Parliamentary Committees



Fisheries (Sustainable Fisheries Strategy) Amendment Bill 2018

Report No. 17, 56th Parliament
State Development, Natural Resources and Agricultural Industry Development Committee
November 2018

State Development, Natural Resources and Agricultural Industry Development Committee

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Abbreviations

CYLAC	Cape York Land Aboriginal Council
DAF/the department	Department of Agriculture and Fisheries
EDONQ	Environmental Defenders Office of North Queensland
Fisheries Act	*Fisheries Act 1994*
GBRMPA	The Great Barrier Reef Marine Park Authority
LSA	*Legislative Standards Act 1992*
Minister	Minister for Agricultural Industry Development and Fisheries
QGFA	Queensland Game Fishing Association
QLS	Queensland Law Society
QSIA	Queensland Seafood Industry Association
QSMA	Queensland Seafood Marketers Association
SCP	Shark Control Program
Sustainable Fisheries Strategy	Queensland Sustainable Fisheries Strategy 2017-2027
Sunfish	Sunfish Queensland Inc.
VMS	Vessel Monitoring Systems
WWF	World Wildlife Fund

Chair's foreword

This report presents a summary of the State Development, Natural Resources and Agricultural Industry Development Committee's examination of the Fisheries (Sustainable Fisheries Strategy) Amendment Bill 2018.

The committee's task was to consider the policy to be achieved by the legislation and the application of fundamental legislative principles – that is, to consider whether the Bill has sufficient regard to the rights and liberties of individuals, and to the institution of Parliament.

To better understand the impact of the Bill on stakeholders the committee held regional hearings in Cairns and Scarborough. The committee visited a coral trout live export business to discuss the issues faced by the post-harvest sector. The committee also went out on patrol with fisheries officers into Moreton Bay and saw first-hand the significant problem of illegal fishing and issues around compliance and enforcement.

On behalf of the committee, I thank those individuals and organisations who made written submissions on the Bill and participated in the committee's public hearings. In particular, I would like to thank Mr Leahy, General Manager of the Australian Reef Fish Trading Company for hosting the committee on site.

I thank the Department of Agriculture and Fisheries, in particular Scott Spencer, Claire Andersen, Ben Westlake and Michael Mikitis for their assistance during the Inquiry and the fisheries officers who the committee met with in Manly Harbour.

I would like to thank my parliamentary colleagues for their contribution to this Inquiry, particularly Leanne Linard MP who acted as Chair in Cairns. I also thank our Parliamentary Service staff, and Dr Jaqueline Dewar and Natasha Mitchenson from the secretariat.

I commend this report to the House.

Chris Whiting MP

Chair

Recommendations

1 Introduction

1.1 Role of the committee

The State Development, Natural Resources and Agricultural Industry Development Committee (committee) is a portfolio committee of the Legislative Assembly which commenced on 15 February 2018 under the *Parliament of Queensland Act 2001* and the Standing Rules and Orders of the Legislative Assembly.[1]

The committee's areas of portfolio responsibility are:

- State Development, Manufacturing, Infrastructure and Planning
- Natural Resources, Mines and Energy, and
- Agricultural Industry Development and Fisheries.

Section 93(1) of the *Parliament of Queensland Act 2001* provided that a portfolio committee is responsible for examining each bill and item of subordinate legislation in its portfolio areas to consider:

- the policy to be given effect by the legislation
- the application of fundamental legislative principles, and
- for subordinate legislation – its lawfulness.

The Fisheries (Sustainable Fisheries Strategy) Amendment Bill 2018 (Bill) was introduced into the Legislative Assembly and referred to the committee on 4 September 2018. The committee is to report to the Legislative Assembly by 2 November 2018.

1.2 Inquiry process

On 7 September 2018, the committee invited stakeholders and subscribers to make written submissions on the Bill. The committee received 27 written submissions (see Appendix A for a list of submitters).

The committee received a public briefing about the Bill from the Department of Agriculture and Fisheries (DAF/the department) on 17 September 2018. Appendix B contains a list of officials who attended the public briefing. The committee also received written advice from the department in response to matters raised in submissions.

The committee held two regional public hearings on the Bill:

- Cairns – Wednesday 10 October 2018
- Scarborough – Friday 12 October 2018

See Appendix C for a list of witnesses who attended the public hearings.

The committee also held two site visits as part of its Inquiry:

- Cairns – the committee visited a local business that purchases live coral trout from Queensland commercial fishers, supplies fish to interstate markets and exports fish to Asia.
- Manly Harbour – the committee met with fisheries officers to examine issues relating to compliance and enforcement.

[1] *Parliament of Queensland Act 2001*, section 88 and Standing Order 194.

Committee members meeting with fisheries officers at Manly Harbour.[2]

The submissions, correspondence from the department and transcripts of the briefing and hearings are available on the committee's webpage. [3]

1.3 Policy objectives of the Bill

The Bill proposes to:

- modernise the objectives of the *Fisheries Act 1994* and recognise the interests of key stakeholder groups
- clarify the roles of the Minister responsible for fisheries and the chief executive in the management of the State's fisheries
- strengthen enforcement powers and penalties to address serious fisheries offences such as black-marketing, and
- reduce complexity and remove redundant provisions.[4]

According to the explanatory notes:

> *Queensland's fisheries are highly valued for their economic, social and cultural contributions to the State. The Bill will, amongst other things, help support the thousands of jobs that rely on*

2 Committee site visit, Manly harbour, 11 October 2018.

3 http://www.parliament.qld.gov.au/work-of-committees/committees/SDNRAIDC

4 Explanatory notes, p 1.

sustainable fisheries resources, deliver more responsive decision making and help protect fisheries in the Great Barrier Reef.[5]

The Bill is a key step in implementing the Queensland Sustainable Fisheries Strategy 2017-2027 (Sustainable Fisheries Strategy). It aims to support a more responsive, evidence-based approach to fisheries management; strengthen compliance powers to better align Queensland with other Australian jurisdictions; and establish the necessary powers, functions and tools for fisheries management.[6]

1.4 Government consultation on the Bill

At the pubic briefing in Brisbane, Mr Spencer, Deputy Director-General, DAF, summarised the development of the Bill over four years and the consultation that had been undertaken in its development:

In 2014, the previous government had an independent inquiry by MRAG Asia Pacific, led by Professor Glenn Hurry. That report was released in 2015. It basically says that the system needs quite a bit of work and quite a bit of adjustment to both the management and the legislation. This legislation deals with that particular issue, as well as dealing with the fact that, once that MRAG Asia Pacific report was released, the current government then released a green paper on fisheries management in Queensland. We received a very large number of submissions—11,800 submissions—to that green paper. Over 10,000 of those were from the conservation sector. There were 192 written submissions, 476 responses online and 663 responses on a short survey. It is fair to say that the overwhelming response from stakeholders was that they wanted reform of the way that our fisheries are managed.[7]

Further consultation was undertaken by the department in early 2018 with respect to the proposed amendments to the Fisheries Act. The explanatory notes state:

The Green Paper flagged changes to the Fisheries Act, but did not provide details of the changes proposed. As such, a discussion paper was released to provide the community with greater detail on the changes proposed and provide a further opportunity to comment.[8]

The discussion paper was released for public consultation for a period of nine weeks, from 16 March 2018 to 20 May 2018. The explanatory notes summarise of the results of that consultation process:

More than 240 submissions were received with strong support for the majority of proposed changes. From the online survey submissions more than:

- *90% agreed that the compliance powers of inspectors and penalties to address serious fisheries offences such as black marketing should be strengthened;*
- *80% agreed that the objectives of the Fisheries Act should be modernised and the interests of key stakeholder groups be recognised; and*
- *84% agreed to reducing the complexity and removing redundant provisions was required.*
- *55% agreed that the roles of the Minister responsible for fisheries and the chief executive in managing Queensland's fisheries should be clarified and more responsive decision-making through the use of harvest strategies should be provided.*[9]

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5 Explanatory notes, p 1.

