

Fisheries Legislation Amendment Regulation 2020

Human Rights Certificate

Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 41 of the *Human Rights Act 2019*, I, Mark Furner MP, Minister for Agricultural Industry Development and Fisheries, provide this Human Rights Certificate with respect to the Fisheries Legislation Amendment Regulation 2020 made under the *Fisheries Act 1994*, the *Marine Parks Act 2004*, the *Rural and Regional Adjustment Act 1994* and the *Statutory Instruments Act 1992*.

In my opinion, the Fisheries Legislation Amendment Regulation 2020 is compatible with the human rights protected by the *Human Rights Act 2019* (Human Rights Act). I base my conclusion on the reasons outlined in this certificate.

Overview of the Subordinate Legislation

The Fisheries Legislation Amendment Regulation 2020 is made under the *Fisheries Act 1994*, the *Statutory Instruments Act 1992*, the *Marine Parks Act 2004* and the *Rural and Regional Adjustment Act 1994*.

The authorising laws for the regulation are:

Sections 13, 32, 33, 49, 54, 56, 65, 65A, 68B, 70C, 77A, 80, 82, 118, 120, 218, 223 and schedule 1 of the *Fisheries Act 1994*

Section 21 of the *Marine Parks Act 2004*

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

Section 20A of the *Statutory Instruments Act 1992*.

The Fisheries Legislation Amendment Regulation 2020 (Amendment Regulation), is another significant step in the Government's broader fisheries changes being delivered under the *Sustainable Fisheries Strategy 2017-2027*.

It implements the proposals outlined in the *Discussion Paper on proposed changes to the Fisheries Regulation 2008* the Government released in June 2019 that have been considered a priority that:

- will support the commercial fishing industry's economic recovery from COVID-19 by reducing red tape and streamlining requirements;
- are necessary to implement harvest strategies and meet the conditions of the Commonwealth Wildlife Trade Operation (WTO) approvals under the *Environment Protection and Biodiversity Act 1999* (EPBC Act); and
- clarify existing fishing rules to support ongoing fishing efficiency and compliance.

Human Rights Issues

Human rights relevant to the subordinate legislation (Part 2, Division 2 and 3 *Human Rights Act 2019*)

Section 19 Freedom of movement

Amendment of *Fisheries (Commercial Fisheries) Regulation 2019*

Section reference	How the clause engages the right	Restriction of right
Clause 156 – Chapter 6, Sections 142, 143 and 144	These sections specify that a person in control of an authorised boat lands the boat at either a landing place stated in a pre-trip notice for that fishing trip or a location outlined in an amending notice, restricting the right to move freely within Queensland.	This section does restrict the right to freedom of movement through limiting the locations in which a person may land a boat to prescribed locations, unless the person cannot land the boat at such locations due to a medical emergency or extreme weather event, which inhibits his or her ability to move freely through Queensland as they choose.
Clause 169 - Schedule 7A, Part 1 Division 2, Section 11	This section provides that a mesh net may only be used if a person using it is located within 100 metres of it, restricting his or her right to move freely within Queensland during the use of a mesh net.	This section aims to minimise the risk of fishing on non-target species (dugongs, turtles, dolphins etc.) by requiring fishers to be in attendance of fishing gear. However, it partially restricts the right as freedom of movement is only restricted during use of a mesh net. If a person wishes to move freely outside a 100 metre range, he or she can easily do so by stopping fishing with a mesh net.
Clause 169 - Schedule 7A, Part 4, Sections 46 and 48	These sections prescribe eel trapping times and provide that eel traps must be checked every 24 hours, thereby restricting the right to move freely within Queensland in these circumstances.	This section aims to manage fishing pressure in a particular waterway by restricting trapping times and requiring that fishers check their gear regularly. However, it partially restricts the right as freedom of movement is only restricted during use of an eel trap. If a person wishes to move freely, he or she can easily do so by not using an eel trap in these circumstances.

Amendment of *Fisheries Declaration 2019*

Section reference	How the clause engages the right	Restriction of right
Clause 53 - Section 90A	This section restricts the speed at which a boat can pass through the Hervey Bay (scallop ranching area) to a minimum of 5 knots if the boat is identified under a T1 or T2 licence and has a trawl net on board, restricting the right to move freely within Queensland in these circumstances.	This section enables access to trawl vessels to steam through previously prohibited waters. However, it still restricts the right to move freely through Queensland by limiting the speed at which one can travel and preventing the boat from stopping within the specified area.

Consideration of reasonable limitations on human rights (section 13 *Human Rights Act 2019*)

(a) The nature of the right

Section 19 provides for the right to freedom of movement, specifically that every person lawfully within Queensland has the right to move freely within Queensland, enter or leave Queensland, and choose where they live. This clause is modelled on article 12 of the International Covenant on Civil and Political Rights (ICCPR). It reflects the negative obligation on the State under article 12 of the ICCPR to not act in a way that would unduly restrict the freedom of movement, but is not intended to impose positive obligations on the State to take positive actions to promote free movement (e.g. the provision of free public transport services).

