

Fisheries Legislation Amendment Regulation 2021

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 and Minister for Rural Communities, provide this human rights certificate with respect to the *Fisheries Legislation Amendment Regulation 2021* made under the *Fisheries Act 1994*.

In my opinion, the *Fisheries Legislation Amendment Regulation 2021*, as tabled in the Legislative Assembly, is compatible with the human rights protected by the *Human Rights Act 2019*. I base my opinion on the reasons outlined in this statement.

Overview of the Subordinate Legislation

The Queensland Sustainable Fisheries Strategy 2017 – 2027 (the Strategy) committed to the implementation of reforms in a number of Queensland’s fisheries, and the implementation of best practice management principles more generally for managing Queensland’s fisheries resources. Initial legislative foundations were established through the *Fisheries (Sustainable Fisheries Strategy) Amendment Act 2019*, and further changes were made in August 2019 and September 2020 through the *Fisheries (General) Regulation 2019* (General Fisheries Regulation), *Fisheries (Commercial Fisheries) Regulation 2019* (Commercial Fisheries Regulation), *Fisheries Amendment Declaration 2019* and *Fisheries Legislation Amendment Regulation 2020* (FLAR).

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 Queensland 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.

In June 2019, the Government released a *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 Declaration*

2019, which commenced on 1 September 2019, together implemented 39 of the 102 proposals outlined in the Discussion Paper.

Before the remainder of the proposed changes in the Discussion Paper could be fully considered for implementation, the novel Coronavirus (COVID-19) outbreak occurred and affected the viability of the fishing industry. The commercial fishing industry was one of the first industries to be impacted by COVID-19 with the loss of key export markets initially early in 2020. Subsequently, Australia imposed domestic restrictions in response to COVID-19, further affecting the Queensland's fishing industry through the loss of domestic markets.

Despite the easing of restrictions in Queensland in mid-late 2020, and support provided to the commercial fishing industry from across government, the commercial fishing industry continued to face significant economic hardship due to the reduced demand in the hospitality and tourism markets, and the disruptions to freight services to key international, Sydney and Melbourne wholesale markets.

Consequently, the implementation of the remaining proposals outlined in the Discussion Paper were prioritised in the FLAR based on those changes that:

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

A number of provisions within the FLAR instrument do not commence until 1 September 2021. However, since notification of that instrument, a number of minor, technical errors have been identified that relate to both the commenced and un-commenced provisions. The purpose of the *Fisheries Legislation Amendment Regulation 2021* (the Amendment Regulation) is to correct those minor errors and make other minor, routine, and non-significant changes to fisheries subordinate legislation. This will be achieved by amending the *Fisheries (General) Regulation 2019*, *Fisheries (Commercial Fisheries) Regulation 2019* and *Fisheries Declaration 2019*, and making consequential amendments to the *Fisheries Quota Declaration 2019*.

Human Rights Issues

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

Amongst other things, section 15 of the Amendment Regulation amends schedule 2 (Regulated fish declarations), part 2 of the *Fisheries Declaration 2019* to achieve the following:

- to provide that a person cannot take or possess bivalve mollusc or gastropod, other than pipi, unless the person is taking or possessing the fish commercially under an A1 licence; and

- to provide that the maximum number of any fish, other than Australian anchovy and sardine, common hardyhead, freshwater prawn, herring, marine yabby, silver biddy, soldier crabs or worms that are not already regulated by number in part two, or mentioned in column 1 of the table in part 3 that a recreational fisher can take or possess, is 20.

These amendments may interact with Aboriginal and Torres Strait Islander peoples' ability to maintain and strengthen their distinctive spiritual, material and economic relationships with waters and coastal seas with which they have a connection under Aboriginal and Torres Strait Islander tradition (subsection 28(2)(d)), and to conserve and protect the environment and productive capacity of their waters and coastal seas (subsection 28(2)(e)) because it may reduce the availability of the fisheries resource to traditional owners and may restrict or prevent them from taking and possessing certain fish.

