

Fisheries (Structural Reform Stage 2) and Other Legislation Amendment Regulation 2024

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* (HR 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 (Structural Reform Stage 2) and Other Legislation Amendment Regulation 2024* (the Amendment Regulation) made under the *Fisheries Act 1994* (the Fisheries Act) and the *Rural and Regional Adjustment Act 1994* (RR Act).

In my opinion, the Amendment Regulation, as tabled in the Legislative Assembly, is compatible with the human rights protected by the HR Act. I base my opinion on the reasons outlined in this statement.

Overview of the Subordinate Legislation

The Amendment Regulation is made under the Fisheries Act and the RR Act.

On 28 November 2022, the United Nations Educational, Scientific and Cultural Organization (UNESCO) and the International Union for the Conservation of Nature (IUCN) released a report on the reactive monitoring mission to the Great Barrier Reef (GBR). The report recommended the GBR be listed as ‘in danger’ on the World Heritage List. The report included 18 recommendations. A priority recommendation was to “phase out destructive gill net fishing through appropriate mechanisms, including purchasing, and/or retiring all remaining industrial gill-net licences; retiring of other gill-net fisheries and the establishment of net-free sub-zones in areas of high conservation value for protected species”.

On 5 June 2023, the Honourable Tanya Plibersek MP, Commonwealth Minister for the Environment and Water; Senator Nita Green, Special Envoy for the Great Barrier Reef and Senator for Queensland; the Honourable Mark Furner MP, Queensland Minister for Agricultural Industry, Development and Fisheries and Minister for Rural Communities; and the Honourable Leanne Linard MP, Queensland Minister for the Environment and the Great Barrier Reef, Minister for Science and Minister for Multicultural Affairs, released a joint media release announcing that over \$160 million will be delivered to significantly reduce net fishing and other high risk fishing activities impacting the GBR. This includes ensuring the GBR is gillnet free by mid-2027 and committed to the establishment of new gillnet free areas in the Gulf of Carpentaria. As part of these reforms, Queensland Government was asked to declare threatened hammerhead sharks a no-take species for commercial fishers. Concurrently, the Queensland Government finalised the review of the zoning plan for the Great Sandy Marine Park (GSMP).

On the 17 July 2023, the Queensland Government announced the establishment of the independent Future Fishing Taskforce (the Taskforce) to provide expert advice to government on the best approach, design and implementation of a structural adjustment package for the GBR. The terms of reference made clear the need to consider also interconnected fisheries in the Gulf of Carpentaria (Gulf) and the GSMP zoning plan review (<https://www.daf.qld.gov.au/business-priorities/fisheries/commercial/future-fishing>).

The Taskforce sought input from subject matter experts, stakeholders and peak bodies and the Great Barrier Reef Marine Park Authority. The results of targeted consultation with affected commercial fishers and processors was also provided for consideration.

The Taskforce recommended, among other things:

- providing support and structural adjustment for commercial fishers displaced by increased protections. The Taskforce made detailed recommendations on financial assistance for authority holders, depending on the market value of the particular authority and the extent of impact from the reforms;
- providing payments to eligible employees who are impacted by the removal of gill net licences and changes to the GSMP;
- ensuring an approach to paying structural adjustment for implementing gill net free zones in the Gulf of Carpentaria consistent with that for the GBR and Great Sandy regions;
- undertaking consultation on potential gillnet free areas in the Gulf of Carpentaria.

On 25 October 2023, the Queensland Government approved the recommendations of the Taskforce and the associated indicative budget allocations in relation to a \$125 million Fisheries Structural Adjustment Package to phase out large mesh commercial gillnet fishing on the GBR and mitigate impacts related to changes to the GSMP Zoning Plan. The establishment of an interdepartmental governance committee (IDC), led by the Department of the Premier and Cabinet (DPC), was also approved to support the timely and effective delivery of all recommendations in the Report.

On 16 November 2023, the Queensland Government announced a structural adjustment package, which adopts all the recommendations made by the Taskforce. Key components of this package include:

- Around \$90 million to financially assist eligible fishers and supply-chain businesses, including payments for licence packages, relevant symbols, relevant individual transferable quota (ITQ), nets and their disposal, boat refits, payments acknowledging loss of future income, and support for seeking independent advice;
- \$2.25 million to support employees such as deckhands and skippers;
- \$1.5 million to support making hammerhead shark a no-take species for commercial fishers;
- \$1.5 million in grants and support for reskilling and retraining;
- \$15 million to develop a whole-of-government strategy to accelerate and adopt innovative best-practice sustainable aquaculture in Queensland;

- \$4.5 million, with matching Australian Government funding from the Fisheries Research Development Corporation, to support an evidence-based approach to developing and trialling sustainable alternative commercial fishing gear; and
- \$2.95 million for developing and growing sustainable regional jobs, tourism opportunities and supporting master fishers training and threatened species protection.