6 Explanatory notes, p 2.

7 Public briefing transcript, Brisbane, 17 September 2018, pp 1-2. See also, Explanatory notes, pp 1, 23.

8 Explanatory notes, p 23.

9 Explanatory notes, p 2.

At the public briefing in Brisbane, Ms Andersen, Executive Director, Fisheries Queensland, provided the committee with further details regarding the lengthy consultation process for these particular amendments:

> *We had a total of 233 responses, seven written submissions and 233 responses to the online survey. A total of 340 people met with fishery managers at meetings across Queensland. That was specifically about the Act amendments that were proposed. We also did quite a bit on our social media pages, including a poll that reached almost 3,000 individuals, which was good. The feedback on the actual Act amendments was very positive.*[10]

Although the explanatory notes provide that consultation took place in relation to the amendments, some stakeholders expressed concern over the way in which consultation occurred, in particular through the use of small groups.[11] For example, Mr Pender, Chair of The Fishermens Portal Inc. from Karumba, submitted:

> *Our view is that the smaller meetings don't allow stakeholders to hear what others think, or for us to be sure that our concerns are being formally documented. A mixture of open meetings as well as 'one on one' sessions is preferred.*[12]

Others commented that there were plenty of opportunities for consultation, but that the concerns raised during the consultation were not recognised by the department.[13] For example, Mr Tony Riesenweber, Director, Queensland Seafood Industry Association (QSIA) stated:

> *There has not been proper consultation. There has been no proper risk assessment in terms of what it is going to do to the industry.*[14]

Some submitters also queried the composition of the department's working groups and expert panels involved in the consultation process, citing concerns around panel selection and transparency.[15]

However, there were other stakeholders who commented positively on the opportunities given to them as part of the development of the Bill. For example, the Environmental Defenders Office of Northern Queensland (EDONQ) applauded the 'transparent and consultative approach to develop the sustainable fisheries strategy implemented by the Bill.'[16] The Quandamooka Yoolooburrabee Aboriginal Corporation (QYAC) also highlighted the benefits of fishery working groups, in particular, the Moreton Bay working group and Indigenous working group.[17]

In response to some of the concerns raised by stakeholders, the department advised:

> *We have a range of different stakeholders with just as many views. That can be very challenging for us. We also have a range of different organisations that provide advice. We have to use a range of tools to consult with people. That ranges from online surveys to letters to individual fishers, SMSs, Facebook polls, face-to-face meetings and a range of others. Because of the*

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10 Public briefing transcript, Brisbane, 17 September 2018, p 4.

11 See for example, Allan Bobbermen, Public hearing transcript, Cairns, 10 October 2018, p 20; Shane Card and Judy Lynne, Public hearing transcript, Scarborough, 12 October 2018, pp 17, 34; Submission 7.

12 Submission 7, p 2.

13 See for example, Michelle Jensen, Public hearing transcript, Cairns, 10 October 2018, p 20; Submissions 3, 4, 5, 8.

14 Public hearing transcript, Scarborough, 12 October 2018, p 7.

15 See, for example, submissions 4, 5 and 8.

16 Submission 14, p 1.

17 Submission 26, p 9.

challenging nature of where our stakeholders are, the number we are dealing with and the different sectors, we have found that we have to come at it from a range of different angles.[18]

1.5 Should the Bill be passed?

Standing Order 132(1) requires the committee to determine whether or not to recommend that the Bill be passed.

After examination of the Bill, including consideration of the policy objectives to be implemented, stakeholders' views and information provided by the Department of Agriculture and Fisheries, the committee recommends that the Bill be passed.

Recommendation 1

The committee recommends the Fisheries (Sustainable Fisheries Strategy) Amendment Bill 2018 be passed.

[18] Public hearing transcript, Scarborough, 12 October 2018, pp 47-48.

2 Examination of the Bill

This section discusses issues raised during the committee's examination of the Bill and is set out according to the four key policy objectives of the Bill.

2.1 Modernise the objectives of the *Fisheries Act 1994* and recognise the interests of key stakeholder groups

The first aim of the Bill is to modernise the objectives of the Fisheries Act. The explanatory notes state that the current fisheries management framework is 'outdated, cumbersome and incapable of appropriately responding to sustainability risks or issues'.[19] At the committee's public briefing in Brisbane, Mr Spencer, DAF, provided further context to these changes:

> *For the first time, the legislation will recognise the fact that there are different sectors in the fishing industry. We often get the response that the Act is all about commercial fishing, which is not unusual given that that is where the majority of restrictions apply. However, the new legislation before you will actually recognise for the first time recreational, commercial, charter fishing and Aboriginal and Torres Strait Islander fishing as all part of the very complex area and stakeholders that we manage. It will give a commitment to stakeholders about engagement. It is fair to say that one of the criticisms of the agency has been that we have not engaged enough with our stakeholders over the years. The strategy and the legislation will deal with that. There is also a commitment to maximise the economic, social and cultural values that Queenslanders receive from the sustainable use of the fisheries resources, which at the end of the day is a community owned resource.*
>
> *That is the broad modernising of the objectives. It is a relatively simple part of the act. It is the least complex, in fact, of what we are dealing with here today. It is interesting to note that it is consistent with MRAG's second recommendation, that the revised Fisheries Act contain a clear statement of purpose consistent with the guiding principle of maximising benefits for the use of Queensland's fisheries in ways that ensure sustainability for future generations. That is the fundamental aim of the legislation.* [20]

Specifically, the Bill will recognise the charter fishing sector as a sector to be managed under the Act and formally acknowledge the importance of fisheries resources to Aboriginal and Torres Strait Islander communities in Queensland.[21]

Stakeholders were generally supportive of this component of the Bill. Ms Hance, President of the Queensland Game Fishing Association (QGFA), stated to the committee at its hearing:

> *We congratulate you on the review and bringing the Act up to date. With an estimated five million Australians going fishing each year and spending $10 billion a year in doing so, we are pleased that recreational and charter fishing have been formally recognised for its economic, social and environmental contribution to the Queensland and Australian economy and communities.*[22]

In its submission, the QYAC stated it supports 'the establishment of better processes for future fisheries management developed in consultation with Indigenous working groups who are committed to the long term stewardship of these natural and cultural resources.'[23] However, the Cape York Land Aboriginal Corporation (CYLAC) noted that the Bill did not go far enough in recognising Indigenous

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19 Explanatory notes, p 1.

20 Public briefing transcript, Brisbane, 17 September 2018, p 2.

21 Explanatory notes, p 3.

22 Public hearing transcript, Cairns, 10 October 2018, p 9.

23 Submission 26, p 10.

interests in the fishing sector. The CYLAC called on the department to progress the Indigenous Fishing Strategy as outlined in it Green Paper on fisheries management reform in Queensland.[24]

Environmental groups were supportive of the new direction of the fisheries legislation, arguing that fisheries in Queensland was a shared resource. Mr Higgs, Acting Senior Manager, Marine Sustainable Development, World Wildlife Fund (WWF), argued:

> *I want to highlight that it is not a commercial resource and it is not a recreational resource; it is a community resource that we are dealing with today. Nobody has ownership. It is the community that has ownership of this resource.*[25]

Environmental groups argued that the proposed Bill did not go far enough, in that they sought to give ecological objectives primacy over other objectives. For example, Mr Bruce Elliot, General Manager, Great Barrier Reef Marine Park Authority (GBRMPA), stated:

> *Noting the global importance of the Great Barrier Reef World Heritage area, as outlined in our submission, we do encourage the inclusion of a provision under the objectives of the Bill that explicitly gives the highest priority to environmental and resource sustainability.*[26]

Similar views were expressed in the joint submission by WWF/Humane Society International/Australian Marine Conservation Society, which stated 'ecological objectives must be explicitly acknowledged in the Act as having primacy over economic social and cultural objectives'.[27]

In response, the department outlined:

> *Section 3(1) of the Fisheries Act, already provides that managing fisheries should be done in a way that seeks to apply and balance the principles of 'ecologically sustainable development'. This is further defined under section 3(5) to include the 'precautionary principle' where there is a risk of irreversible environmental damage or lack of certainty.*[28]

Committee comment

The committee supports the modernisation of the Act to recognise the multiple users accessing Queensland's fisheries resources. The legislative framework has been in place since 1994 and the committee acknowledges that it is appropriate that this resource is managed in a way that maximises the potential environmental, economic, social and cultural benefits to the Queensland community.

