

Fisheries (General) Regulation 2019

Explanatory notes for SL 2019 No. 179

made under the

Biosecurity Act 2016

Fisheries Act 1994

Marine Parks Act 2004

Planning Act 2016

Rural and Regional Adjustment Act 1994

State Penalties Enforcement Act 1999

Statutory Instruments Act 1992

General Outline

Short title

Fisheries (General) Regulation 2019

Authorising law

Section 503 of the *Biosecurity Act 2014*

Sections 13, 14, 32, 33, 37, 49(2), 54, 56, 65, 65A, 68AB (7), 68B, 70C, 71, 73, 77A, 80, 82, 89, 90, 118, 120, 130, 131, 133, 140, 141, 154, 184, 218, 221, 222, 223 and schedule 1 of the *Fisheries Act 1994*

Sections 21 and 150, of the *Marine Parks Act 2004*

Section 284 of the *Planning Act 2016*

Section 44 of the *Rural and Regional Adjustment Act 1994*

Section 165 of the *State Penalties Enforcement Act 1999*

Section 20A of the *Statutory Instruments Act 1992*

Policy objectives and the reasons for them

The overarching policy objective of the *Fisheries (General) Regulation 2019* (General Fisheries Regulation) is to provide for the use and management of Queensland's fisheries resources and fish habitats in accordance with the objectives of the *Fisheries Act 1994*.

Together with the *Fisheries (Commercial Fisheries) Regulation 2019* (Commercial Fisheries Regulation), the General Fisheries Regulation replaces the *Fisheries Regulation 2008* with the aim of delivering a more modern regulatory approach. The General Fisheries Regulation also aligns with the *Queensland Sustainable Fisheries Strategy 2017-2027* (the Strategy) which was released in June 2017, and sets out clear targets to be achieved and a range of actions to deliver on these targets. This includes reviewing

fisheries legislation to support a more responsive, evidence-based approach to fisheries management.

The *Fisheries Regulation 2008* (the expired Regulation) expired on 31 August 2019 under the automatic expiry provisions of the *Statutory Instruments Act 1992*.

The need for fisheries reform in Queensland was established by a number of reviews, starting with the review by MRAG Asia Pacific, an independent fisheries and aquatic resource company, in 2014. In 2016, the Government released the *Green Paper on fisheries management reform in Queensland* (the Green Paper) for consultation. The Green Paper outlined the issues facing Queensland's fisheries and priority areas for reform. The overwhelming message of the response was that all stakeholders wanted the management of fisheries to be reformed. Most stakeholders agreed that doing nothing was not an option.

This feedback was used to inform the Strategy which was released by the Government in June 2017. It outlines the Government's vision for the future management of Queensland's fisheries and includes specific principles to be met and timed actions to review fishing rules and access; implement vessel tracking on commercial fishing vessels; set sustainable catch limits; manage ecological risks from fishing activities; and implement harvest strategies to manage our priority fisheries.

The Strategy included clear targets to be achieved and actions to deliver on these targets. It included the following actions relevant to legislative reform:

- Action 7.1 - Review fishing rules, regulations and access arrangements as part of developing harvest strategies for each fishery.
- Action 7.2 - Amend fisheries legislation to minimise regulation and ensure rules are clear and practical.
- Action 8.1 - Amend the fisheries legislation (*Fisheries Act 1994* and *Fisheries Regulation 2008*) in 2018 to clarify the roles of the responsible Minister and Fisheries Queensland, to ensure decision-making is at the appropriate level and is timely and evidence-based, and that rules can be changed via declaration as far as possible to ensure sufficient flexibility.

The Government also committed at the 2017 State election to "Review the *Fisheries Act 1994* and *Fisheries Regulation 2008* to create a legislative framework for recreational and commercial fishers that is contemporary, simple to understand reflective of community expectations". Commitments have also been made under the *Reef 2050 Long-Term Sustainability Plan* which can only be achieved by amendments to fisheries legislation.

In order to deliver on this election commitment and the more specific principles and commitments outlined in the Strategy, amendments to the *Fisheries Act 1994* and its subordinate legislation were required.

The first stage of legislative reforms was delivered by the *Fisheries (Sustainable Fisheries Strategy) Amendment Act 2019*. Consequential amendments to the Fisheries Regulation 2008 were made by the *Fisheries (Sustainable Fisheries Strategy) Amendment Regulation 2019* which commenced with relevant Act amendments in May 2019.

Replacement of the expired Regulation with the Commercial Fisheries Regulation and General Fisheries Regulation represents a further step in the reform process. The management arrangements in the expired Regulation were the result of many years of *ad*

hoc amendments rather than strategic management, leaving it complex, inefficient and not effective in controlling effort and/or catch in most of Queensland's commercial fisheries. It did not support best practice fisheries management or modern regulatory approaches and, therefore, does not meet the needs of the Strategy or the community and would limit the effectiveness of harvest strategies to achieve agreed objectives and targets for Queensland's fisheries resources.