(b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The limitations on the right to freedom of movement within the amendments to this regulation require persons to be within specified distances of mesh nets and eel traps; require traps to be checked regularly; require specification of the locations that at which persons can land an authorised boat; require the person conducting a charter fishing trip not to start a trip until he or she has access to the required logbook(s); and require movement of a boat through the Hervey Bay (scallop ranching area) whilst carrying trawl nets to be at a minimum speed of 5 knots.

In each of these limitations, the restrictions only apply in certain circumstances and the person has the ability to be able to move freely if he or she complies with simple requirements, such as ceasing to fish with a mesh net, obtaining the required logbook, or travelling through an area at a minimum speed. These limitations are consequently consistent with a free and democratic society based on human dignity, equality and freedom.

(c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose

In each of the cases where the right to freedom of movement is limited, the limitation helps to achieve the purpose of ensuring the sustainability of Queensland's fisheries resources, viability of the commercial fishing industry and public safety.

The requirement to stay within 100 metres of a mesh net ensures that monitoring of the mesh net by the commercial fisher can occur at all times to monitor that the net fishing activity does not have an unreasonable impact on aquatic/marine species, nor pose a public safety hazard. This can be ensured through visual observation and the ability to quickly react if a public safety or unreasonable aquatic impact issue arises, which can occur if the user is within a 100 metre distance of the net.

The requirements to land a boat at one of three specified locations ensures that fisheries inspectors have the opportunity to reasonably inspect a boat's catch to ensure that quota fish species catch is being accurately recorded in order to ensure that quota fisheries are not being overfished. This helps ensure the long term viability of the fishery for all commercial fishers. Implementing boat landing requirements such as these is the most practical way that Fisheries Queensland can monitor quota fisheries through inspections as it is not feasible for Queensland Boating and Fisheries Patrol (QBFP) officers to be in all port locations at all times that commercial fishing boats are being landed or unloaded.

The limitation upon the speed at which a boat identified under a T1 or T2 licence can travel through the Hervey Bay (scallop ranching area) while carrying trawl nets on-board is required to ensure that fishing does not occur within these ranching areas. It is impractical to conduct trawling while a boat is travelling at a speed of 5 knots or more, therefore, this speed is considered sufficient evidence to demonstrate that trawling is not occurring and to allow access to trawl fishers to steam through between fishing ground and/or fishing grounds and port. As it is not feasible for fisheries inspectors to constantly monitor ranching areas, a minimum speed is the only way to ensure that ranching areas are protected from commercial fishing. Trawl boat speeds are monitored through vessel tracking, which alerts Fisheries Queensland and, therefore, fisheries inspectors, when a commercial fishing boat has entered the ranching area. Vessel tracking data is then used to determine the speed the boat has travelled through the ranching area to determine if the boat could have been trawling or not. The utilisation of this system and this legislative requirement help ensure effective management of the ranching areas while allowing steaming access to reduce the economic costs of longer fishing trips associated with the previous requirement to prohibit any access to these areas.

(d) whether there are any less restrictive and reasonably available ways to achieve the purpose

At this time, the methods referred to above are the best available solutions for ensuring commercial fishery sustainability and public safety.

(e) the balance between the importance of the purpose of the limitation and the importance of preserving the human right, taking into account the nature and extent of the limitation

Each of the limitations to the freedom of movement only restricts movement in limited circumstances which can be easily resolved by the relevant person complying with simple requirements through ceasing fishing or travelling through an area at a minimum speed. Restrictions on landing locations are required in order to ensure that fisheries inspectors have the opportunity to inspect a relevant boat to ensure that quota fisheries' catches are being reported correctly. This helps to ensure the long-term sustainability of commercial fisheries for all commercial fishers. As the limitations have very limited scope and persons subject to them have the ability to move freely through complying with simple requirements, the limitations provide an appropriate balance between the purpose of the limitation and the impact of the limitation on the affected person and are therefore justified.

Human rights relevant to the subordinate legislation (Part 2, Division 2 and 3 *Human Rights Act 2019*)

Section 24 Property rights

Amendment of *Fisheries (Commercial Fisheries) Regulation 2019*

Section reference	How the clause engages the right	Restriction of right
Clause 156 – Sections 130, 134	This section requires a commercial fisher to give his or her approved logbook (commercial fishing), or part of his or her approved logbook (TEP animal interaction), to the chief executive within 15 days of the end of each calendar month, which may impact upon his or her right not to be arbitrarily deprived of his or her property.	This requirement restricts the commercial fishers rights to their property as a requirement to send in the logbook to the chief executive may be seen as arbitrarily depriving a person of this right.
Clause 138 - Sections 74(1)-(2)	These sections provide for a deduction of effort units for a full day if the boat has been detected by vessel tracking equipment at any time during that day.	A person's quota entitlement has property-like characteristics. The potential reduction in a holder's quota, equivalent to a whole day of fishing, even where fishing may not have occurred, may be seen to arbitrarily deprive a person of this right.
Clause 140 – Section 82	This section provides for a deduction of effort units if there has not been any detection by vessel tracking equipment or manual reporting of a primary boat identified in an East Coast Trawl Fishery primary fishing licence at any time during a day.	A person's quota entitlement has property-like characteristics. The potential reduction in a holder's quota, equivalent to a whole day of fishing, even where fishing may not have occurred, may be seen to arbitrarily deprive a person of this right.
Clause 149 - Sections 106G, 106N, 106V	These sections provide that ITQ unit entitlement that is unused at the end of the ITQ year cannot be carried over to the following year.	A person's quota entitlement has property-like characteristics. The potential compulsory surrender of a holder's quota in the circumstances where it has not been completely used for the relevant ITQ unit year may be seen to arbitrarily deprive a person of this right.