2.2 Establish harvest strategies and clarify decision-making processes in Queensland's fisheries legislation

2.2.1 Harvest strategies

The Bill introduces a harvest strategy framework into the Act, which is recognised nationally and internationally as best practice for the management of fisheries.[29] A harvest strategy sets out pre-agreed rules on how to manage each fishery. The recently released Sustainable Fisheries Strategy notes:

> *A harvest strategy is a framework that specifies 'pre-determined management actions in a fishery for a defined species necessary to achieve the agreed ecological, economic and/or social management objectives'.*

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24 Submission 25.

25 Public hearing transcript, Scarborough, 12 October 2018, p 20.

26 Public hearing transcript, Cairns, 10 October 2018, p 2.

27 Submission 18, p 1.

28 DAF, correspondence dated 8 October 2018, p 9.

29 Public briefing transcript, Brisbane, 17 September 2018, p 3; Public hearing transcript, Cairns, 10 October 2018, p 11.

> *Key elements include a process for assessing the biological and economic conditions of the fishery, and decision rules about the corresponding management actions that control the intensity of fishing activity according to the assessment outcomes. Harvest strategies provide clarity about the overall fishery objective, fishery performance targets, triggers for management action and appropriate management responses.*[30]

Ms Andersen from the department provided an example on how the proposed harvest strategy framework would work:

> *They will cover all sectors, so commercial, recreational and charter. A harvest strategy will pick out key indicators that measure the performance of a fishery. For the commercial sector, for example, it may be catch rates. We might use information on how many fish per day you are catching. If the numbers go down, we are concerned about the sustainability of the stock. We also have other indicators such as biomass, so we estimate through modelling how much biomass of a particular fish stock is available and we can see whether it is trending up or down. Within a harvest strategy, you have a target that you are aiming for and a limit that you want to avoid getting to. You want to keep your fishery hovering around in that kind of middle area that is the sweet spot in terms of sustainability.*
>
> *We make those minor judgements depending on what the science is telling us on an annual basis. The harvest strategy will spell out what data is used and the decision rules that go with that.*[31]

The committee was informed that harvest strategies provide a contemporary and transparent approach to fishery management. Mr Higgs from the World Wildlife Fund told the committee:

> *Harvest strategies are the cornerstone of modern fisheries management. Industry needs to know and the community needs to know that there will be actions if we do get signs that there are problems with the stock. Going back to scallop, at six per cent this is alarm bells…That is why we need a harvest strategy in place: the community can go to the shelf, pull down the harvest strategy and say, 'This is how the fishery is operating. It is within the band. No management changes. If the population of fish goes down, this will be the action that is taken,' and there will not be that chance of political interference to come and say, 'No, we need to keep the temporary people processing particular species of fish employed for a month while that product is coming in.' The action will be: 'Here we stated that we would close that fishery until the stocks come back.'*[32]

During the Inquiry, the coral trout fishery was examined as a fishery which already has in place decision rules based upon a harvest strategy framework. The committee was informed that the successful management of this fishery has seen stock rates rise and has allowed catch quotas to increase. Ms Andersen from the department explained:

> *For example, for some fisheries we already have decision rules, particularly around coral trout. For example, it uses catch rates from the previous two to three years to see what the trend is over time. If it falls below a certain point, then the quota is adjusted down so that the catch is reduced for a period of time. Then it can be adjusted back up as the catch rates increase. We have certainly seen that operate effectively in the coral trout fishery over the last couple of years. We reduced the quota about four or five years ago when we had some concerns about coral trout. It has recovered since then. In the last two years we have increased the coral trout quota about 250 tonnes, so it can go up and down. I think that is a really important point.*[33]

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30 Queensland Government, Department of Agriculture and Fisheries, *Queensland Sustainable Fisheries Strategy 2017-27*, p 20.

31 Public briefing transcript, Brisbane, 17 September 2018, p 3.

32 Public hearing transcript, Scarborough, 12 October 2018, p 25.

33 Public briefing transcript, Brisbane, 17 September 2018, p 3.

Committee members inspecting a coral trout export business in Cairns.[34]

A key element of the harvest strategy is to allow catch limits to be gradually adjusted avoiding potentially significant economic and ecological impacts. Mr Spencer, DAF, noted:

> *Minor adjustments in fisheries management are much better than the more significant adjustments... The new harvest strategy process will allow us to adjust the arrangements in the fishery much more subtly and hopefully it will not have as big an impact on the people in the fishery.*[35]

Additionally, the committee was informed by the department that this approach would provide greater certainty to both the recreational and commercial fishing sector:

> *… the idea is to make those really small adjustments every year rather than these drastic up-and-down changes where you are taking too much and closing. You do not want the boom and bust; you want the more stable fishery that can give the commercial and recreational sector more certainty and stability over time.*[36]

The committee heard from a number of recreational fishers who highlighted the poor state of some recreational fisheries and who strongly supported the development of a sustainable approach to the management of fisheries. Mr Sutherland, appearing in his capacity as a recreational fisher, told the committee:

> *We are under huge threat, just like fisheries right throughout the world, and most of it is because of bad management. Let us not pretend that we have had good management all the time… We have a totally unsustainable fishery here. It does not go on forever… Some will blame the*

34 Committee site visit, Cairns, 10 October 2018.

35 Public briefing transcript, Brisbane, 17 September 2018, p 2.

36 Public briefing transcript, Brisbane, 17 September 2018, p 11.

> *environment and some will blame all sorts of other reasons, but basically we have a mismanaged fishery in many areas of South-East Queensland. We can do one of two things: we can stick our head in the sand [until] there is nothing left in Moreton Bay at all; or we can turn around and have a sensible look at what is happening to the fishery, acknowledge that we have problems and act. There is not a do-nothing option here. At some time in the future we have to take the bull by the horns and look at what is happening to our fishery.*[37]

A number of submitters argued that the harvest strategy approach to fishery management would deliver greater sustainability and resilience within fisheries. The GBRMPA submitted:

> *Responsive fisheries management through the defined fishery harvest strategy approach is essential in managing for resilience. Particularly in response to accumulating environmental pressures including the direct impacts of climate change and associated coral bleaching that has occurred in recent years on the Great Barrier Reef. In light of diminishing outlook trends for the Great Barrier Reef ecosystem, there is some urgency to reaching the higher standards of fisheries management and enhanced fisheries compliance and enforcement that are to be delivered through reforms under the Strategy.*[38]

Mr Higgs, WWF, argued:

> *We are strong supporters of having formal harvest strategies in place so that we can put the brakes on earlier and allay these concerns of having overfished fisheries, and also addressing concerns about bycatch of protected species or impacts on the environment from fishing gear. That is across commercial and recreational sectors.*[39]

Similar views in support of harvest strategies were expressed at the committee's regional hearings. Mr Betzel, President of the Queensland Seafood Marketers Association (QSMA) noted:

> *Queensland Seafood Marketers welcomes the Queensland fisheries reform and also the use of the development of harvest strategies as a tool to provide certainty for the future ...*[40]

Mr Alridge, General Manager, MG Kailis Pty Ltd told the committee:

> *In general, we are very supportive of, and happy with, the new direction of fisheries management in Queensland. It is moving into the 21st century. There are a lot of things about it that are really good; for example, harvest strategies and fisheries consultative bodies are being set up again.*[41]

In contrast, the committee heard from members of the commercial fishing sector who had significant concerns regarding the economic impact of this fisheries management approach to their industry. Mr Bobbermen informed the committee:

> *I can tell the committee that the majority of the commercial sector does not support this harvest strategy… With the harvest strategy and going to different models of sharing quotas or whatever, models are on the table and off the table and have gone to the scientific committee, but nowhere has anybody taken into account the economic impact the strategy in the amendment Bill will have on existing fishermen. I think that should be foremost before we jump to any conclusions that this should proceed.*[42]

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37 Public hearing transcript, Scarborough, 12 October 2018, pp 31-32.