The general approach to relocating the provisions across the two instruments was to separate the matters that related only to commercial fishing and commercial fishing licence holders into the Commercial Fisheries Regulation and all other matters into the General Fisheries Regulation. This new approach will support an objective of the Strategy to standardise fishing rules and support compliance by making it easier to find the relevant provisions of fisheries subordinate legislation. Consequential amendments to a range of Queensland subordinate legislation are also required to reflect new terminology used and update references due to relocated provisions or omission of provisions.

In June 2019, the Government released the *Discussion Paper on proposed changes to the Fisheries Regulation 2008* (the Discussion Paper) which outlined 102 proposed amendments. The General Fisheries Regulation, Commercial Fisheries Regulation and *Fisheries Amendment Declaration 2019*, which all commence on 1 September 2019, together implement 39 of the 102 proposals outlined in the Discussion Paper.

The following changes proposed in the Discussion Paper are implemented in the General Fisheries Regulation:

- clarifying that only 1 primary boat may be identified on a commercial fishing boat licence to assist in identifying which primary boats are operating under the commercial fishing boat licence;
- providing for restrictions on the issue of commercial fisher licences to persons at least 18 years and who have knowledge of fisheries legislation. This is necessary for the safe and appropriate operation of commercial fishing vessels and commercial fishing apparatus to prevent potential hazards to and unnecessary impacts upon fisheries resources, aquatic animals more generally and human life;
- providing that the chief executive may issue a general fisheries permit for an activity that is not able to be carried out under another type of authority including for trialling new and alternative gear types to support innovation within the commercial fishing industry;
- providing that a general fisheries permit can only be issued for a maximum of three years regardless of whether it is for a commercial or non-commercial purpose;
- moving from the payment of licence fees in arrears, which is administratively cumbersome and places the department at significant risk of bad debts as a result of managing outstanding payments, to payment of fees in advance.

The Government is still assessing feedback on other reforms proposed in the Discussion Paper and further amendments to fisheries subordinate legislation are being considered.

The General Fisheries Regulation also updates how the inspection of fish habitat maps may occur, and that the datum reference used is the datum specified on the plan.

Achievement of policy objectives

The subordinate legislation achieves its objectives by creating the following chapters and schedules. The achievement of each specific policy objective is discussed as it arises within the parts and schedules.

Chapter 1: Preliminary

Chapter 1, part 1 provides for the short title of the General Fisheries Regulation and its commencement on 1 September 2019. Section 3 clarifies the relationship between the fisheries subordinate instruments by providing that:

- the General Fisheries Regulation, Commercial Fisheries Regulation, *Fisheries Declaration 2019* and the *Fisheries Quota Declaration 2019*, all provide for matters under the *Fisheries Act 1994* (Fisheries Act) and must be read together;
- the General Fisheries Regulation provides for particular matters that apply to the regulations and declarations for example, the interpretation of particular references and authorisations under and conditions of an authority;
- the other fisheries subordinate instruments provide for things that apply to the General Fisheries Regulation. For example, the Commercial Fisheries Regulation provides for the authorisation under and the conditions of authorities that authorise activities to be carried out in a commercial fishery

Chapter 1, part 2 provides for definitions and key concepts and other interpretative tools. It groups definitions and interpretative provisions about similar topics together to assist readers to locate matters easily. For example, section 19 provides that schedule 10 provides interpretative provisions about particular fishing apparatus.

Incorporated into part 2, division 2 are two new concepts: that the meaning of a commercial fishery and a reference to a particular fishery is a fishery under the Commercial Fisheries Regulation; and a reference to a licence prefixed with a fishery symbol is a reference to a commercial fishing boat licence or commercial harvest fishery licence on which a fishery symbol is written.

Chapter 1, part 2, division 2 provides referential provisions to minimise the number of definitions required across in fisheries subordinate legislation. For example, section 9 provides that the term 'regulated waters' are regulated waters declared under the Fisheries Declaration 2019, and reference to particular regulated waters are the waters with that name or description in the Fisheries Declaration 2019 regardless of whether the reference includes the term 'regulated waters'. Chapter 1, part 2, division 3 provides other general interpretative provisions.

Chapter 1, part 3 provides that for section 82 of the Fisheries Act, schedule 1 prescribes the acts that must only be done by the holder of an authority and persons who have authority under the Fisheries Act to undertake that activity e.g. a person acting under an authority authorising the person to take fish for trade or commerce.

Chapter 1, part 4 prescribes fishing apparatus and waters for the purposes of the defence in section 14 of the Fisheries Act that applies for Aboriginal and Torres Strait Islanders for certain acts which would otherwise constitute certain offences.

