

# Fisheries (Commercial Fisheries) Amendment Regulation 2022

## 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 (Commercial Fisheries) Amendment Regulation 2022* made under the *Fisheries Act 1994*.

In my opinion, the *Fisheries (Commercial Fisheries) Amendment Regulation 2022* (subordinate legislation), 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 subordinate legislation is made under the *Fisheries Act 1994* (Act).

The authorising law for the subordinate legislation is sections 62 and 223 of the Act.

The purpose of the subordinate legislation is to increase the maximum allowable mesh net size for the nearshore waters in the east coast no. 1 and east coast no. 2 net fisheries, and the ply diameter for the nearshore waters of the east coast no. 2 net fishery.

The amendments will result in a reversion to the net mesh and ply size requirements prior to 1 September 2021 in those waters. This is a result of feedback from industry that the nets complying with the size restrictions were not widely available and the lighter nets were reportedly not proving efficacious for standard nearshore fishing activities.

There has also been limited empirical evidence to support that introduction of lighter ply requirements reduces harmful interactions with protected species in net fisheries, with some evidence to suggest it may have the opposite effect of increasing the risk of entangling non-target species.

### Human Rights Issues

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

#### Cultural rights – Aboriginal and Torres Strait Islander peoples

The subordinate legislation engages the distinct cultural rights held by Aboriginal peoples and Torres Strait Islander Peoples under section 28 of the *Human Rights Act 2019*. In particular, the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas

and other resources with which they have a connection under Aboriginal tradition or Island custom section 28(2)(d); and the right to conserve and protect the environment and the productive capacity of their lands, territories and waters, coastal seas and other resources (section 28(2)(e) is engaged because the subordinate legislation changes the management arrangements for the use of nets in east coast no. 1 and east coast no. 2 net fisheries.

These rights are not limited as the management changes made in the subordinate legislation only relate to commercial fishing nets and will not restrict Aboriginal and Torres Strait Islander peoples undertaking traditional fishing methods.

### Property Rights

The subordinate legislation engages the property rights protected under section 24 of the *Human Rights Act 2019*. Under this section, ‘a person must not be arbitrarily deprived of the person’s property’. Deprivation of property is not limited to physical dispossession of property and can take the form of any interference with the use, enjoyment, or exploitation of private property.

The amendments engage property rights because a Primary Fishing Licence with the relevant fishing symbols which entitles the holder to commercially take fish in the east coast no. 1 and east coast no. 2 net fisheries, has property-like characteristics for the licence-holder. Regulation of net mesh size and ply diameter restricts the size of nets which may be used in the nearshore sector of the east coast no. 1 and no. 2 fisheries. The management changes in the subordinate legislation which increase the prescribed net mesh and ply sizes for nets used in the fisheries do not limit, but support, property rights as they are a relaxation of the mesh and ply size requirements to the previous size requirements which allow fishers to broaden the scope of nets that may be used in the fisheries. The changes are in response to the industry stakeholders’ concerns.

## **Conclusion**

I consider that the *Fisheries (Commercial Fisheries) Amendment Regulation 2022* is compatible with the *Human Rights Act 2019* because it does not limit, restrict or interfere with human rights.

**MARK FURNER MP**  
MINISTER FOR AGRICULTURAL INDUSTRY  
DEVELOPMENT AND FISHERIES AND  
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