38 Submission 21, p 1.

39 Public hearing transcript, Scarborough, 12 October 2018, p 20.

40 Public hearing transcript, Cairns, 10 October 2018, p 23.

41 Public hearing transcript, Cairns, 10 October 2018, p 14.

42 Public hearing transcript, Cairns, 10 October 2018, p 16.

Ms Jensen told the committee that while she supported the improved clarity the harvest strategy would bring to the management of the fishery, the impact of catch limits were unknown and therefore the commercial sector's support for the strategy was uncertain:

> *As to whether I support it or do not support it, it is a bit hard to say since the harvest strategies have not been developed. We do not know what we are up against yet.*[43]

The concern that the harvest strategy framework would not consider the potential economic impact upon the commercial sector was argued by some witnesses to be a secondary concern to the on-going sustainably and viability of the fishery. Mr Kleinschmidt, a commercial and recreational fisherman in Moreton Bay, told the committee:

> *We should not be at a point where we have to shut a fishery down because the biomass is not there. We have to be one step ahead of that. We cannot let any fishery get to that point. It has to be stopped before that point. Everything we talk about at all of these meetings with Fisheries is chump change compared to looking after the place. Everything else will fall into place if we look after the habitat. It we look after it correctly, everything else will be fine.*[44]

2.2.1.1 Validity of scientific data

Concerns were raised regarding the validity of data and scientific modelling used to determine key fishery indicators and consequently each harvest strategy. In particular, concerns were expressed about the reliability and use of biomass data.[45] At the committee's hearing in Scarborough, Dr Pollock, Scientific Adviser, Sunfish Queensland Inc. (Sunfish) stated:

> *Central to the harvest strategy is the biomass model. We are talking about having the ability to say where our fish stock is, in terms of saying 40 per cent or 10 per cent of the unfished biomass or the virgin biomass. Scientifically, that is a very difficult thing to estimate…*
>
> *There is a great deal of uncertainty about the accuracy in those biomass models…*
>
> *The biomass model is basically a mathematical model that you plug data into and you get some information out of. The mathematical model is not too bad, but the data being put into it is pretty dodgy, to say the least. It is not robust. If you put rubbish into the model, you are going to get something questionable coming out of the other side. That worries me from a scientific viewpoint. We have an expert panel who are quite well informed and understand this sort of thing. However, I am concerned about where we are going with the harvest strategy, which has at its heart this biomass model, and how we are going to manage our fisheries based on biomass models that may be dubious.*[46]

Similarly, Mr Bateman, Deputy Chair of Sunfish, told the committee:

> *… the models are being done on very dubious data, and that is a fact. There is not very good recreational data. There is not very good recreational or commercial data, because everybody agrees that logbooks can be falsified.*[47]

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43 Public hearing transcript, Cairns, 10 October 2018, p 22.

44 Public hearing transcript, Scarborough, 12 October 2018, pp 31-32.

45 Public hearing transcript, Cairns, 10 October 2018, p 22 and p 31.

46 Public hearing transcript, Scarborough, 12 October 2018, p 30.

47 Public hearing transcript, Scarborough, 12 October 2018, p 31.

Ms Jensen, from the commercial fishing sector, also emphasised the importance of valid data in her submission:

> *I also cannot impress strongly enough the importance of ensuring that biomass and stock assessments are clear and based on sound, common sense science. At present, there is NO biomass figure for several fisheries, including mud crab.*[48]

In response to concerns about the validity of biomass data, the department informed the committee that biomass was one indicator used and that the department continually undertakes monitoring of fish stock levels:

> *Under a harvest strategy, it is not just biomass indicators that you would use. You are not reliant entirely on stock assessments and models. You can use other proxies for biomass—catch rates, for example. The coral trout quota is adjusted annually based on catch rates. They have a target and a limit of where they want it to be. Our target is 25 kilos per dory per day of coral trout and the limit is 15, or somewhere around there. We track how that is performing over time. We do not do a stock assessment every year; we do one only every five years for coral trout. In between we adjust the quota based on catch rates. That has been a quite effective process. That is what we would be looking at using for other fisheries as well. We cannot possibly do a stock assessment on every species every year. We need to use other indicators as well.*[49]

Queensland produces more stock assessment models every year for the number of species than any other state in Australia.[50] Mr Spencer, DAF, informed the committee of the range of data collection strategies undertaken by the department:

> *There was $20.9 million over three years to implement the Sustainable Fisheries Strategy. Around about half of that is going to the collection of new data. Currently we collect data from commercial fishers by way of log books, via their VMS so we know how many days they are operating. We collect it from the charter boats through log books. We have our own scientific monitoring program, which is age measuring and we have people on the beach at Fraser Island measuring fish…*
>
> *We are doing our boat ramp surveys for recreational fishers, because one of the areas in which we were probably deficient in data was recreational fishing. It is so difficult to collect it. This year we will doing our triennial 12-month survey of recreational fishers across Queensland. We have now a good time series in that area. We use all that data to do stock assessments. We have modellers who take all the data from all the sources, standardise it to take out the noise caused by seasonal influences, et cetera, and produce a model as to how the fishery operates. We will be doing a lot of that work. We will be doing a lot of environmental risk assessments, as well, to make sure we can make those calls.*
>
> *There is never enough data. It is very difficult to count the fish. We are using as much novel technology as we can. Claire mentioned the recreational fishing app. We are also going to have a commercial fishing app and, hopefully, some artificial intelligence that will allow those fishers to measure and identify those fish easier. There are a lot of resources going into that area to try to make those sorts [of] decisions…*
>
> *With all that data, when we talk about science, it will be information based decision-making so that we have the full suite of information in front of our working group, in front of the expert scientific panel and in front of the government to say, 'Here is the complete picture as far as we*

48 Submission 9, p 6.

49 Public hearing transcript, Cairns, 10 October 2018, p 29.

50 Public briefing transcript, Brisbane, 17 September 2018, p 15.

know it to make the decisions'. We are working very hard in that area. We hope that we will see the results coming through.[51]

The EDONQ argued the need for continued research funding to support the data on which harvest strategies are based:

Harvests strategies are being successfully used in other jurisdictions. They allow for certainty and guidance in decision-making. For a harvest strategy to be successful, it must be underpinned by informed science throughout its creation, implementation and review. The success of harvest strategies are fundamentally tied to access to informed data. As such, funding for continued research must be increased alongside the implementation of harvest strategies.[52]

Committee comment

The committee acknowledges the finite nature of fisheries resources and notes that historically this has not been always managed in a sustainable way. The harvest strategy approach is considered best practice in fisheries management and allows decisions to be made in a scientific and timely manner. This approach acknowledges the shared nature of this resource and the need to ensure its sustainability for all fishing sectors and for the Queensland community. The committee supports the adoption of the harvest strategy approach to sustainably manage Queensland's fisheries resources.