Chapter 2: Authorities

Chapter 2 prescribes the types of authorities that can be issued, such as licences, permits and quota authorities, and the restrictions on the issue of those authorities.

Notably, section 31 provides that the chief executive may only issue a licence to a person who is at least 18 years of age and who reasonably satisfies the chief executive that they possess knowledge of fisheries legislation of commercial fisheries. This is new compared to the expired Regulation and is to ensure that commercial fishing vessels and commercial fishing apparatus are operated safely and appropriately to prevent potential hazards to and unnecessary impacts upon fisheries resources, aquatic animals more generally and human life.

Section 32 directs the reader to the Commercial Fisheries Regulation for authorisations under and conditions applying to a commercial fisher licence.

The restriction on issue of a licence identifying a primary fishing boat in section 34 is new compared to the expired Regulation. It clarifies that only one boat may be identified as the commercial fishing boat on a commercial fishing boat licence. It is important for compliance and monitoring purposes to identify the primary boat operating under the licence at any time so that fisheries are managed consistently and accessed in the most equitable way.

Section 35 provides the number of tender boats that the chief executive has decided to authorise for use under a commercial fishing boat licence must be written on the licence and the manner that they are to be written. However there are restrictions on the symbols L2 and L3 that differentiate the otherwise equivalent entitlement provided by these authorities.

Sections 36 and 37 point to the Commercial Fisheries Regulation for authorisations and conditions applying to commercial fishing boat licences, commercial fishery licences, and commercial harvest fishery licences, and fishery symbols for commercial fisheries to which these licences apply.

Chapter 2, part 2, division 4 relates to carried boat licences and includes provisions relating to when the chief executive must not issue a carried boat licence and the authorisations and conditions of the licence. Division 5 relates to charter fishing licences and includes provisions relating to the authorisations and conditions of the licence.

Chapter 2, part 3 relates to permits, and includes provisions about restrictions on the issue of particular permits, authorisations under particular permits and the conditions applying to particular permits. In particular, section 50 provides that three years is the maximum term a general fisheries permit can be issued whether it is issued for a commercial or non-commercial purpose. This is new compared to the expired Regulation Section 204(3) of the expired Regulation only permitted the issue of a general fisheries permit for a maximum of 2 years if the sole or main purpose was a commercial purpose. General fisheries permits for other purposes have at times been issued for longer. Therefore to provide consistency, a maximum term of three years is appropriate given a general fisheries permit authorises matters that are not generally permitted under the Fisheries Act.

Chapter 2, parts 4 and 5 relate to quota authorities and resource allocation authorities and part 6 prescribes criteria the court must consider when deciding to suspend or cancel an authority if it has convicted a person of a serious fisheries offence under section 68B(3)(b)(i) of the Fisheries Act.

Chapter 2, part 7 specifies other matters for the Fisheries Act including:

- offence provisions that relate to the obstruction of commercial fishers taking fish that were previously provided by section 641 of the expired Regulation;
- the particulars that are to be contained in the register under section 73 of the Fisheries Act;
- notification requirements to the chief executive of any changes to the particulars in the register kept under section 73 of the Fisheries Act;
- the authorities that continue after a holder's death for section 70C of the Fisheries Act; and
- authorities in which inspectors may have an interest for section 213 of the Fisheries Act.

Chapter 3: Declared fish habitat areas

Chapter 3 declares fish habitat areas and provides for fish habitat plans to describe the areas declared.

It includes a change, compared to the expired Regulation, in relation to the datum used as the reference for coordinates on a fish habitat area plan. It provides that the datum for a particular plan is the datum which is stated on the plan. This is necessary because these plans are in the process of being converted to use datum GDA 2020 but some still use older datums.

Chapter 3 updates how the inspection of fish habitat area plans may occur. Compared to section 615 of the expired Regulation it amends the definition of the department's website to provide for publication of information on the government's website and inspection by arrangement with the chief executive.

Chapter 3 also prescribes particular acts that can result in deleterious impacts on fish habitats as offences in a declared fish habitat area, such as taking bait using a digging implement other than using a hand pump to take yabbies.

Chapter 4: Matters prescribed for particular offences under the Act

Chapter 4 prescribes details for particular offences under the Act. It prescribes matters relating to vessel tracking requirements under the Fisheries Act - relevant authorities, relevant boats, installation requirements and periods that the equipment must be working.

Notably, chapter 4, part 1, division 3 prescribes the requirements that apply to the holder of a relevant authority or another person acting under the authority if the approved vessel tracking equipment malfunctions.

Chapter 4, part 2 prescribes commercial quantities of priority fish (in the same amounts which were previously provided for by section 640 of the expired Regulation) and the circumstances in which non-indigenous fisheries resources may be released (as previously provided in section 624 of the expired Regulation).