Amendment of *Fisheries (General) Regulation 2019*

<p>Clause 76 – Schedule 2A</p>	<p>This schedule provides for the reallocation of effort units for the existing East Coast Trawl Fishery across five regions, and new Moreton Bay effort units which may impact upon property rights.</p>	<p>The introduction of new effort units for the area previously described as the Moreton Bay Trawl fishery area restricts commercial fishers to resource allocations based on previous catch history, which may be seen to be arbitrarily depriving some commercial fishers of property rights in cases where they have not been allocated effort units or allocated as much effort units as their current harvest from that fishery. A person’s resulting effort unit’s entitlement has property-like characteristics.</p> <p>The amendments also potentially impact current East Coast Trawl Fishery effort units holders by restricting their rights to regions for which they have effort history, or to which they have nominated unused effort units, which may be seen as arbitrarily depriving a person of his or her existing property rights. Previously, East Coast Trawl effort unit extended to all of the areas previously described East Coast Trawl fishery area.</p> <p>Despite these limitations, any Primary Commercial Fishing Licence with the relevant fishery symbol (T1, T2, M1, M2) can buy or lease effort units to continue to fish in each of the trawl fishery management regions.</p>
<p>Clause 76 - Schedules 2B, 2C and 2D</p>	<p>This schedule provides for the establishment of a number of new Individually Transferable Quota (ITQ) fisheries based on catch history, which may limit property rights.</p>	<p>The introduction of an ITQ for numerous fisheries resources restricts commercial fishers to resource allocations based on previous catch history, which may be seen to be arbitrarily depriving some commercial fishers of property rights in cases where they</p>

		<p>have not been allocated quota or allocated as much quota as their current harvest from that fishery.</p> <p>A person’s resulting ITQ entitlement has property-like characteristics.</p> <p>Despite these limitations, any Primary Commercial Fishing Licence with the relevant fishery symbol (C1, N1, N2, N10, N11, K, L1, L2) can buy or lease ITQ to continue to fish in each of the crab and East Coast inshore fishery management regions.</p>
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Consideration of reasonable limitations on human rights (section 13 *Human Rights Act 2019*)

a) The nature of the right

Section 24 provides for property rights. This clause is modelled on article 17 of the Universal Declaration of Human Rights (UDHR). The right essentially protects a person from having their property unlawfully removed. Subsection (1) provides that all persons have the right to own property alone or with others. Subsection (2) provides that a person must not be arbitrarily deprived of his or her property. The protection against being deprived of property is limited to arbitrary deprivation of property.

(b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The limitations on property rights within the amendments to this regulation result in the deduction of effort units for a full day of fishing if a relevant boat has been detected by vessel tracking equipment during that day; the inability to roll over harvest ITQ unit entitlement that is unused at the end of each harvest ITQ year; a requirement to submit logbooks and records (including TEP animal interactions) to the chief executive for inspection; the reallocation of effort units for existing East Coast Trawl Fishery across five regions; introduction of Moreton Bay effort units; and the establishment of a number of new ITQ fisheries based on catch history. In each of these limitations, the purpose relates to reducing pressure on fish stocks, or allowing for assessment of fish stocks, to ensure they remain sustainable for a viable commercial fishing industry in Queensland.

In most of these limitations, an alternative option which does not result in property rights being arbitrarily impacted is available. The deduction of effort units for detection by vessel tracking equipment is able to be overturned if the person provides sufficient evidence to indicate that he or she did not fish on the relevant day. Additionally, in cases where quota allocation is not rolled over due to not being used, or being transferred, the commercial fisher is able to avoid this issue by using his or her whole allocation, and is not deprived of any property in this case.

In relation to the logbook requirements, logbooks are provided in duplicate or triplicate so that commercial fishers do not have to send their entire logbook to the chief executive, but just a duplicate record of the relevant log sheet.

The limitations in relation to reallocation of effort units for the East Coast Trawl Fishery, and introduction of effort units for Moreton Bay, limit access to fisheries resources based on catch and effort histories. These limitations are based on data which show past catch and effort for fishers, allowing them access to fisheries resources in a capacity reflective of past fishing activity for licences and is, therefore, not arbitrary in its application. Furthermore, the establishment of new Individually Transferable Quota (ITQ) fisheries for fish species such as blue swimmer crab, mud crab, sea cucumber, coral, shell grit, trochus, crayfish and rock lobster, still allows for access and take of these resources, and does not arbitrarily deprive persons of property.

These limitations are consequently consistent with a free and democratic society based on human dignity, equality and freedom.

(c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose

In each of the cases where property rights are limited, the limitation helps to achieve the purpose of ensuring the long-term sustainability of the commercial fishing industry through the reduction of pressure on fish stocks.