2.2.2 Clarification of decision making processes

To implement the harvest strategy framework, the Bill will clarify decision making processes between the Minister for Agricultural Industry Development and Fisheries (Minister) and the chief executive under the Act. The Minister will maintain responsibility for strategic oversight of Queensland's fisheries, including the approval of harvest strategies and reallocation decisions, and the chief executive will be responsible for day to day management.[53] The committee was informed that harvest strategies would be released for public consultation. Feedback from stakeholder engagement on decision rules will be considered before new rules are implemented.[54]

The department advised the committee:

It is important to note that the proposal is for the chief executive to be able to adjust possession limits and total allowable commercial catch only if it is outlined in a pre-agreed harvest strategy which has been approved by the Minister for Fisheries after public consultation. Any other changes would be a matter for Government to consider as per current arrangements.[55]

The committee received a submission from EDONQ that was supportive of the proposed decision making process as it ensured departmental independence:

The Bill clearly outlines the respective powers of the Minister and Chief Executive. The assignment of responsibility for day-to-day operations and development of draft harvest strategies to the Chief Executive ensures that the operations of the department remain independent. Further, the Bill provides for the delegation of power, allowing for technical decisions to be made by those with appropriate expertise.[56]

2.2.2.1 Call-in powers

The explanatory notes state that the Bill will allow the Minister responsible for fisheries to direct the chief executive to make a different decision in relation to a harvest strategy or management of fisheries

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51 Public briefing transcript, Brisbane, 17 September 2018, pp 14-15.

52 Submission 14, p 2.

53 Explanatory notes, p 3.

54 Public briefing transcript, Brisbane, 17 September 2018, p 3.

55 Department of Agriculture and Fisheries, correspondence, 8 October 2018, p 3.

56 Submission 14, p 2.

resources.[57] A number of witnesses raised concerns in regard to the proposed 'call-in power' of the Minister. For example, Mr Alridge stated:

> *With regard to the call-in power, the minister may, for whatever reason, overturn something that has been worked out over time by the consultative bodies in line with the harvest strategy and signed off by the chief executive. Generally, in commercial industries people like to have security and certainty about things so they can make plans for investing in their business. This leaves a note of uncertainty. You have what theoretically is a process that is going to get us to better manage fisheries and so on, yet we have this call-in power mentioned where the minister can overturn it for who knows what reason. I am happy to be comforted about it, but it just sounds a little worrisome.*[58]

Similarly, Mr Betzel from QSMA, raised concerns that these powers would undermine certainty within the post-harvest industries such as wholesalers, processors and retailers:

> *QSMA was of the opinion that the reform process was about creating certainty for the industry. By this, it would appear to be that the minister still has an overarching power to make a decision without consultation with industry … What is of concern to us here is that once again, as in the past, we still have an overriding ability for the minister, without any consultation, to make a different decision in relation to a harvest strategy.*[59]

The department outlined why it was considered necessary for the Minister to have call-in powers, in particular, noting the flexibility that this approach provides:

> *Part of the reason for having the minister's call-in power for harvest strategies is that some of these will be iterative and will have to evolve and continually improve over time. If there is a decision rule that says, 'You must cut the quota by 200 tonnes' and we think, 'Something's not quite right. Maybe that indicator was not set quite correctly,' it gives us an option to say, 'We might set that aside this year until we get a better understanding of the data.'*[60]

At the public briefing, Ms Andersen from DAF gave further background to the operation of this power, in particular, that it would require public notification and explanation:

> *I think the point is that, for a minister to call in a decision under a harvest strategy, you would have to have a very good reason and you would have to publish a statement of reasons. What happens currently is you get recreational fishers and commercial fishers knocking on ministers' doors trying to get the decisions that they want. If you want to step outside the harvest strategy process you would have to have a very good reason to do that, and you would have to be able to justify that publicly.*[61]

Additional concerns were raised by recreational body Sunfish in its submission to the Inquiry.[62] At the committee's hearing in Scarborough, Dr Pollock from Sunfish elaborated on these concerns, specifically, ability of the chief executive to make declarations that are not subject to parliamentary scrutiny:

> *The point I want to make is that the government and the minister responsible for fisheries have been key in making decisions; it has not been the chief executive. The thing that worries us in recreational fishing is that a chief executive can, without very much consultation or maybe none with us, make decisions about where we fish, the gear we can use, the numbers of fish we can*

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57 Explanatory notes, p 3.

58 Public hearing transcript, Cairns, 10 October 2018, p 14.

59 Public hearing transcript, Cairns, 10 October 2018, p 23.

60 Public hearing transcript, Cairns, 10 October 2018, p 29.

61 Public briefing transcript, Brisbane, 17 September 2018, p 5.

62 Submission 2.

catch and the size of the fish. When I say 'we', I mean the recreational sector. We would prefer that power to stay with the minister and the government.[63]

In response, the department advised:

Existing provisions in the Fisheries Act provide the Chief Executive with the power to make a range of declarations in order to effectively manage the State's fisheries resources (e.g. declare quota for coral trout where decision rules have been established in consultation with Industry). All declarations made by the Chief Executive are considered subordinate legislation and must be tabled in the Legislative Assembly and may be subject to a disallowance motion.[64]

Committee comment

The committee supports the clarification of decision making processes as set out in the Bill. The committee acknowledges the concerns raised by submitters but is satisfied with the responses provided by the department.

2.3 Strengthen enforcement powers and penalties to address serious fisheries offences such as black-marketing

The Bill proposes a suite of measures designed to strengthen compliance and enforcement under the Fisheries Act. According to the explanatory notes, a key driver of these reform measures was significant evidence of black-marketing in the fisheries industry.

Fisheries officers measuring size of blue swimmer crabs as part of compliance activities.[65]

63 Public hearing transcript, Scarborough, 12 October 2018, p 30.

64 DAF, correspondence dated 8 October 2018, p 3.

65 Committee site visit, Manly harbour, 11 October 2018.

2.3.1 Black-marketing

The explanatory notes explain the concept of black-marketing with respect to the fisheries industry:

> *In Queensland, only fishers licensed under the Fisheries Act are able to legally sell their catch. Selling fish without a commercial authority is illegal and is often referred to as 'black-marketing'. Black-marketing can be opportunistic, however, there is evidence suggesting it is becoming increasingly organised in Queensland, particularly for high-value species such as mud crab, coral trout, spanish mackerel and, more recently, fish swim bladders.*[66]

At the committee's public briefing, Mr Spencer from the department provided further evidence about the state of black-marketing in Queensland:

> *Black marketing has been, for as long as I can remember, a very significant issue in Queensland. There is a very significant investment particularly for high-value species for people to sell fish into the market when they are not licensed. Effectively, black market is the sale of fish by unauthorised people. When you think of some of the species such as mud crab, coral trout and mackerel, last week or the week before the price of a mud crab in the Sydney Fish Market was $62 a kilo, so all of a sudden the market becomes very attractive for people to do it inadvertently. A lot of the black marketing in the past has been opportunistic. We are getting more and more information that it is becoming organised and there has been a number of studies across Australia that shows that crime in fisheries is real and that some organised people get into this because the incentives are so high.*
>
> *The latest one we have come across is the black jewfish bladder. Jewfish bladders are currently being marketed for somewhere between $600 and $900 a kilo, which makes it incredibly attractive for people to go out and catch some jewfish, which are relatively easy to catch, and put them on the market. This is one area where there was almost universal support—90 per cent support—for strengthening the legislation in terms of what we have at the moment….*
>
> *It is real, it is out there and it is occurring. We have had some cases in the past where crabbers in particular have gone to extensive measures to try to conceal the fact that they are taking excess or regulated product. We have seen boats modified with concealed compartments and quite elaborate concealment...* [67]

According to the explanatory notes, black-marketing has been identified as a concern to stakeholders and is an issue that has been considered nationally by the Australian Institute of Criminology in a report on organised crime in the fishing industry and later at ministerial council level through the release of a National Compliance Strategy.[68] Other jurisdictions, such as New South Wales, Victoria and Western Australia provide for indictable trafficking offences for black market trade in certain species.[69] The explanatory notes state:

> *…Queensland's capacity to effectively address black-marketing of fisheries products is significantly below other Australian jurisdictions. This is largely a result of other jurisdictions having implemented the recommendations of the Report and national compliance strategy. A key purpose of the Bill is to provide inspectors with expanded powers and effective tools to investigate non-compliance and align Queensland with the National Compliance Strategy.*[70]

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66 Explanatory notes, p 4.