Chapter 5: Information requirements

Chapter 5 prescribes information requirements for the purposes of section 118 of the Fisheries Act that apply to particular authority holders and persons other than authority holders fishing under the authority. It also prescribes record keeping matters such as for the wholesale of fishing resources, the processing of abalone, and for particular activities involving bringing Spanish mackerel and regulated coral reef fin fish into Queensland.

Chapter 6: Other matters relating to fisheries management

Chapter 6, part 1 provides for the use of the automatic interactive voice response system (AIVR). The AIVR must be established and operated by the chief executive to support obligations under fisheries legislation to satisfy information exchange requirements required under the Fisheries Act. Part 1 also states the requirements and procedures that apply to the operation and use of the AIVR.

Chapter 6, part 2 provides for compliance and enforcement matters. In particular, it prescribes:

- particular federal offences committed in the reef line commercial fishery and the east coast trawl fishery as serious fisheries offences for the purposes of the definition of 'serious fisheries offence' in schedule 1 of the Fisheries Act. Those federal offences are under the *Commonwealth Great Barrier Reef Marine Park Act 1975* (Cwlth) the *Great Barrier Reef Marine Park Regulations 2019* (Cwlth) and the *Great Barrier Reef Marine Park Regulations 1983* relate to activities done the Great Barrier Reef Marine Park;
- that information or a summary of information are matters for evidentiary certificates for the purposes of section 184(4)(g) of the Fisheries Act;
- the species of regulated fish that are declared fisheries resources for the purposes of section 154 (seizure of fisheries resources in heap etc.) of the Fisheries Act, section 77 and 78 as forfeiture offences and the threshold limits relevant to enable an inspector to seize a heap, collection or container of fisheries resources;

Chapter 6 also prescribes:

- persons who may be appointed as inspectors for the purposes of section 140(1)(d) of the Fisheries Act;
- entities to whom chief executive may delegate functions or powers;
- accepted development requirements to support the objectives of the *Planning Act 2016*;
- fees, the amounts of which are prescribed in schedules 5 (relating to assessment of applications for resource allocation authorities) and 6 (fees other than development fees such as annual licence fees).

The General Fisheries Regulation changes the payment of annual fees for licences compared to the expired Regulation. Fees in schedule 6, part 1 are payable in advance either in full or in two equal payments at the start and end of the financial year, which is similar to how boat registration is paid in Queensland. This is an amendment to the existing requirements and transitional arrangements are provided in Chapter 7.

Chapter 7: Transitional provisions

Chapter 7 provides that the restrictions introduced under sections 31 and 34(2) for the issue of commercial fisher and commercial fisher boat licences do not apply to existing licences unless and until they are reviewed.

Chapter 7 also provides for transitional arrangements for changing annual fees from payment in arrears to advance payments. In essence, no fees will be charged in respect of a six month transition period so that those who have paid the fees in full in arrears before 31 December 2019, will not need to next pay fees until July 2020 when they will be paying fees in advance. This will lessen the financial impact on authority holders. The chief executive has the power to enter into arrangements for the payment in instalments to alleviate concerns of possible hardship.

Chapter 8: Amendment of other legislation

Chapter 8, part 1 amends the *State Penalties Enforcement Regulation 2014* to omit references to, and offences prescribed in, the expired Regulation and replace them with references and equivalent offences prescribed in the General Fisheries Regulation and the Commercial Fisheries Regulation.

Chapter 8, part 2 directs the reader to Schedule 12 which amends other subordinate legislation.

Schedule 1: Prescribed acts for which authority required

Schedule 1 prescribes acts for the purposes of section 20 (and indirectly section 82 of the Fisheries Act) which can only be done by the holder of an authority. For example taking fish for trade or commerce or releasing fisheries resources into prescribed river basins.

Schedule 2: River basins where non-indigenous fisheries resources can not be released

Schedule 2 prescribes, for section 57, the waters of the river basins into which a person acting under a general fisheries permit cannot release non-indigenous resources.

Schedule 3: Declared fish habitat areas

Schedule 3 prescribes matters related to fish habitats that assist in identifying fish habitat areas – fish habitat plans, fish habitat areas, and included and excluded areas.

Schedule 4: Matters for particular fisheries offences under the Act

Schedule 4, part 1 prescribes the commercial quantities of priority fish for the purposes of section 97 (and indirectly the trafficking offence under section 89 of the Fisheries Act).

Schedule 4, part 2 prescribes river basin waters in which non-indigenous resources may be released for the purposes of section 98 (and indirectly section 90 of the Fisheries Act).

Schedule 5: Fees relating to development

Schedule 5, part 1 prescribes fees for different levels of assessment of application for resource allocation authorities.

Schedule 5, part 2 prescribes fees for different levels of assessment of fish movement exemption notices.

Schedule 6: Other fees

Schedule 6 prescribes fees for different types of authorities such as a commercial fishing boat licence, fees for a symbol or quota authority and general fisheries permits.

