

# ***Fisheries Legislation Amendment Declaration (No. 2) 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* (Human Rights Act), 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 Declaration (No. 2) 2021* made under the *Fisheries Act 1994*.

In my opinion, the *Fisheries Legislation Amendment Declaration (No. 2) 2021* (the Amendment Declaration), as tabled in the Legislative Assembly, is compatible with the human rights protected by the Human Rights Act. I base my opinion on the reasons outlined in this statement.

### **Overview of the Subordinate Legislation**

The Amendment Declaration is made under sections 33, 34, 35 and 37 of the *Fisheries Act 1994*.

The Queensland Government manages several commercial fisheries using quota-based management systems that allocate the total quota entitlement for a fishery or part of a fishery. Under this system, individual fishers hold individual transferable quota (ITQ) units or effort units, which are both types of quota authorities. ITQ units entitle the holder to take a portion of the catch allowed under the total quota entitlement for that fishery, or part of the fishery, during the season. From season to season, the total quota entitlement may be increased or decreased depending upon the status of the fish stocks concerned. Effort units entitle the holder to fish, according to a formula that takes into account the characteristics of their operation, a portion of the fishing effort allowed for that fishery, or part of the fishery, during the season.

The main purpose of the Amendment Declaration is to introduce a limit, colloquially known as a 'regional effort cap', on how much effort can be exerted in each of the six trawl management regions in the east coast trawl fishery. Each regional effort cap will prohibit fishing under effort units in the relevant region once a certain amount of effort has been exerted in that region during the fishing season.

A further purpose of the Amendment Declaration is to increase the total quota entitlement for prescribed whiting in the Commercial Trawl Fishery (Fin Fish) to 1,281 tonnes.

## Human Rights Issues

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

#### Section 24 Property rights

The Amendment Declaration interacts with a person's right to own property and not be arbitrarily deprived of his or her property (section 24) because quota authorities have property-like characteristics. Individual transferable quota (ITQ) units, which entitle the holder to take a portion of the catch allowed under the total quota entitlement for the relevant fishery, and effort units, which entitle the holder to fish, according to a formula that takes into account the characteristics of their operation, a portion of the fishing effort allowed for that fishery or part of the fishery during the season, are both types of quota authorities.

The Amendment Declaration restricts how the holder can use his or her property-like effort units by restricting or preventing the possession or use of trawl nets in a trawl management region, which effectively prevents fishing from occurring once the effort cap for that region has been reached.

The Amendment Declaration does not limit the holder's property rights in relation to ITQ units because setting a total quota entitlement for a species has the effect of placing value on each unit held by a person. Without doing so, the units that have been allocated to a holder are essentially worthless and do not become valuable until a total quota entitlement is declared for the fishery or part of the fishery.

#### Section 28 Cultural rights—Aboriginal peoples and Torres Strait Islander peoples

The Amendment Declaration, which uses a number of management tools to impose restrictions on the commercial take of fisheries resources, may interact with Aboriginal 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 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)). The Amendment Declaration may impact the availability of fishery resources to traditional owners directly if they are involved in commercial fishing or indirectly because restrictions on commercial fishing will impact on cultural fishing for the same fish stocks. It also engages their right to conserve and protect the environment and productive capacity of their waters and coastal seas.

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

#### (a) the nature of the right

Section 24 of the Human Rights Act provides for property rights. Section 24(2) provides that a person must not be arbitrarily deprived of their property. This clause is modelled on article 17 of the Universal Declaration of Human Rights. It essentially protects a person from having their property unlawfully removed.

Section 28 of the Human Rights Act provides for the distinct cultural rights held by Aboriginal peoples and Torres Strait Islander peoples as Australia's first peoples.

Section 28(1) recognises that Aboriginal peoples and Torres Strait Islander peoples hold distinct cultural rights. Section 28(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 their culture. Relevantly here, the section provides that Aboriginal peoples and Torres Strait Islander peoples must not be denied their right to—

- maintain and strengthen their distinctive spiritual, material and economic relationship with the land, territories, waters, coastal seas and other resources with which they have a connection under Aboriginal tradition or Island custom (section 28(2)(d)); and
- conserve and protect the environment and productive capacity of their land, territories, waters, coastal seas and other resources (section 28(2)(e)).

Section 28 of the Human Rights Act is modelled on article 27 of the International Covenant on Civil and Political Rights, as well as articles 8, 25, 29 and 31 of the United Nations Declaration on the Rights of Indigenous Peoples. Section 28 is intended to be read with section 107 of the Human Rights Act, 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 purpose of declaring the total quota entitlement for prescribed whiting and the effort caps for the east coast trawl fishery is to implement harvest strategies for these commercial fisheries, which have been developed in collaboration with key stakeholders to achieve ecological, economic and/or social objectives for these fisheries. It recognises 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 property rights of holders by preventing fishing from occurring once the effort cap for each region has been reached is also directly linked to the purpose of implementing harvest strategies for the east coast trawl fishery, which have been developed in collaboration with key stakeholders to achieve ecological, economic and/or social objectives for these fisheries.

Limiting the cultural rights of Aboriginal and Torres Strait Islander peoples through limits on commercial fishing is directly linked to the purpose of implementing harvest strategies for these commercial fisheries, which have been developed in collaboration with key stakeholders to achieve ecological, economic and/or social objectives for these fisheries including to conserve and protect the environment and productive capacity of their waters and coastal seas.

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

Although there are alternative ways to manage commercial catch, imposing regional effort caps is the only way to implement the harvest strategies for the east coast trawl fishery.

Further, while the cultural rights of Aboriginal peoples and Torres Strait Islander peoples may be impacted by the operation of the commercial sector, Aboriginal peoples 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 Amendment Declaration only applies to commercial fishing and will reduce the impact on cultural fishing from the commercial fishing sector. Any alternative way to restrict commercial catch will impact on the cultural rights of Aboriginal peoples and Torres Strait Islander peoples in a similar way.

In addition, limiting this right through restricting the commercial catch potentially serves to preserve the distinctive spiritual, material and economic relationship of Aboriginal peoples and Torres Strait Islander peoples with the land and waters more generally, which could otherwise be limited in these waters if restrictions were not implemented and 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

Imposing effort caps in the east coast trawl fishery limits the property rights of holders by restricting or preventing the possession or use of trawl nets in a trawl management region, which effectively prevents fishing from occurring once the effort cap for that region has been reached. Balanced against these limitations is the importance of achieving the ecological, economic and/or social objectives of the fishery's harvest strategies.

Setting limits on commercial fishing in the east coast trawl fishery and the commercial trawl fishery (fin fish) potentially limits the cultural rights of Aboriginal peoples and Torres Strait Islander peoples by reducing the availability of this fishery resource to traditional owners. However, the species targeted by these fisheries typically exist in deeper waters and are not significant species for traditional fishing methods. Also, preserving Queensland's fisheries resources from potential overfishing helps to protect Aboriginal people's and Torres Strait Islander people's traditional cultural rights and connection to these waters and is consistent with their right to conserve and protect the environment and productive capacity of their land, territories, waters, coastal seas and other resources.

- (f) any other relevant factors

The Amendment Declaration only relates to commercial harvest and will not restrict Aboriginal and Torres Strait Islander peoples from undertaking cultural harvest. 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)).

Further, the Amendment Declaration does not restrict the locations, or times, that Aboriginal peoples and Torres Strait Islander peoples can fish, nor does it restrict the number of fish they can catch.

## Conclusion

I consider that the *Fisheries Legislation Amendment Declaration (No. 2) 2021* is compatible with the *Human Rights Act 2019* because it does not 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.

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

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