possible solutions: gathering and analysing information, consulting with stakeholders
 3. Choosing the best solution
 4. Implementing the policy
 5. Evaluating the policy

Policy development cycle

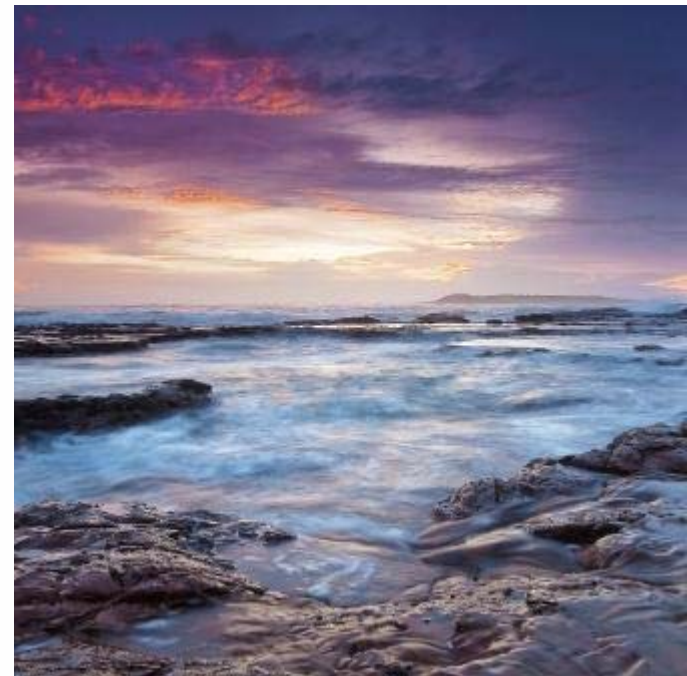


Stakeholder engagement

- Most input and consultation will probably occur at stage 2 (identifying solutions)
- Early engagement with policy makers is vital – make better laws
- Stakeholder consultation can include: public forums, surveys, public information campaigns, interdepartmental committees, community consultation committees, focus groups, inviting written submissions
- Governments listen because stakeholders:
 - have practical knowledge, experience and expertise
 - alert policy makers to less obvious issues
 - transparency and accountability in process
 - help to predict responses to a policy and possible problems with implementation

2. Policy tools

- Policy 'tools' include action plans, law, regulations, standards, incentives, funding programs, market mechanisms, and official guidelines etc
- Policy engagement tools include: submissions, discussion papers, forums, parliamentary inquiries, legal consultancies etc



EDO NSW Policy and Law Reform program

1. Preparing submissions on draft legislation and regulations, and proposed policies
2. ‘Proactive’ work: discussion papers, roundtable discussions, letters to government agencies, ministers etc
3. Advice to clients on law reform and policy issues
4. “Key stakeholder” role eg advisory committees

EDO NSW Policy and Law Reform program

- Written submissions
 - Written submissions are effective:
 - On the public record
 - Can contain well-ordered, considered and researched opinions
 - Ongoing/recurrent nature of environmental policy issues: enables a body of work on an issue to be established
 - Provide a good resource for new governments
- Tips on writing submissions:
www.edonsw.org.au/hys_fact_sheets

3. Overview of Australia's marine management regime

- Marine environments are protected under:
 - Two levels of Government: National and state

- National
 - *Environment Protection Biodiversity Conservation Act 1999 (Cth) (EPBC Act)*
 - *Fisheries Management Act 1991 (Cth)*
 - Pollution related laws

- State
 - *Marine Estates Management Act 2014 (NSW)*
 - *Threatened Species Conservation Act 1995 (NSW)*
 - *Fisheries Management Act 1994 (NSW)*
 - Pollution related laws

Frameworks

- Marine environments are protected under several different frameworks:
 - Protected areas
 - Protected species
 - Fisheries and aquaculture
 - Pollution



Protected areas

- National
 - Marine reserves (EPBC Act)
 - Ecosystem conservation and protection of biodiversity
 - Adopted IUCN list of marine protected area management categories. Zones include: Marine National Park, Habitat Protection, Multiple Use, Special Purpose

 - Matters of National Environmental Significance (EPBC Act)
 - Ramsar Wetlands
 - Great Barrier Reef marine park
 - Commonwealth Marine Areas

Protected areas

- State
 - NSW marine parks (marine estates law)
 - Purpose: Ecosystem conservation and biodiversity protection
 - Marine Estate Management Authority
 - Marine Estate Expert Knowledge Panel
 - Aquatic Reserves (marine estates law)
 - Conserve fish and marine vegetation biodiversity

Protected species

- National
 - Matters of National Environmental Significance (EPBC Act)
 - Protection is provided for:
 - Nationally listed threatened species or ecological communities
 - Nationally listed migratory species
 - Australian Whale Sanctuary (EPBC Act)

- State
 - Threatened fish (fisheries law)
 - Marine mammals and birds (threatened species law)

Fisheries

Assessment of current operations of the NSW Ocean Trap and Line Fishery for review against the requirements of the EPBC Act

Published in July 2005 by
NSW Department of Primary Industries
Agriculture and Fisheries Division
PO Box 21 Cronulla NSW 2230



NSW DEPARTMENT OF
PRIMARY INDUSTRIES

- National (fisheries law)
 - All permits issued and details available on the Internet
 - Assessments are made according to “Guidelines for the ecologically sustainable management of fisheries”

Fisheries - State

- Commercial
 - Total allowable catch committee
 - Lobster and abalone only
 - Share management fisheries
 - Shares allocated
 - Plan of management
 - Total allowable catch
 - Licensing
 - Fishers: individual fishing without a licence, first offence max penalty is \$110,000, corporation \$220,000
 - Boats
 - Environmental assessment
 - Environmental Impact Assessment must be prepared, which includes a species impact assessment

Fisheries

- State (fisheries law)
 - Recreational
 - Size limits: max penalty for first offence for individual \$22,000 , 6 months in prison or both, for corporation \$110,000
 - Bag limits: similar penalty as for size limits
 - Possession limits
 - Aboriginal cultural fishing

Aquaculture

- Permits and leases
- Planning approval
- Restrictions

Pollution

- Controlling pollution
 - Banning substances
 - Regulation polluting practices
- Mainly State responsibility
- NSW
 - Pollution at sea from land-based sources
 - Pollution at sea from non-land-based sources
 - Noise pollution from vessels

Thank You!

Questions?