Schedule 7: References to particular fish

Schedule 7 prescribes scientific names for regulated fish. Where a prescribed reference document is referred to for the scientific name for a species of fish mentioned in the fisheries legislation, item 3 provides the hierarchy for those prescribed reference documents commencing with lowest item number.

In circumstances where a scientific name prescribed reference document is different from the scientific name used in the fisheries legislation because the name in the prescribed reference document has been amended or is an alternative scientific name for the species, then the scientific name in the fisheries legislation is taken if the context permits to be the scientific name in the prescribed reference document.

Schedule 8: References relating to waters or areas

Schedule 8, part 1 provides interpretative provisions to describe boundaries of waters or areas – how the latitudes and longitudes are worked out, the application of boundaries, lines, shores and other reference points, the meaning of waterways, banks and aids to navigation.

Schedule 8, parts 2 and 3 define terms used to describe waters or areas or references to particular waters or areas.

Schedule 9: References relating to boats

Schedule 9 provides interpretative provisions required to identify parts of boats.

Schedule 10: References relating to fishing apparatus

Schedule 10 provides interpretative provisions to define particular line and net fishing apparatus; the meaning of, and parts of apparatus; actions involving nets and matters such as distances, lengths and mesh size.

Schedule 11: Dictionary

Schedule 11 defines terms used in fisheries subordinate legislation.

Schedule 12: Consequential amendments

The subordinate legislation will achieve its policy objective of continuity between the expired Regulation, and the General Fisheries Regulation and Commercial Fisheries Regulation through consequential amendments to the:

- *Biosecurity Regulation 2016*
- *Fisheries Quota Declaration 2019*
- *Marine Parks(Declaration) Regulation 2006*
- *Marine Parks (Great Barrier Reef Coast) Zoning Plan 2004;*
- *Marine Parks (Great Sandy) Zoning Plan 2017;*

- *Planning Regulation 2017*;
- *Rural and Regional Adjustment Regulation 2011*.

The changes include, for example, replacing references to the expired Regulation, and particular sections of the expired Regulation, with references to the General Fisheries Regulation and the equivalent sections.

Consistency with policy objectives of authorising law

The subordinate legislation is consistent with the main purpose of the *Fisheries Act 1994* to provide for the use, conservation and enhancement of the community's fisheries resources and fish habitats in a way that seeks to:

- apply and balance the principles of ecologically sustainable development; and
- promote ecologically sustainable development.

Inconsistency with policy objectives of other legislation

The subordinate legislation is consistent with the policy objectives of other legislation.

Alternative ways of achieving policy objectives

Under the *Statutory Instruments Act 1992*, the expired Regulation could not be continued beyond 31 August 2019. Three alternatives in regard to the expiry of the expired Regulation were considered.

Alternative 1 – No regulation

Although no legislative intervention may be considered an alternative management mechanism, it raises serious difficulties. Fisheries resources are common property resources managed by the Queensland Government on behalf of the broader community. A regulatory approach to management of Queensland's fisheries is consistent with that used in other jurisdictions both nationally and internationally and remains the most appropriate means of ensuring the long-term sustainability of Queensland's fisheries resources.

There is a legitimate concern that where access to fisheries resources is unregulated, there is little incentive for fishers to use fish stocks responsibly which may lead to resource depletion or social and economic inefficiency. Ultimately it may result in the collapse of our fisheries with consequent regional economic impacts in Queensland. Additionally, the failure to have regulations would be inconsistent with the objectives of the *Fisheries Act 1994*.

For these reasons, the alternative of 'no regulations' is considered an unviable option.

Alternative 2 – Replacing the expired Regulation with a single new instrument containing essentially the same provisions

Replacing the expired Regulation with a single new instrument containing essentially the same regulations is a viable option. However, splitting the regulations between two instruments was preferred because it differentiates those regulations that do not directly impact those who are not involved in commercial fishing.

Failing to implement reforms to achieve the specific objectives would fail to deliver on the principles and commitments outlined in the Strategy or meet the expectations of the community for sustainable fisheries in Queensland.

Alternative 3 — Replacing the expired Regulation with the General Fisheries Regulation and Commercial Fisheries Regulation

Where the expired Regulation was all encompassing, the Commercial Fisheries Regulation and General Fisheries Regulation deliver a more strategic and modern regulatory approach to the management of Queensland's fisheries resources. In particular, the Commercial Fisheries Regulation and General Fisheries Regulation deal with different aspects of fisheries management.

Replacing the expired Regulation with the General Fisheries Regulation and Commercial Fisheries Regulation meets the Government's election commitment which is to "Review the *Fisheries Act 1994* and *Fisheries Regulation 2008* to create a legislative framework for recreational and commercial fishers that is contemporary, simple to understand reflective of community expectations".