The requirements which result in automatic deduction of effort units due to detection by vessel tracking equipment, or a lack of detection or manual reporting in cases where an exception applies, ensures that commercial fishers cannot utilise more than their allocated effort units by switching vessel tracking equipment off to avoid monitoring of activities by Fisheries Queensland. Monitoring effort is used to manage the amount of pressure put on a fishery (determine the number of days fished). This fisheries management tool is used to ensure the sustainability of commercial fishing by limiting the ability for commercial fishers to fish more than their allocation. Depriving commercial fishers of their property through automatic deduction of quota in these circumstances directly helps to achieve the purpose of ensuring over fishing does not occur by limiting the potential for commercial fishers to fish more than their allocated quota.

The requirements resulting in the surrender of quota entitlement in certain circumstances, and therefore deprivation of this property-like entitlement, is implemented to prevent the potential for overfishing to occur in a fishing year due to too much quota allocation. The total allowable commercial catch (TACC) is an annual maximum catch cap on a quota fishery which is based upon fish stock assessments, and is essentially an identified 'safe' amount of fishing on the particular fish stock that still allows for fish replacement. A TACC is set for a quota fishery each year to prevent the risk of a fishery being overfished. If quota were allowed to be carried over to the following year, there is a considerable risk that too much stock would be taken in a year, limiting the potential for fish stock replacement and resulting in the collapse of the fishery. Consequently, this property right limitation is directly correlated to the purpose of ensuring long-term sustainability of fish stocks, and subsequently, the commercial fishing industry.

The requirement for logbooks/record of fishing day for TEP animal interactions to be provided to the chief executive has been implemented to help assess fish stocks and further assist with management of species of conservation interest. Logbooks are the main source of commercial fisheries data collection and are used to assess the status of fish stocks in Queensland. Requiring logbook information be provided within 15 days after the end of each month, for that month, and within 24 hours or 7 days for TEP animal interactions, ensures that data can be analysed and rapid stock assessments undertaken, which enables more responsive fisheries management. Consequently, this property right limitation is directly correlated to the purpose of ensuring long-term sustainability of fish stocks, and subsequently, the commercial fishing industry.

The requirement for the reallocation of effort units for the East Coast Trawl Fishery and establishment of the Moreton Bay effort units is implemented to prevent the potential for overfishing to occur along the east coast and within the Moreton Bay region. The current East Coast Trawl Fishery allows for fishers to move throughout the state, exhausting resources in area after area, which reduces the sustainability of fish stocks. The amendments will restrict the fishing that can occur in each location through effort allocation, which restricts effort/number of days a fisher can fish the area. This helps reduce the ability for fishers to continue to exhaust fishery resources throughout the east coast. Similarly, the establishment of the Moreton Bay effort units will restrict the number of days commercial fishers can fish in the Moreton Bay area, allowing for more sustainable management of fisheries resources in this region.

The requirement for the establishment of new Individually Transferable Quota Fisheries is implemented to limit the impact of overfishing on key fish species, including blue swimmer crab, mud crab, sea cucumber, coral, shell grit, trochus, crayfish and rock lobster. Like the existing ITQ fisheries, these amendments result in a finite 'quota' that is distributed unequally amongst primary fishing licence holders and, once holders have used their quota, they are no longer able to carry out the activities authorised under the licence for that fishery symbol. The purpose of implementing this quota is to ensure that the take of the relevant species is limited to an amount that is sustainable to ensure a viable long-term industry and prevent the collapse of these fisheries. Making these fisheries quota fisheries, enables effective management and monitoring of take from these fisheries, therefore directly helping to achieve the purpose of ensuring the long-term sustainability of fish stocks and the commercial fishing industry.

(d) whether there are any less restrictive and reasonably available ways to achieve the purpose

At this time, the methods referred to above are the best available solutions for ensuring commercial fishery sustainability. The limitations pursued have considered ways to be as minimally restrictive as possible, such as providing logbooks to commercial fishers in duplicate or triplicate and just requiring the relevant month's log sheet so that these fishers do not need to provide their entire logbooks to the chief executive.

(e) the balance between the importance of the purpose of the limitation and the importance of preserving the human right, taking into account the nature and extent of the limitation

As outlined above, alternatives which do not result in the deprivation of property have been provided where possible in order to balance the need to preserve fish stocks with commercial fishers' property rights.

Human rights relevant to the subordinate legislation (Part 2, Division 2 and 3 *Human Rights Act 2019*)

Section 25 Privacy and reputation

Amendment of *Fisheries (Commercial Fisheries) Regulation 2019*

Section reference	How the clause engages the right	Restriction of right
Clause 169 – Sections 45 and 92	These sections require floats to be marked with the first name and surname of the holder of the licence under which the device to which the float is attached is being used, which may interfere with the person's right to privacy	The requirement to provide a first name and surname, with no other identifiable information such as telephone number or address, partially restricts the right to privacy.