On 7 December 2023, the Governor in Council made the Fisheries and Other Legislation (Structural Reform) Amendment Regulation 2023 SL No 194 (Stage 1 of the structural adjustment). This Amendment Regulation:

- amended the *Rural and Regional Adjustment Regulation 2011* to prescribe Fisheries structural adjustment scheme (Stage 1 Scheme), to be administered by the Queensland Rural and Industry Development Authority (QRIDA), for holders of fishing authorities affected by the structural reform; and
- reduced impacts on threatened, endangered and protected species within the GBR and the GSMP by consequential amendments to fisheries legislation. These amendments removed the fishing authorities associated with commercial gillnet fishing within the GBR and specific areas within the GSMP and prohibited the commercial take of hammerhead sharks in Queensland.

A ‘Gulf of Carpentaria inshore fishery consultation on gillnet-free areas and fishery reforms - Discussion paper’ was released for public consultation from 10 October 2023 to 11 December 2023. The Gulf discussion paper received 1,104 responses and recorded 93 per cent support from respondents for the implementation of the proposed gillnet-free zones. There was also majority support for extra areas to be protected as gillnet-free areas, prompting the need for further consultation and analysis. Additional consultation was undertaken in March 2024 with the Gulf of Carpentaria Inshore Fishery working group, Sustainable Fisheries Expert Panel and First Nations groups in the Gulf of Carpentaria. This additional consultation led to minor adjustments to some of the proposed boundaries to improve enforcement capabilities, mitigate economic impacts and support economic opportunities, views and aspirations of Traditional Owners.

On 14 March 2024, amendments to the Scheme were approved to extend the closing dates.

On 23 April 2024, the Honourable Mark Furner MP, Minister for Agricultural Industry Development and Fisheries and Minister for Rural Communities, considered the results of consultation to inform the final design and implementation of new gillnet free areas in the Gulf of Carpentaria and approved the drafting of amendments to the *Fisheries Declaration 2019* to implement the new gillnet free areas in the Gulf of Carpentaria.

Stage 2 of the structural adjustment will:

- Amend fisheries legislation to introduce new gillnet-free areas in the Gulf, commencing 17 May 2024, and where relevant consolidate existing Gulf net-free areas into the new areas. The new areas are:
 - northern Gulf waters,
 - Pormpuraaw waters,
 - Topsy Creek,
 - Norman River,
 - Western Gulf waters.

- Introduce a new assistance scheme under the *Rural and Regional Adjustment Regulation 2011* to:
 - facilitate voluntary surrender of N3 fishery symbols and licences for the Gulf region, and
 - provide payments for loss of income for:
 - employees (skippers and crew members) who worked for at least 20 days on vessels registered to eligible licences with fishing history in the GBR and Great Sandy regions,
 - employees (skippers and crew members) who worked for at least 20 days on vessels registered to eligible licences where the licence or N3 symbol have been surrendered in the Gulf region,
 - owners of N3 and N11 licences with fishing history in the new Gulf gillnet-free areas,
 - holders and lessors of eligible licences endorsed with aquarium fish fishery symbols (A1 and A2) who had fishing history in the Great Sandy region and were not included in Stage 1, and
 - holders and full-time lessors of licences with catch history in hammerhead sharks who are not eligible to receive payment under any other category.

Loss of income payments for aquarium fish and hammerhead sharks will be consistent with loss of income payments under Stage 1 of the assistance scheme.

A minor amendment will be made to Stage 1 Scheme under *the Rural and Regional Adjustment Regulation 2011*, to remove any doubt of the original intention that payments for loss of income in the GBR region is only for fishing history under the retired net symbols, and within the regions, specified in the eligibility criteria.

Some minor amendments to the fisheries legislation are also required to achieve the original intent:

- correct an unintended restriction on N11 nets and recreational fishing apparatus in Dugong Protection Areas (DPAs). While large-mesh gillnets are now prohibited in DPAs, it was never intended to prohibit the smaller mesh nets that have historically been permitted.
- include the designation 'A' and 'B' against the relevant dugong protection areas, for clarity and consistency with Marine Parks legislation.
- refine the definition of the new Net Free North boundary so it does not unintentionally capture waterways that flow westward towards the Gulf.