Benefits and costs of implementation

The General Fisheries Regulation contains matters that apply generally to the administration of fisheries in Queensland. In particular, it: provides for easily located interpretative tools such as definitions and rules in clearly identified schedules that are relevant for all the fisheries subordinate legislation outlining requirements; ensures Aboriginal and Torres Islanders retain their defences to do certain acts which would otherwise constitute offences; provides for the types of authorities that the chief executive may issue to access fisheries resources; outlines the requirements for vessel tracking requirements; provides for fish habitat areas and their effective management; specifies certain acts (e.g. release of non-indigenous resources, obstruction of commercial fishing etc) that constitute an offences with penalties attached; specifies information requirements; and provides for fees.

In releasing the final Discussion Paper, a Supporting Impact Statement was also released outlining the objectives, summarising the consideration of options over the last 18 months, the benefits and impacts of the proposed changes and additional analysis of the more significant proposed changes. The reforms included in the General Fisheries Regulation will generally not have a significant impact on fishers.

The most significant impact is to Government is the transition from the collection of fees in arrears to fees in advance. The transitional exemption from the payment of fees for six months theoretically reduces government revenue but will have minimal impact over the forward estimates because fees will still be received at approximately the same interval provided for under the expired Regulation, given the first payment in advance is due at about the time the next payment in arrears would otherwise have been required to be paid. It will require system changes to implement, but Government is expected to benefit in the long term through the reduction in costs associated with recovering fees and administering the administration system compared to the current model.

There are no new fees, offences or financial costs associated with the General Fisheries Regulation compared to the expired Regulation.

Consistency with fundamental legislative principles

The subordinate legislation has been drafted with regard to the fundamental legislative principles (FLPs) as defined in section 4 of the *Legislative Standards Act 1992* (LSA). Potential FLPs are addressed below.

Legislation should have sufficient regard to rights and liberties of individuals – LSA s4(2)(a)

Legislation should not, without sufficient justification, unduly restrict ordinary activity including the right to conduct business without interference

Restrictions on the issue of authorities

- Section 31 – Restriction on issue of licence
- Section 34 - Restrictions on issue of licence identifying primary boat
- Section 35 – Deciding number of tender boats for licence
- Section 39 – Restriction on issue of licence for regulated coral reef fin fish
- Section 40 - Restriction on issue of licence for commercial spanner crab fishery (managed area A)
- Section 41 - Restriction on issue of licence for commercial spanner crab fishery (managed area B)
- Section 46 - Possessing or using purse seine net must not be authorised
- Section 47- Restriction on authorising taking or possessing maray or Australian sardine
- Section 48 – Restriction on authorising taking or possessing of freshwater fish
- Section 49 – Restriction on authorising use of set mesh nets in Gulf of Carpentaria waters under developmental fishing permit
- Section 50 – Maximum term of general fisheries permit
- Section 51 – Restriction on authorising taking of fish in particular regulated waters under a general fisheries permit
- Section 52 – Restriction on authorising use of particular nets in particular regulated waters under a general fisheries permit
- Section 61 – Restriction on issue of particular resource allocation authorities

The potential FLP issue related to these provisions is whether the legislation unduly restricts ordinary activity without sufficient justification including the right to conduct business without interference.

The provisions replicate former provisions in the expired Regulation, with the exception of sections 31 and 34.

New section 31 provides that the chief executive may only issue a licence to a person who is at least 18 years of age and who reasonably satisfies the chief executive that they have knowledge of fisheries legislation for commercial fisheries. These requirements are justified on the basis that safe and appropriate operation of commercial fishing vessels and commercial fishing apparatus is necessary to prevent potential hazards to and unnecessary impacts upon fisheries resources, aquatic animals more generally and human life.

New section 34 which replaces section 244 in the expired Regulation clarifies in subsection (2) that a commercial fishing boat must be identified as the primary vessel

against a commercial fishing boat licence before fishing can be undertaken using the authority. The additional subsection will address a loophole in the current legislation that allows a tender vessel to be used as a primary vessel without a primary vessel actually being nominated against the licence. This will assist in ensuring that fisheries are managed consistently and accessed in the most equitable way.

The provisions which restrict the issue of authorities are all justified on the basis that they support the viability of commercial fishing, sustainable fisheries management and fish habitats.

Record keeping requirements

- Section 111 - Docket for sale to be given
- Section 112 - Seller to keep docket
- Section 113 - Seller to give copy of docket with consignment
- Section 114 - Buyer to keep docket
- Section 117 - Processor keep record of processing
- Section 119 - Buyer to keep record of fish bought outside the State
- Section 120 - Person who takes fish outside the relevant fishery area to keep record of taking
- Section 121 - Person transporting fish to keep record of consignment
- Section 122 - Person storing fish to keep record of storage

The potential FLP issue related to these provisions is also whether the legislation unduly restricts ordinary activity without sufficient justification including the right to conduct business without interference.