Amendment of *Fisheries (General) Regulation 2019*

Section reference	How the clause engages the right	Restriction of right
Clause 76 - Schedule 2A, section 17(2)(a), Schedule 2B, section 12(2)(a), Schedule 2C, section 12(2)(a), and Schedule 2D, section 7(2)(a).	These sections require relevant certificates to state the name of the holder of the certificate, which may interfere with the person's right to privacy	The requirement to provide a name, with no other identifiable information such as telephone number or address, partially restricts the right to privacy.
Clause 191 – Sections 110.	This section requires sales dockets to contain sales particulars, which are defined to include the name of the buyer and name of the seller of fishery resources. Buyers and sellers are required to keep dockets with these identifying sales particulars for 5 years.	The requirement to provide a name, with no other personally identifiable information such as telephone number or address, partially restricts the right to privacy.

Consideration of reasonable limitations on human rights (section 13 *Human Rights Act 2019*)

(a) The nature of the right

Section 25 provides for the rights to privacy and reputation. This section is modelled on article 17 of the ICCPR. The scope of the right to privacy is very broad. It protects privacy in the narrower sense including personal information, data collection and correspondence, but also extends to an individual's private life more generally. For example, the right to privacy protects the individual against interference with their physical and mental integrity; freedom of thought and conscience; legal personality; individual identity, including appearance, clothing and gender; sexuality, family and home.

This section contains limitations. The protection against interference with privacy, family, home or correspondence is limited to unlawful or arbitrary interference. The notion of arbitrary interference extends to those interferences which may be lawful, but are unreasonable, unnecessary and disproportionate. The protection against attack on reputation is limited to unlawful attacks. It prohibits attacks on a person's reputation that are unlawful and intentional, based on untrue allegations.

(b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The limitations on the right to privacy and reputation within the amendment regulation relate to requirements for a person to put their first name and surname on a float attached to an eel trap; for the name of a holder of a relevant certificate to be stated on the certificate; and for dockets with the name of the buyer and seller required for the sale of fisheries resources and retained for 5 years. The purpose of these limitations are to ensure that fisheries inspectors have the practical ability to enforce requirements related to eel trap use, effort unit allocation, and tracking of fisheries products, which have been implemented to ensure the sustainability of such fisheries. These limitations are minor in nature and are consistent with a free and democratic society based on human dignity, equality and freedom.

(c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose

The limitation helps to achieve the purpose of ensuring the long-term sustainability of the commercial fishing industry through enabling practical compliance and monitoring activities.

The requirement to provide a first name and surname on a float attached to an eel trap is required to ensure that trapping property can be tracked and compliance matters enforced. The number of traps that can be used per person is limited to prevent over fishing, so tracking of traps through tagging helps fisheries inspectors to enforce limitation requirements. Similarly, the requirement for the name of buyers and sellers of fisheries resources on sale dockets ensures that fisheries resources can be adequately tracked and compliance issues pursued with the relevant buyers and sellers should a compliance action be needed. These limitations help prevent overfishing, and, subsequently, help to ensure the long-term sustainability of the industry, which is consistent with the purpose of the limitation.

(d) whether there are any less restrictive and reasonably available ways to achieve the purpose

It is not feasible or practical for fisheries inspectors to be in all fishing locations at all times to monitor commercial fishing activities. In the absence of this, simple requirements for names on floats and sales dockets, is minimally restrictive and reasonable.

(e) the balance between the importance of the purpose of the limitation and the importance of preserving the human right, taking into account the nature and extent of the limitation

The collection of this private information is required to address a range of strategies employed by offenders to avoid detection when taking more fish than that which is allowed. Requiring a name on eel trap floats gives fisheries inspectors the opportunity to ensure that commercial fishers are not overfishing in a manner that is reasonable and minimally restrictive. Consequently, the limitation is balanced between achieving the purpose and preserving the human right to privacy.

Human rights relevant to the subordinate legislation (Part 2, Division 2 and 3 *Human Rights Act 2019*)

Section 28 Cultural rights – Aboriginal peoples and Torres Strait Islander peoples

Amendment of *Fisheries (Commercial Fisheries) Regulation 2019*

Section reference	How the clause engages the right	Restriction of right
Clause 169 - Schedule 7A	These sections restrict the way fish may be taken and/or sold, as well as the use of fishing lines and nets, which may not be consistent with traditional Aboriginal or Torres Strait Islander traditions, potentially limiting their ability to maintain and strengthen their relationship with waters and coastal seas.	Aboriginal peoples and Torres Strait Islander peoples maintain traditional fishing rights and can fish using traditional methods in this capacity as long as the fishery resources taken are not sold commercially, which partially restricts cultural rights.
Clause 169 – Section 13	This section restricts the taking of aquarium fish for human consumption, which may not be consistent with traditional Aboriginal or Torres Strait Islander traditions, potentially limiting their ability to maintain and strengthen their relationship with waters and coastal seas	Aboriginal peoples and Torres Strait Islander peoples maintain traditional fishing rights and can fish using traditional methods in this capacity as long as the fishery resources taken are not sold commercially, which partially restricts cultural rights.
Clause 169 - Schedule 7A, Part 4	These sections restrict the times of day and the way in which certain eels may be taken, which may not be consistent with traditional Aboriginal or Torres Strait Islander traditions, potentially limiting their ability to maintain	Aboriginal peoples and Torres Strait Islander peoples maintain traditional fishing rights and can fish using traditional methods in this capacity as long as the fishery resources taken are not sold

	and strengthen their relationship with waters and coastal seas	commercially, which partially restricts cultural rights.
Clause 169 – Section 47	This section limits the number of traps able to be used at the same time when fishing for certain eel species, which may not be consistent with traditional Aboriginal or Torres Strait Islander fishing methods, potentially limiting their ability to maintain and strengthen their relationship with waters and coastal seas	Aboriginal peoples and Torres Strait Islander peoples maintain traditional fishing rights and can fish using traditional methods in this capacity as long as the fishery resources taken are not sold commercially, which partially restricts cultural rights.