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 peoples. This clause is modelled on article 27 of the International Covenant on Civil and Political Rights (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 education 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 first limitation on the cultural rights of Aboriginal and Torres Strait Islander peoples relates to a reduction in the availability of this fishery resource to traditional owners. This may, for example, reduce the ability of Aboriginal and Torres Strait Islander people to maintain their distinctive spiritual, material and economic relationship to these waters as there will be a reduction in fisheries resources available to them. The second limitation relates to restricting or preventing Aboriginal and Torres Strait Islander peoples from taking or possessing certain fish which may also reduce the ability of Aboriginal and Torres Strait Islander people to maintain their distinctive spiritual, material and economic relationship to these waters as there interactions with certain fisheries resources are restricted.

The purpose of these limitations are to continue to ensure the long-term sustainability of the fishery resources. The amendments to the *Fisheries Declaration 2019* set out limitations on who can take fish, and how many fish of a certain type can be taken, and in doing so, restricts the ability for overfishing to occur which would deplete fish stocks. By restricting the ability for overfishing to occur, it 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, which are preserved elsewhere in the *Fisheries Act 1994*.

The purpose of the limitation, to ensure the long-term, commercial sustainability of a natural resource, is recognition that natural resources are limited and must be managed, which is a relevant consideration in modern society. The limitations on this right are, therefore, 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

Limiting the cultural rights of Aboriginal and Torres Strait Islander peoples through a reduction in the availability of certain fisheries resources is directly linked to the purpose of ensuring the long-term, commercial sustainability of the fishery resource as the restrictions help to reduce the potential for overfishing to occur.

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

This limitation on the rights of Aboriginal peoples and Torres Strait Islander peoples is the least restrictive way to address the long term, sustainability of the fishery resources. 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. Without imposing limitations on the taking and possessing of fisheries resources, there is no way to ensure the sustainability of the resource long-term. There are many examples of fish species becoming vulnerable to extinction due to overfishing, and imposing restrictions on who may take and possess fish, and how many fish can be taken, is the most effective way to prevent this occurring.

In addition, limiting this right through imposing limitations on the taking and possessing of fisheries resources potentially serves to preserve the distinctive spiritual, material and economic relationship with the land and waters, which could otherwise be limited in these waters if over-fishing occurred.

(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 restriction on the take and possession of bivalve molluscs and gastropods, other than pipis, and the limitation on how many fish may be taken for certain types of fish, may limit the cultural rights of Aboriginal and Torres Strait Islander peoples by restricting access to, and limiting the availability of, certain fishery resources to traditional owners. This, among other outcomes, may affect their right to maintain their distinctive spiritual, material and economic relationship with the land and waters.

Balanced against this limitation is the importance of preserving Queensland's fisheries resources from overfishing for all fishing sectors, which also, importantly, helps to protect Aboriginal peoples' and Torres Strait Islander peoples' traditional cultural rights and connection to these waters. Therefore, the rights are only limited in a broad-scale 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.

(f) any other relevant factors

These amendments to the *Fisheries Declaration 2019* will not restrict Aboriginal and Torres Strait Islander peoples from undertaking cultural harvest. These amendments relate to the taking and possessing of fish more broadly and apply to all persons equally in Queensland. The Queensland Government uses other policies and tools to ensure Aboriginal and Torres Strait Islander peoples are able to maintain and strengthen their distinctive spiritual, material and economic relationships with waters and coastal seas with which they have a connection under Aboriginal tradition (subsection 28(2)(d)) and to conserve and protect the environment and productive capacity of their waters and coastal seas (subsection 28(2)(e)).

Conclusion

I consider that the *Fisheries Legislation Amendment Regulation 2021* is compatible with the *Human Rights Act 2019* because it may limit, restrict or interfere with a human right, but that limitation is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom, to the extent outlined in this statement. I further consider that the remainder of the *Fisheries Legislation Amendment Regulation 2021* is compatible with the *Human Rights Act 2019* because it does not raise a human rights issue.

Mark Furner MP
Minister for Agricultural Industry Development and Fisheries and
Minister for Rural Communities