67 Public briefing transcript, Brisbane, 17 September 2018, pp 8-9.

68 Explanatory notes, p 4.

69 Explanatory notes, p 4.

70 Explanatory notes, p 4-5.

2.3.2 Trafficking in priority fish

In an effort to combat black-marketing, the Bill will introduce a new offence of 'engaging in a trafficking activity for priority fish'. Priority fish are high value species which include, for example, barramundi, coral trout and mud crab.[71] The department outlined to the committee the rationale for the introduction of this offence:

> *…the value of some of this product is very high, so the incentive is enormous. Currently, in some cases the maximum penalties in the legislation are seen as not a very sufficient deterrent. Largely, the bill tries to address some of these issues by introducing a trafficking offence. That will be the first indictable offence under the legislation. We are looking at introducing a three-year prison term and a 3,000 penalty unit monetary penalty.*[72]

The maximum penalty for the offence will vary depending on whether the trafficking relates to a 'commercial quantity'. If the trafficking relates to a commercial quantity the maximum penalty will be 3000 penalty units ($391,650) or three years' imprisonment, otherwise it will be 1000 penalty units ($130,550).[73]

The committee examined the definition of 'commercial quantity' as part of its Inquiry. Commercial quantity is defined in clause 54 of the Bill:

> ***commercial quantity**, of priority fish, means the quantity of the fish, which must be at least 5 times the recreational limit or at least 5 times the weight equivalent of the recreational limit for the fish, prescribed by regulation.*[74]

Some stakeholders raised concerns that the figure of five times the recreational limit/weight equivalent was not adequate, especially given the varying values associated with certain types of priority fish. For example, at the committee's hearing in Cairns, Mr Alridge stated:

> *In the case of tropical rock lobster, it could be 25 tropical rock lobster in order to be considered a commercial chargeable amount. In our view, even if you have five and you are going to sell them it should be an offence. To give you an idea of its value, our live tropical lobster in Queensland are quite big, so 25 animals, which would probably be two kilos each, would be 50 kilos. I can tell you that right now their value would be in excess of $4,500. I would suggest that in the case of priority species, which are of high value, it should be a fairly low amount before charges accrue for black marketing and illegal fishing.*[75]

Other stakeholders raised similar concerns.[76] QSMA, for example, suggested that trafficking in any quantity should be captured by this offence.[77]

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71 A full list of priority fish is contained in proposed section 89A of the Bill, and there is also a power to prescribe additional species of fish as priority fish through regulation. See also, Bill, cl 54 and Explanatory notes, pp 15, 49.

72 Public briefing transcript, Brisbane, 17 September 2018, p 10.

73 Bill, cl 54. The penalty unit value in Queensland is $130.55 (current from 1 July 2018) – https://www.qld.gov.au/law/crime-and-police/types-of-crime/sentencing-fines-and-penalties-for-offences

74 Bill, cl 54.

75 Public hearing transcript, Cairns, 10 October 2018, p 14.

76 Public hearing transcript, Cairns, 10 October 2018, p 25; Greg Savige, Public hearing transcript, Scarborough, 12 October 2018, p 17.

77 Public hearing transcript, Cairns, 10 October 2018, p 25.

At the committee's hearing, commercial fisherman Mr Savige, stated:

> *…five is too high. There should be a bit of leeway. We have no leeway. If I catch a tonne of fish and they are live and you try to let go the bycatch that is very small, if I get home and there are two or three still there I will get booked. There has to be some common sense.*[78]

Ms Jensen, commercial fishing representative, was supportive of offences to capture trafficking in priority fish. Ms Jensen told the committee:

> *As far as talking about penalties for black marketing and that sort of thing, I would say that, yes, we would support that because at the end of the day increased penalties for black marketing would be welcomed from the commercial fishing industry. I think they would be fairly welcomed by most industries, I guess, and most parts of the community. In terms of the penalties being higher than they were previously, I think that is a great thing. If it is a deterrent and it slows that down then I think that is a great thing. I do not have a problem with that at all.*[79]

Similarly, commercial fisherman Mr Bobbermen expressed support for penalties and suggested more enforcement is also required:

> *The black market is rife in Queensland, especially in the high-dollar fisheries, and it needs to be addressed. I do not know whether the penalties are going to be enough as a deterrent. I think some of the things that are going to act as a deterrent are probably more enforcement on the ground.*[80]

In response to comments by stakeholders that the amount considered to be a 'commercial quantity' was too high, the department stated:

> *For trafficking, we want to see a consistent, intentional effort to take more than the recreational amount and traffic that. There is still an offence under the act for illegally selling product and exceeding the bag limit. This is about making sure that it is commercial quantities.*[81]

In regard to penalties for the trafficking offence, the department stated that the penalties are 'consistent with Tasmania and the Northern Territory, but less than New South Wales and Victoria, where the maximum penalty is ten years imprisonment.' [82] Further, that the penalties 'are believed to be sufficient to provide a significant deterrent to persons engaged in the illegal trafficking of fisheries resources in Queensland.'[83]

Expanding on the issue of deterrence, Mr Spencer, DAF, stated:

> *We have had some fining issues—ticketing issues, if you like—for lesser offences, but, for major prosecutions, this is considered to be such a threat to the Queensland commercial fishing industry that the government is proposing to increase the penalties quite significantly to say, 'It is the wrong.' It is the wrong thing to do by the commercial fishing industry. It is the wrong thing to do by the resource, which is owned by the community.*[84]

78 Public hearing transcript, Scarborough, 12 October 2018, p 16.

79 Public hearing transcript, Cairns, 10 October 2018, p 19.

80 Public hearing transcript, Cairns, 10 October 2018, p 19.

81 Public hearing transcript, Cairns, 10 October 2018, p 29.

82 DAF, correspondence dated 8 October 2018, p 7.

83 DAF, correspondence dated 8 October 2018, p 8.

84 Public briefing transcript, Brisbane, 17 September 2018, p 10.

Committee comment

The committee heard concerns from stakeholders that the definition of 'commercial quantity' (being at least five times the recreational limit or at least five times the weight equivalent of the recreational limit for the fish) was potentially too low a threshold for the offence of trafficking in a priority fish.

Although the committee acknowledges the department's advice that there are other offences currently within the fisheries legislative framework that could deal with conduct that is over the limit but not high enough to constitute trafficking, the committee considers that there is merit in lowering the threshold for a 'commercial quantity'. The committee considers this is particularly important given the differences in size and weight of priority fish and the need to combat black-marketing in Queensland's fisheries.

Recommendation 2

The committee recommends the Minister for Agricultural Industry Development and Fisheries review the definition of 'commercial quantity' as it relates to the offence of trafficking in priority fish to a threshold that is significantly lower than five times the recreational limit or weight equivalent.