Human Rights Issues

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

A. Amendments to the *Rural and Regional Adjustment Regulation 2011*

In my opinion, the following human rights are engaged by the amendments to the *Rural and Regional Adjustment Regulation 2011* included in the subordinate legislation:

- Cultural rights of Aboriginal and Torres Strait Islander peoples (section 28).

B. Amendments to the Fisheries Declaration 2019 - New Gillnet Free Areas in the Gulf of Carpentaria

In my opinion, the following human rights are engaged by the amendments to the *Fisheries Declaration 2019*, included in the subordinate legislation:

- Property rights (section 24)
- Cultural rights of Aboriginal and Torres Strait Islander peoples (section 28)
- Fair hearing (section 31).

Consideration of Reasonable Limitations on Human Rights (section 13 *Human Rights Act 2019*)

Property Rights – Section 24

The subordinate legislation engages the property rights protected under section 24 of the HR Act. 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 implementation of new gillnet free areas in the Gulf of Carpentaria (GoC) engages property rights protected under section 24 of the *Human Rights Act 2019*. The new gillnet free areas can be seen as interfering with property rights because a Primary Commercial Fishing Licence (PCFL) with the ‘N3’ fishery symbol, which entitles the holder to commercially take fish species in the GoC, has property-like characteristics. Implementing the new gillnet free areas will restrict holders of a PCFL endorsed with a N3 fishery symbol from exercising their rights to commercially take fish species within the new gillnet free areas.

(a) the nature of the right

Section 24 of the *Human Rights Act 2019* provides for property rights. This clause is modelled on article 17 of the Universal Declaration of Human Rights. The right essentially protects a person from having his or her 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.

(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 limiting a licence holder’s property rights by implementing new gillnet free areas is to improve protections for threatened, endangered and protected species (TEPS) that occur within those areas, many of which migrate between the GoC and GBR. TEPS are often caught as bycatch in gillnets due to the relatively unselective nature of gillnets. The removal of net fishery symbols from the GBR on 31 December 2023 is expected to result in the transfer of fishing effort from the GBR to the GoC, thus placing TEPS at even higher risk. TEPS are a common property resource of significant social and ecological value.

In addition, the pressure of fishing effort shift from the GBR on top of existing concerns about low biomass for key Gulf region species could risk the sustainability of fisheries stocks in the Gulf.

These purposes are consistent with a free and democratic society based on 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 a licence-holder directly achieves the purpose. Limiting the use of N3 gillnet fishing symbols in areas of particular ecological significance will minimise the capture and death of TEPS and protect them from harmful interactions as a result of commercial gillnet fishing activities.

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

The purpose of the amendments cannot be achieved effectively through any less restrictive and reasonably available means. The ongoing use of gillnets in these areas (ie. maintaining the status quo) would result in continued ecological risks to the health and productivity of TEPS populations that occur within those areas. Similarly, a reduction in the extent of areas closed to gillnet fishing would not be effective in achieving the objective as it would not provide adequate protection to address the identified risk.

These less restrictive options are not supported as they would not reduce the unnecessary interaction with TEPS and would risk further deaths of these species through unsustainable fishing practices. This would result in adverse impacts on the GoC, the GBR and the environment. These options would also fail to meet the Queensland Government's commitment to UNESCO. Additionally, these options would fail to meet the objectives of the Queensland Sustainable Fisheries Strategy 2017–2027, the main objective of the *Fisheries Act 1994* and the Queensland's Government's responsibility to ensure public fisheries resources are managed in a responsible and sustainable manner.

In deciding the final gillnet free areas, extensive consultation was undertaken to determine the most appropriate locations that maximise the protection outcomes for protected species while limiting the property-right impacts of commercial fisherman.

Licence holders will no longer be able to fish under a N3 fishery symbol in the gillnet free areas, however other regions of the fishery will remain open and accessible to N3 fishery symbol holders. Commercial fishers with fishing history within the new gillnet free areas will receive remuneration and other structural adjustment support, and employees working on boats that will no longer continue fishing under the N3 symbol will receive payments under the financial assistance scheme being offered. The limitation of property rights is, therefore, reasonable, and demonstrably justified 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 need to protect TEPS and fulfil obligations to prevent the GBR from being declared in Danger by UNESCO, should unsustainable fishing practices continue, outweigh the limitations on licence holders' property rights. The impact of the restrictions and limitations on commercial fishers and licence holders is balanced by the fact that commercial fishers will be able to continue fishing in other regions of the fishery.