The provisions listed above which impose record keeping requirements on parties involved in the trade and commerce of fisheries resources are intended to prevent black market activity and collusion by assisting in verifying details provided on dockets and logbooks. The requirements are required to address a range of strategies employed by offenders to avoid detection of trafficking including manipulation of details contained on dockets and logbooks, involvement of transport and airfreight companies and concealment of fisheries resources. Often buyers of black market fisheries resources profit substantially from black market activity, and collusion between sectors may be strong.

Record keeping requirements are justified because they assist in enforcement and compliance as they allow the information in logbooks and dockets and other records to be verified.

Consequences should be proportionate and relevant to the actions

- Section 20 - Prescribed acts – Act, s82
- Section 72 – Obstructing persons fishing under an authority
- Section 80 - Person not to take bait using digging implement
- Section 81- Person not to remove weeds etc.
- Section 129 - Fisheries offences prescribed as serious fisheries offences –Act, sch 1, definition serious fisheries offence

Section 20 - Prescribed acts – Act, s82

Under section 82 of the Fisheries Act, a person must not unlawfully do an act prescribed by regulation or declared by a declaration as an act that must only be done by the holder of an authority. Schedule 1 prescribes acts that must be done under an authority. The prescribed acts include activities that relate to trade and commerce, developments in a fish habitat area, charter operations, and release of aquaculture fisheries resources.

Schedule 1 replaces the provisions in Chapter 13, part 2 of the expired Regulation which prescribed the same acts that must be done by an authority holder. The new provisions are drafted in a contemporary drafting style which assists a reader to locate the provisions easily under relevant headings with the acts clearly described.

Requiring the prescribed acts to be done under an authority is justified because unmanaged access to fisheries resources and declared fish habitats may severely impact the future sustainability of fisheries and risk jeopardising export accreditations for commercial fisheries.

Section 72 – Obstructing persons fishing under an authority

Section 72(1) and (2) replicates the offences that were prescribed in section 641 of the expired Regulation. It provides that it is an offence to obstruct a commercial fisher, an assistant fisher or someone else acting under an authority who is using a net to take fish, unless the person has a reasonable excuse. It is also an offence for a person to disturb fish to prevent a commercial fisher, an assistant fisher or someone else acting under an authority from taking them.

These sections were specifically provided to address conflict in the ocean beach fishery. They are justified because both acts involve interfering with a person's right to take fish for trade and commerce and affect a person's livelihood.

The maximum penalty, 20 penalty units, has not been changed compared to the expired Regulation. The maximum penalty for each offence is of an appropriate level to reflect the seriousness of interfering with a person's livelihood.

Section 80 - Person not to take bait using digging implement

Section 80 provides for an offence for a person to take fish by using a digging implement in a declared fish habitat area. It does not apply to a person using a hand pump to take yabbies.

The offence replicates the offence provided for in section 620 of the expired Regulation and is justified because the use of a digging implement to take bait may have deleterious impacts on fish habitats within a declared fish habitat area that would be equivalent to the impacts of development.

The maximum penalty, 20 penalty units, is of an appropriate level to reflect the seriousness of non-compliance. It remains the same as was provided for in the Regulation.

Section 81- Person not to remove weeds etc.

Section 81(1) and (2) provides for an offence to remove weeds, use pesticide and carry out biological control of a pest in a declared fish habitat area or outside a declared fish habitat areas if it would be likely to affect a fish habitat in the declared fish habitat area.

These offences does not apply to a person if they are doing the act in compliance with the fish habitat code of practice.

The offences replicate the offences in section 621 of the expired Regulation. The offences are justified because pest control activities in or adjoining a declared fish habitat area may have deleterious impacts on fish habitats if not done in compliance with the fish habitat area code of practice.

The maximum penalty, 20 penalty units, for each offence, is of an appropriate level to reflect the seriousness of non-compliance. It remains the same as was provided for in the expired Regulation.

Section 129 - Fisheries offences prescribed as serious fisheries offences –Act, sch 1, definition serious fisheries offence

Section 129 replicates the provisions in section 625 of the expired Regulation. It prescribes particular federal offences committed in the reef line commercial fishery and the east coast trawl fishery as serious fisheries offences. Those federal offences under the *Commonwealth Great Barrier Reef Marine Park Act 1975* (Cwlth) the *Barrier Reef Marine Park Regulations 2019* (Cwlth) and the *Great Barrier Reef Marine Park Regulations 1983* relate to activities done in the Great Barrier Reef Marine Park.

The inclusion of the offences is justified as non-compliance affects the sustainability of fish habitats and fisheries resources in a habitat area of global importance.

Legislation should have sufficient regard to the institution of Parliament

Legislation should allow the subdelegation of a power delegated by an Act only in appropriate cases and if authorised by an Act - LSA s4(5)(d)

Section 84 – Way equipment must be installed

Section 84 provides that the vessel tracking equipment on a boat is to be installed in a way stated in the vessel tracking standard. The potential FLP issue is whether the legislation has sufficient regard to the institute of Parliament by allowing an external document that is not subject to Parliamentary scrutiny prescribe an approved facility.