2.3.3 Vessel monitoring systems

The Bill introduces requirements and offences relating to vessel monitoring systems (VMS). Relevant boats will be required to have VMS installed and working properly. Although 'relevant boats' will be prescribed by regulation, this Bill contains the offences related to VMS. It will be an offence to not have approved vessel tracking equipment installed and working properly, and it will be an offence to interfere with the operation of VMS.[85] The maximum penalty for each of these offences is 1,000 penalty units (approx. $130,550).

Mr Spencer, DAF, provided some background on the roll out of the VMS:

> *The Bill does two things. It increases the penalties for people not using appropriate vessel tracking. Commercial fishers will be required to have commercial tracking apparatus over the next two years. We are phasing that in. The government is providing $3 million to pay the costs.*[86]
>
> *In relation to what vessels will require vessel tracking, our priority is on net, crab and line commercial fishing boats by 1 January 2019. The remainder of the commercial fishing fleet will require them by 1 January 2020, and that will include licensed charter operators. Currently only offshore charter operators require a licence in Queensland. They will be required by 2020 to have vessel-tracking units on board.*[87]

Vessel monitoring systems, according to the explanatory notes, form 'an integral part of the contemporary approach fisheries management and compliance.'[88] This rationale for VMS was acknowledged by a range of stakeholders, including environmental groups, which generally expressed support for vessel tracking on the basis that it would assist in monitoring compliance with the Fisheries Act.[89] For example, the EDONQ said it 'should eliminate breaches of zoning rules and assist in targeting vessels for further inspection'.[90] The joint submission by WWF/Humane Society International/Australian Marine Conservation Society stated:

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85 Bill, cl 51 and Explanatory notes, p 16.

86 Public briefing transcript, Brisbane, 17 September 2018, pp 10-11.

87 Public hearing transcript, Cairns, 10 October 2018, p 28.

88 Explanatory notes, p 16.

89 See, for example, GBRMPA, Public hearing transcript, Cairns, 10 October 2018, p 8.

90 Submission 14, p 2.

We strongly support the compulsory installation and use of electronic vessel monitoring equipment on each and every individual fishing vessel. This is needed to ensure fisher compliance with regulations but also to ensure more accurate and comprehensive data collection.[91]

Further, at the public hearing in Scarborough, Mr Higgs from the WWF told the committee:

… part of the reason we are getting electronic tracking is that there is a reasonably large amount of noncompliance going on in the commercial sector …. If you can change some of these behaviours so that offence is no longer occurring, that is the management outcome you are after. This electronic tracking will be critical in that. [92]

Mr Higgs also outlined to the committee some of the benefits that could be gained through the VMS:

A practical example of the benefits that VMS can provide to the industry is the rezoning of the Moreton Bay Marine Park with very limited area left open for the commercial trawl sector. We could reduce the impacts on the trawl sector because we had fine-scale information to make sure there were minimal economic impacts on that fishery. The impact on the sector was around four to six per cent, from memory—it is a long time ago now—but the closures were well in excess of 60 per cent to the trawl sector. If you have good information you can make good management decisions.[93]

Ms Lynne, Executive Officer, Sunfish commented on the compliance aspect of the VMS. Ms Lynne told the committee 'we need to make sure that it is not just about data collection; it is about aiding and compliance. Compliance is very visible out there in the community.'[94]

However, concerns were raised by the commercial sector in regard to VMS.[95] Some stakeholders commented they felt victimised by the monitoring aspect. For example, Mr Savige told the committee that the VMS 'makes us feel a bit like a criminal with an ankle bracelet'.[96]

However the most significant concerns raised during the committee's Inquiry in regard to VMS were the protection of confidential data/intellectual property obtained via VMS and the cost and reliability of VMS equipment.

2.3.3.1 Confidentiality of data

Some stakeholders expressed concern about the risk of information obtained through VMS being inadvertently or purposely released by public servants or third parties.[97] Commercial sector representatives argued that this information was intellectual property, sometimes taking years to develop, and was of high commercial value.[98] For example, Ms Jensen stated:

I cannot speak for all fishermen, but I can tell you that our family is very reluctant to give away our fishing marks to any fisheries organisation, which could then disseminate that information to other agencies for uses that we do not even know.

It is a bit of a concern to us about the use of the VMS data and the value of those fishing marks to us as a family. These are marks that we take years to find. We do not tell people where they are. We do not share those marks. There is a difference between the value of, for example, a line

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91 Submission 18, p 3.

92 Public hearing transcript, Scarborough, 12 October 2018, pp 23-24.

93 Public hearing transcript, Scarborough, 12 October 2018, p 21.

94 Public hearing transcript, Scarborough, 12 October 2018, p 29.

95 Submissions 3, 4, 12, 15.

96 Public hearing transcript, Scarborough, 12 October 2018, p 14.

97 See, for example, submissions 3, 4, 5, 9.

98 See, for example, Tony Riesenweber and Shane Card, public hearing transcript, Scarborough, 12 October 2018, pp 1, 2, 12.

fishing mark where we might go and fish and fill up a whole esky to sell commercially, and going out recreationally and having a quick fish. Trawling VMS data, for example—I would not say it is not as valuable, but it has a different value in the sense that people do not go recreationally trawling, but people could go recreationally fishing. No-one is going to use VMS data to go trawling for prawns, but if people were to get access to our fishing marks that could be detrimental to our business.

From our perspective, our intellectual property is at a very high risk here. We really do not trust anybody to take our data. It is really putting us on the spot to say, 'You have to pay X amount of money every year and sign a contract to give your data away to somebody'—that is, to some service polling company that we do not know or trust which will then give that information to Fisheries, which can then disseminate that information elsewhere.[99]

Mr Lionel Riesenweber, QSIA, expressed similar concerns about the security of information gained through the VMS:

We spend time and fuel to chase this product down to know where it is and then to harvest it. We do not take everything; we harvest it so it keeps going. We look after an area, and when that information gets out it could be destroyed.[100]

At the committee's public hearing in Scarborough, commercial fisherman Mr Card stated:

With the advent of VMS we lose that competitive advantage over our opposition. We lose the advantage that we have as fishermen to go out with the knowledge and a risk assessment that we can go out on that trip and make money. I am sure Fisheries Queensland have expressed at length how safe that information is. However, Fisheries Queensland are not the only ones with access to that information.[101]

In light of the concerns raised by stakeholders, the committee examined the penalties associated with the disclosure of confidential data by public servants and third parties. The Bill contains protections for fisher's private data through establishing a maximum penalty for unlawful use or disclosure of information equivalent to 50 penalty units ($6,527.50).[102] The department advised that this includes public servants and third parties and is in addition to protections provided under the *Information Privacy Act 2009.*[103]

Generally, commercial industry stakeholders considered that these penalties were not high enough. In its submission, the QSIA stated that the potential fines for government officers are 'woefully inadequate'.[104] At the committee's public hearing in Cairns, Ms Jensen stated:

We had a look at some of the amendments talking about penalties relating to noncompliance of VMS which come somewhere to the tune of 1,000 penalty units, which is around $135,000, which is probably more than my mortgage is on my house—or maybe not by much at any rate. That is a lot of money. We were also looking at the penalty for breach of information within Fisheries which is 50 penalty units, which is somewhere to the tune of less than $7,000. That is my only gripe as far as penalties go in the amendments—that is, the value of our VMS data seems really important when it is being collected to the point that if you do not do it properly it is $130,000, but when you are looking after it under the table it is only worth $7,000.[105]

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99 Public hearing transcript, Cairns, 10 October 2018, p 16.