Amendment of Fisheries Declaration 2019

Section reference	How the clause engages the right	Restriction of right
Clause 45 - Section 29	This section restricts the taking of black jewfish in the North Cape York waters, which may not be consistent with traditional Aboriginal or Torres Strait Islander traditions, potentially limiting their ability to maintain and strengthen their relationship with waters and coastal seas.	Aboriginal peoples and Torres Strait Islander peoples maintain traditional fishing rights and can fish using traditional methods in this capacity as long as the fishery resources taken are not sold commercially, which partially restricts cultural rights.
Clause 67 - Section 51A	This section restricts the taking or possession of coral reef fin fish in regulated periods, which may not be consistent with traditional Aboriginal or Torres Strait Islander traditions, potentially limiting their ability to maintain and strengthen their relationship with waters and coastal seas.	Aboriginal peoples and Torres Strait Islander peoples maintain traditional fishing rights and can fish using traditional methods in this capacity as long as the fishery resources taken are not sold commercially, which partially restricts cultural rights.

Amendment of Fisheries (General) Regulation 2019

Section reference	How the clause engages the right	Restriction of right
Clause 119 - Sections 39	These sections restrict a person conducting a charter or on board a charter fishing trip from taking maray or Australian Sardines for purposes other than bait for use during the trip, which may not be consistent with traditional Aboriginal or Torres Strait	Aboriginal peoples and Torres Strait Islander peoples maintain traditional fishing rights and can fish using traditional methods in this capacity as long as the fishery resources taken are not sold commercially, which partially restricts cultural rights.

	Islander traditions, potentially limiting their ability to maintain and strengthen their relationship with waters and coastal seas.	
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Consideration of reasonable limitations on human rights (section 13 *Human Rights Act 2019*)

Section 28 Cultural rights – Aboriginal peoples and Torres Strait Islander peoples

(a) The nature of the right

Section 28 provides for the distinct cultural rights held by Aboriginal peoples and Torres Strait Islander Peoples as Australia’s first people. This clause is modelled on article 27 of the ICCPR, but also articles 8, 25, 29 and 31 of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). These articles recognise that Indigenous peoples and individuals have the right: not to be subjected to forced assimilation or destruction of their culture (article 8); to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas (article 25); to conserve and protect the environment and the productive capacity of their lands, territories and waters (article 29); and to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions (article 31).

Subsection (1) recognises that Aboriginal peoples and Torres Strait Islander peoples hold distinct cultural rights.

Subsection (2) recognises the rights of Aboriginal peoples and Torres Strait Islander peoples to live life as an Aboriginal or Torres Strait Islander person who is free to practise his or her culture. The practice of culture includes, for example: the right to enjoy and maintain identity and culture; to maintain and use Indigenous languages; to maintain kinship ties; a freedom to teach cultural practices and educations to their children; the right to maintain their distinctive spiritual, material and economic relationship with the land and waters and other resources with which they have a connection under traditional laws and customs.

Subsection (3) provides that Aboriginal peoples and Torres Strait Islander peoples have the right not to be subjected to forced assimilation of their culture.

This section is intended to be read with section 107 of the *Human Rights Act 2019*, which provides that the Act does not affect native title rights and interests.

(b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The limitations on section 28 cultural rights within the amendment regulation result in the restriction of the ways in which fish may be taken in a commercial fishing context. The purpose of this limitation is to limit the ability for overfishing to occur, which would deplete fish stocks. This limitation, in turn, helps to ensure that Aboriginal peoples and Torres Strait Islander peoples can continue to enjoy their traditional relationship with waters and coastal seas through traditional fishing methods.

(c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose

The restrictions imposed on the ways in which fish can be taken in these sections is directly linked to the intention of preserving fish stocks, as the limitations help to reduce the potential for overfishing to occur.

(d) whether there are any less restrictive and reasonably available ways to achieve the purpose

While the cultural rights of Aboriginal Peoples and Torres Strait Islander peoples are limited by the operation of these sections, Aboriginal and Torres Strait Islander peoples will still be able to maintain their distinctive relationship with waters and coastal seas under Aboriginal tradition or Island custom through traditional fishing methods. The restrictions outlined in these sections only apply to commercial fishing.