Cultural Rights – Aboriginal Peoples and Torres Strait Islander Peoples – Section 28

(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 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 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.

(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 implementation of new gillnet free areas engages the distinct cultural rights of Aboriginal peoples and Torres Strait Islander peoples protected under section 28 of the *Human Rights Act 2019*. In particular, Aboriginal peoples' and Torres Strait Islander peoples' 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 right to conserve and protect the environment and productive capacity of their territories, waters, coastal seas and other resources (section 28(2)(e)) are engaged because the new gillnet free areas have implications for the take of fish within gillnet-free areas under the N3 fishery symbol.

Although the rights of Aboriginal peoples and Torres Strait Islander peoples are engaged by the implementation of new gillnet free areas in the GoC, these rights are not limited as the management changes do not restrict or negatively affect the species' availability for cultural harvest. The amendment regulation restricts the ways in which fish may be taken in a commercial fishing context only.

Instead, the new gillnet free areas positively protect Aboriginal peoples' and Torres Strait Islander peoples' rights as the netting restrictions will reduce the number of interactions and deaths of fish and TEPS, which in turn will increase the availability and security of these species for cultural harvest.

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

Noting the right is engaged but not limited, the purpose is to transition to more sustainable fishing practices and improve the ecological sustainability of the GoC. In turn, this helps to ensure Aboriginal peoples and Torres Strait Islander peoples can continue to enjoy their traditional relationship with waters and coastal seas through traditional fishing method.

Direct consultation and engagement have been undertaken with Traditional Owners of the GoC with their views and aspirations considered in the final design of areas.

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

The proposed amendment regulation engages the cultural rights of Aboriginal peoples and Torres Strait Islander peoples. However, Aboriginal and Torres Strait Islander peoples will still maintain their distinctive relationship with waters and coastal seas under Aboriginal tradition or Island custom through traditional fishing methods.

(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 engagement with the cultural rights of Aboriginal and Torres Strait Islander peoples is justified by the benefits of preserving Queensland's fisheries resources from overfishing and providing ecological protection for the GoC and the GBR. The rights are only limited in a broad-scale commercial fishing context, where a lack of limitation could result in depletion of TEPS populations, and further degradation of the GoC and the GBR.

Fair Hearing – Section 31

(a) the nature of the right

The right to a fair hearing provides a party to a civil proceeding with the right to have the proceeding decided after a fair and public hearing. The right encompasses the 'equality of arms' principle, which requires all parties to a proceeding to have a reasonable opportunity to present their case under conditions that do not disadvantage them against other parties to the proceeding. The principle outlines that the same procedural rights are to be provided to all parties unless distinctions are based on law and can be justified on objective and reasonable grounds.

(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 implementation of new gillnet free areas limits the right to a fair hearing in the way that a Regulatory Impact Statement (RIS) on the proposed management changes was waived due to the urgency of the Queensland Government to comply with the UNESCO recommendations. The purpose of the limitation however was to implement the UNESCO recommendations urgently to ensure the removal of destructive gill net fishing and preservation of TEPS.

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

The limitation on fair hearing directly achieved the purpose of implementing management reforms to gillnet fishing through the implementation of new gillnet free areas. It was only

possible to fulfil the State and Federal Governments' commitments to UNESCO to implement its recommendations, by avoiding a lengthy consultation process through the release of a RIS and providing appeals processes which would otherwise have jeopardised the World Heritage Listing status of the GBR.

In deciding the final gillnet free areas, extensive consultation was undertaken to determine the most appropriate locations that maximise the protection outcomes for protected species and limit the property-right impacts of commercial fisherman. During this consultation, impacted commercial fisherman were afforded the opportunity to inform the final design and implementation of the new gillnet free areas.

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

There is no identified less restrictive or reasonably available way of achieving the identified purpose.

(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

On balance, the purpose of limiting the right to a fair hearing, which if it were not done would delay the implementation of management reforms and compromise the World Heritage Listing status of the GBR and continue to threaten species of high conservation value, far outweighs the limitation on the human right. Public consultation was undertaken and considered in the final design of the new gillnet free areas.

Conclusion

I consider that the Amendment Regulation is compatible with the HR Act because it limits human rights only to the extent that is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

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