A standard for the way vessel tracking equipment must be installed can be an extensive, technical document dealing with various types of equipment which is more suited to a standard published by the department. It would be impractical to include the details of installation of equipment in legislation to the degree required to ensure enforceability.

It would also be overly burdensome on Parliament's time to consider changes to a vessel tracking standard each time they occur. It is therefore more practical and timely for the Department to make and amend vessel tracking standard based on the department's expertise and knowledge.

Consultation

Since the release of the Strategy in 2017, extensive consultation on fisheries reforms has been undertaken. 10 Fishery-specific working groups have met 41 times since late 2017 and the Sustainable Fisheries Expert Panel (the Panel) have met eight times. Both have been integral to the engagement approach on the fisheries reforms. A meeting communiqué has been published on DAF's website and promulgated via social media following each meeting.

In January 2019, the Government released a Directions Paper outlining reforms for the trawl, crab and east coast inshore fisheries. In June 2019, this was followed by a final Discussion Paper and Supporting Impact Statement released for consultation for four weeks, closing on 19 July 2019, seeking feedback from all stakeholders on proposed regulatory changes to implement the fisheries reforms. It outlined 102 proposed amendments focussing on:

- *Implementing the fisheries reforms – essential for long-term sustainability and profitability.* Proposed changes include matters that will apply across all sectors, and commercial fishing, charter fishing, recreational tidal and freshwater fishing sectors only (e.g. splitting fisheries in management regions, total allowable commercial catch limits, in-possession limits, general possession limits and boat limits).
- *Urgent sustainability actions – taking the pressure off snapper and pearl perch.* Proposed changes include seasonal closures and changes to size and in-possession limit for pearl perch.
- *Standardising fishing rules and supporting compliance.* Proposed changes include strengthening management of black jewfish, standardising reporting requirements, consolidating and clarifying vessel requirements, and standardising fishery closure provisions.
- *Reducing red tape and removing unnecessary restrictions.* Proposed changes include enabling online licensing transactions and removing unnecessary restrictions

1245 responses were received along with more than 20,000 Net Free North campaign emails through World Wide Fund for Nature and 3,000 campaign emails supporting the fisheries reforms and seeking changes to reduce the impact of commercial netting on protected species through Australian Marine Conservation Society. Of the 989 online survey responses, 272 were from commercial fishers, 619 were from recreational fishers and 22 were from charter fishers.

Overall, there was good support for the majority of the reforms being delivered initially (39 of the total of 102 that were proposed). Of these, only a very small number are being progressed in the General Fisheries Regulation and only limited feedback was received on these proposals.

The Department of Agriculture and Fisheries consulted with the Office of Best Practice Regulation about proposed fisheries reforms and consultation process. It advised that some of the reforms in the Discussion Paper were likely to be assessed as having 'significant adverse' impacts under the *Queensland Government Guide to Better Regulation* and therefore would require further regulatory impact analysis. Most of the proposed changes that would be considered to have 'significant adverse' impacts (i.e. splitting fisheries up, setting sustainable commercial catch limits and allocating quota) are still being considered have not yet been progressed.

Given the comprehensive consultation process, commencing with the MRAG Review in 2014, followed by the Green Paper on fisheries reforms in 2016, release of the Strategy in 2017 triggering a detailed engagement process, along with the clear Government policy direction outlined in the Directions Paper, a full Regulatory Impact Statement (RIS) has not been prepared. A Supporting Impact Statement was prepared.

It is difficult to do the quantitative economic modelling required in a RIS, as currently there is insufficient data to model social and economic impacts. With the information currently available, a RIS would not be at a scale that would represent the diversity of fishing businesses that currently operate within our fisheries and therefore would not be a good indicator of impact. There is also a lack of industry reporting, quantitative information or research to extrapolate any other meaningful insight into modelling the impacts. Recognising this, and to compensate for the inability to qualitatively model the impacts, the engagement process has been designed around working with individual fishers to better understand the impacts and to refine the proposed fishing rules to minimise impact on individual fishing businesses while still achieving the overall objectives.

In exempting the fisheries reforms from a more detailed RIS the Government commits to undertaking a Post Implementation Review, consistent with the *Queensland Government Guide to Better Regulation*, within two years of the commencement of the full suite of fisheries reforms (i.e. 1 July 2022). The Queensland Government has initiated a new study into the contribution Queensland's commercial fisheries, seafood processing sector and related businesses make to the State's economy and community generally. The outcomes of this research will help the Government to better understand and minimise the impacts of fisheries management on these sectors. It will also establish an important baseline that can be used to monitor the impact and benefit of the Strategy over the next 10 years.