(e) the balance between the importance of the purpose of the limitation and the importance of preserving the human right, taking into account the nature and extent of the limitation

The importance of preserving Queensland’s fisheries resources from overfishing for all fishing sectors, including Aboriginal Peoples and Torres Strait Islander peoples, outweighs the importance of preserving individual traditional cultural rights to maintain their economic relationship with fisheries resources in this instance. Therefore, the rights are only limited in a broad-scale commercial fishing context, where a lack of limitation could result in depletion of fish stocks and therefore impact on achieving the purpose of ensuring the long-term sustainability of fish stocks in Queensland.

Human rights relevant to the subordinate legislation (Part 2, Division 2 and 3 *Human Rights Act 2019*)

Section 31 Fair hearing

Amendment of *Fisheries (Commercial Fisheries) Regulation 2019*

Section reference	How the clause engages the right	Restriction of right
Clause 138 - Sections 74(1)-(2)	These sections provide for a deduction of effort units for a full day if the boat has been detected by vessel tracking equipment at time during that day.	This right is restricted as these sections impose an automatic deduction of effort units for fishers detected in a prescribed area, which can only be overturned on the chief executive being satisfied via written notice from the fishers that the boat was not used on that relevant day, or if an exception applies. This reverses the onus of proof for fishers detected in these areas, who have to disprove the automatic assumption they were fishing.
Clause 140 – section 82	This section provides for a deduction of effort units if there	This right is restricted as these sections impose an automatic

	<p>has not been any detection by vessel tracking equipment or manual reporting of a primary boat identified in an East Coast Trawl Fishery primary fishing licence at any time during a day.</p>	<p>deduction of effort units for fishers detected in a prescribed area, which can only be overturned on the chief executive being satisfied via written notice from the fishers that the boat was not used on that relevant day, or if an exception applies. This reverses the onus of proof for fishers detected in these areas, who have to disprove the automatic assumption they were fishing.</p>
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Consideration of reasonable limitations on human rights (section 13 *Human Rights Act 2019*)

(a) The nature of the right

Section 31 provides for the right to a fair hearing. This section is modelled on article 14(1) of the ICCPR. It applies to criminal trials and civil proceedings. This right reflects the common law tradition of ‘due process of the law’.

Subsection (1) provides for the right of a person charged with a criminal offence or a party to a civil proceeding to have the charge or proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing. It reflects the obligation on the State in article 14(1) ICCPR to set up by law independent and impartial courts and tribunals and provide them with the competence to hear and decide on criminal charges and rights and obligations in civil proceedings.

Subsection (2) provides an exception to the right to a public hearing, whereby a court or tribunal may exclude members of media organisations, other persons or the general public from all or part of the hearing if it is in the public interest or interests of justice.

Subsection (3) provides that all judgements or decisions made by a court or tribunal in a proceeding must be publicly available. There is acknowledgement in international law that certain proceedings or circumstances will justify a court suppressing all or part of a judgment.

There is a logical relationship between subclause (3) and subclause (2). For example, if it is in the interests of justice to exclude the public from a trial under subclause (2) to protect the identity of a party, there may also be a legitimate need to withhold certain parts of a judgment that would identify that party.

(b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The limitations on the right to a fair hearing within the amendment regulation result in the reversal of the onus of proof through the automatic deduction of effort units for fishers detected by vessel tracking equipment, or for commercial fishers fishing under an exception who have not manually reported or been detected by vessel tracking equipment, which can only be overturned through the chief executive’s being satisfied via written notice from the fisher that

the boat was not used for fishing purposes on the relevant day. The purpose of this limitation is to ensure that fishers cannot avoid detection of fishing activities in order to use more than their allocated quota, which could lead to overfishing, which puts commercial fisheries at risk of collapse

This reverses the onus of proof as person who breaches these requirements has to disprove the automatic assumption they were fishing. As the fisher has the opportunity to satisfy the chief executive that he or she did not use the boat that day for fishing, through the provision of relevant evidence, he or she has the opportunity to appeal the automatic deduction if he or she did not commit the offence. Consequently, the limitation is consistent with a free and democratic society based on human dignity, equality and freedom.

(c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose

Reversing the onus of proof in these circumstances results in the automatic deduction of effort for relevant fishers. Due to vessel tracking equipment being the best means of monitoring fishing activity, and the easy ability for fishers to simply turn off this equipment in order to avoid monitoring of their fishing activities, the limitation is directly related to the purpose of effectively managing the sustainability of fisheries through ensuring that quota that is used is deducted from the fisher's allocation. Consequently, the reversal of the onus of proof in these circumstances helps achieve the sustainable management of commercial fisheries.

(d) whether there are any less restrictive and reasonably available ways to achieve the purpose

Vessel tracking is the current means by which quota fishing is best monitored on a daily basis, however, as vessel tracking systems are electronic equipment, they can be easily turned off by a commercial fisher in order to avoid detection of quota use. Consequently, reversing the onus of proof through automatic effort unit deduction is reasonable in the circumstances.

(e) the balance between the importance of the purpose of the limitation and the importance of preserving the human right, taking into account the nature and extent of the limitation

The reversal of the onus of proof is justified in these instances as the offences involve matters which would only be within the defendant's knowledge and/or on which evidence to disprove the offence would be available to them. Given the impact of overfishing on the sustainability of the commercial fishing industry, easy ability for vessel tracking equipment to be turned off by a fisher to avoid detection of fishing, and opportunity a commercial fisher has to disprove the offence, the limitation is balanced between achieving the purpose and preserving the human right to a fair hearing.

Human rights relevant to the subordinate legislation (Part 2, Division 2 and 3 *Human Rights Act 2019*)

Section 32 Rights in criminal proceedings

Amendment of *Fisheries (Commercial Fisheries) Regulation 2019*

Section reference	How the clause engages the right	Restriction of right
Clause 138 – 74(1)-(2)	These sections provide for a deduction of effort units for a full day if the boat has been detected by vessel tracking equipment at any time during that day.	This right is restricted as the automatic deduction of efforts on detection of a fishing boat being in a fishery does not conclusively prove a person has used their fishery entitlement for that day and thus reverses the general presumption that a person is innocent until proven guilty.
Clause 140 – section 82	These sections provide for a deduction of effort units for a full day if an exception applies to the boat and it has not been detected by vessel tracking equipment or manually reported GPS positions.	This right is restricted as the automatic deduction of efforts on detection of a fishing boat being in a fishery does not conclusively prove a person has used his or her fishery entitlement for that day and thus reverses the general presumption that a person is innocent until proven guilty.

Consideration of reasonable limitations on human rights (section 13 *Human Rights Act 2019*)

(a) The nature of the right

Section 32 provides for certain rights in criminal proceedings. This right is modelled on article 14 of the ICCPR, on the provisions regarding the right to certain minimal procedural guarantees in criminal trials.

Subsection (1) provides for the right of a person charged with a criminal offence to be presumed innocent until proven guilty according to law.

Subsection (2) sets out minimum guarantees that a person charged with a criminal offence is entitled without discrimination to receive. Nothing in this subsection entitles a person, if eligible for legal aid, to choose a particular lawyer to provide assistance through legal aid.

Subsection (3) provides for the right of a child charged with a criminal offence to a procedure that takes account of the child’s age and the desirability of promoting rehabilitation.

Subsection (4) provides for the right of a person convicted of a criminal offence to have a higher court review the conviction and any sentence imposed, in accordance with law.

Subsection (5) clarifies that reference to legal aid in this provision means legal aid given under the *Legal Aid Queensland Act 1997*. It is the intention that the rights of a person to legal aid

under this subsection are consistent with existing rights under the *Legal Aid Queensland Act 1992*, and are conditional upon the person being eligible for legal aid under that Act.

(b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The limitations on rights in criminal proceedings within the amendment regulation result in the reversal of the presumption of innocence through the automatic deduction of effort units for fishers detected by vessel tracking equipment, or for commercial fishers fishing under an exception who have not manually reported or been detected by vessel tracking equipment, which can only be overturned through the chief executive's being satisfied via written notice from the fisher that the boat was not used for fishing purposes on the relevant day. The purpose of this limitation is to ensure that fishers cannot avoid detection of fishing activities in order to use more than their allocated quota, which could lead to overfishing, which puts commercial fisheries at risk of collapse

This reverses the presumption of innocence for fishers detected as persons who breach these requirements have to disprove the automatic assumption they were fishing. As the fisher has the opportunity to satisfy the chief executive that he or she did not use the boat that day for fishing, through the provision of relevant evidence, he or she has the opportunity to appeal the automatic deduction if he or she did not commit the offence. Consequently, the limitation is consistent with a free and democratic society based on human dignity, equality and freedom.

(c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose

The reversing of the presumption of innocence in these circumstances results in the automatic deduction of effort for relevant fishers. Due to vessel tracking equipment being the best means of monitoring fishing activity, and the easy ability for fishers to simply turn off this equipment in order to avoid monitoring of their fishing activities, the limitation is directly related to the purpose of effectively managing the sustainability of fisheries through ensuring that quota that is used, is deducted from the fishers allocation.

Consequently, the reversal of the presumption of innocence in these circumstances helps achieve sustainable management of fisheries.

(d) whether there are any less restrictive and reasonably available ways to achieve the purpose

Vessel tracking is the current means by which quota fishing is best monitored on a daily basis, however, as vessel tracking systems are electronic equipment, they can be easily turned off by a commercial fisher in order to avoid detection of quota use. Consequently, reversing the presumption of innocence through automatic effort unit deduction is reasonable in the circumstances.

(e) the balance between the importance of the purpose of the limitation and the importance of preserving the human right, taking into account the nature and extent of the limitation

The reversal of presumption of innocence is justified in these instances as the offences involve matters which would only be within the defendant's knowledge and/or on which evidence to disprove the offence would be available to them. Given the impact of overfishing on the sustainability of the commercial fishing industry, easy ability for vessel tracking equipment to

be turned off by a fisher to avoid detection of fishing, and opportunity a commercial fisher has to disprove the offence, the limitation is balanced between achieving the purpose and preserving the human right to a fair hearing.

Conclusion

I consider that the Fisheries Legislation Amendment Regulation 2020 is compatible with the *Human Rights Act 2019* because it does limit, restrict or interfere with human rights, but the limitations are reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

MARK FURNER MP
MINISTER FOR AGRICULTURAL INDUSTRY DEVELOPMENT AND FISHERIES

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