100 Public hearing transcript, Scarborough, 12 October 2018, p 2.

101 Public hearing transcript, Scarborough, 12 October 2018, p 1.

102 Bill, cl 54 (proposed section 217B).

103 DAF, correspondence dated 8 October 2018, p 5.

104 Submission 12, p 7.

105 Michelle Jensen, Public hearing transcript, Cairns, 10 October 2018, p 19.

A similar point was raised by Mr Card, a commercial fisherman, at the committee's hearing in Scarborough:

> *They say there is a penalty schedule in place for employees that breach my personal information, my business model and my success to penalise that person. It is merely $6½ thousand.*
>
> *I have conservatively valued the information that I have which makes my business successful at a lot more than $6½ thousand. I think it is quite offensive that that is the way they treat our business model—that it is only worth $6½ thousand to a person.*[106]

Mr Card suggested that a six-figure fine would be more appropriate for misuse of this confidential information.[107]

Related to concerns about confidentiality of data, some submitters raised issues about contracts with third party suppliers of VMS equipment. These submitters explained to the committee that they had to sign contracts with third party providers for the supply of VMS equipment and that these contracts contained indemnity provisions which protected the providers from paying damages or compensation for loss associated with breaches of confidentiality.[108]

For example, Mr Card told the committee that certain providers 'had tried to get us to sign contracts to say that if a data breach occurs we have no compensatory schedule'.[109] Mr King, a commercial fisherman, also expressed similar concerns in his submission:

> *Fishers are being forced to sign third party agreements with organisations that have no interest or accountability when it comes to our IP. In fact, these third parties explicity [sic] direct as part of their contracts, that they are not responsible for data breaches, are not to be held to account in the event of a data breach and in fact lay claim to owning the intellectual rights to the data that is provided to them by fishermen.*[110]

In response to concerns about intellectual property and the misuse of confidential data, the department advised:

> *In terms of intellectual property, we heard a lot about that today. That is part of the reason that the Bill has a new penalty in there for anybody disclosing private information. That includes public servants who may disclose information and third parties. We use third-party providers to look after our vessel-tracking data such as IT providers and also any of our compliance partners. If we issued that to the marine park authority, parks and wildlife, the Queensland police or somebody like that, those penalties would apply to them as well. We are also doing work through our audit committee in the department. We have commissioned PricewaterhouseCoopers to review the safeguards that we have in place for protecting data within our systems. They have done their first piece of work on that and they will finalise some further work this year, but at this stage there are no major, glaring issues that they have identified in our system.*
>
> *I think there is a perception that a lot of people have access to that information, but that is just not correct. We also do not publish a lot of that data. I cannot remember who was talking about this earlier, but somebody mentioned that we can de-identify that information. What we actually do is aggregate a whole lot of fishers' data together and map it out potentially into grids, but you cannot tell. They are on six- or 30-nautical-mile grids. You cannot actually tell who was*

106 Public hearing transcript, Scarborough, 12 October 2018, p 11.

107 Public hearing transcript, Scarborough, 12 October 2018, p 13.

108 Public hearing transcript, Scarborough, 12 October 2018, pp 10, 15. See also submission 5.

109 Public hearing transcript, Scarborough, 12 October 2018, p 10.

110 Submission 5, p 4.

fishing where or when. There is no really fine-scale location information in that; it is just giving us better data.[111]

The department explained to the committee that the information they share with their compliance partners, such as the Great Barrier Reef Marine Park Authority, Australian Marine Parks, Queensland Parks and Wildlife Service, the Queensland Police Service and the Australian Maritime Safety Authority, would be shared under normal protocol and that there are strict confidentiality agreements in place with those compliance partners.[112] Further, the department outlined the penalty that would be applicable to public servants and third party providers:

More particularly, we are providing a penalty for ourselves. The legislation will impose a significant penalty on staff of Fisheries Queensland and the Department of Agriculture and Fisheries if they release data inappropriately. We have been asked on a number of occasions, 'It is all very well to fine us, but what about you?' It will become an offence under the act. It is 50 penalty units, which is around $6,500 at the moment, for anybody unlawfully using or disclosing private information from commercial fishers. That strengthens the protections that they have already under the Privacy Act, but it provides that offence for anybody disclosing that information. That may be public servants, or third parties—so some of the compliance partners that we have or any third parties who have access to that data. If they are found to be disclosing that inappropriately, they would be subject to that offence.[113]

With respect to the maximum penalty of 1000 units (approx. $130,550) for VMS related offences, the department advised that it would take a graduated compliance approach in regard to penalties for breaching vessel tracking requirements including a transition period and options for on-the-spot fines in smaller amounts. Ms Andersen explained to the committee that offenders 'would not immediately go to the maximum penalty. That is really a maximum for the court to look at if there is continued recidivist activity'.[114]

In regard to the concerns raised specifically about contracts with third party providers of VMS and indemnity provisions contained in those contracts, the department provided the following advice:

Management of vessel tracking data is delivered through the Australian Fisheries Management Authority under a Memorandum of Understanding.

The contract between the vessel tracking satellite provider and the Australian Fisheries Management Authority requires data to be stored in a manner that satisfies Commonwealth government data security standards The standards are usually higher that required at a State level. Fisheries Queensland will also have confidentiality agreements with the providers.

The vessel tracking contracts between fishers and the providers have standard terms and conditions that limits liability of the company. This is similar to mobile telephone plans. As is the case with most commercial contracts, liability is limited and predicated on proven negligence. Regardless, these contracts are still subject to Commonwealth and State consumer and privacy legislation that protects the rights of individuals. Any rights to compensation could be only determined through legal proceedings and limited to the particulars of the case being prosecuted.[115]

111 Public hearing transcript, Cairns, 10 October 2018, p 27.

112 Public briefing transcript, Brisbane, 17 September 2018, p 10.

113 Public briefing transcript, Brisbane, 17 September 2018, pp 10-11.

114 Public hearing transcript, Cairns, 10 October 2018, p 29.

115 DAF, correspondence dated 17 October 2018.

Committee comment

The committee heard from a number of stakeholders in regard to the commercial value of information and data gathered through the VMS. Stakeholders commented on the time and effort that went into identifying certain locations and the risk that such information could be disclosed, intentionally or inadvertently, by public servants or third parties accessing VMS.

Given the commercial value of this information and in recognition of the importance of this intellectual property to industry, the committee considered that the proposed penalties for the disclosure of this information are currently too low and should be comparable to the penalties for VMS related offences. The committee considered the difference in maximum penalties of 50 penalty units ($6,527.50) and 1,000 penalty units ($130,550) was too vast. The committee is of the opinion that more comparable penalties may alleviate some of the concerns raised by stakeholders regarding VMS data.

The committee heard from a number of stakeholders who expressed concern about indemnity provisions in their contracts with third party providers of VMS equipment. Although the committee acknowledges the advice provided by the department in this respect, it considers the issue warrants clarification by the Minister for Agricultural Industry Development and Fisheries in his second reading speech.

Recommendation 3

The committee recommends the Bill be amended so that there are comparable penalties for offences relating to the installation and use of Vessel Monitoring Systems (under proposed section 80) and for offences relating to the use and disclosure of confidential information by public servants and third parties (under proposed section 217B).

Recommendation 4

The committee recommends the Minister for Agricultural Industry Development and Fisheries, in his second reading speech, clarify the nature of the indemnity provisions contained in contracts between fishers and third party providers of Vessel Monitoring Systems.

2.3.3.2 Cost and reliability

Stakeholders expressed concern over the cost of the VMS, including the initial cost of the unit and monthly operating fees, in addition to the reliability of the equipment.[116] Mr Tony Riesenweber from the QSIA explained the impact that VMS operational cost would have on one of QSIA's members:

> *He is a man in his late sixties who lives on board a boat in the Airlie Beach area… He has a primary boat that he lives on, and he just moves it around to different areas that he crabs so he is not crabbing an area out. He moves around in Repulse Bay. He has a small crab boat that he crabs out of, and he has a speedboat that he uses to go to Airlie Beach to take the product and pick up groceries. He would have to pay for three VMS units at $44 each per month. That is $132 a month that he has to make up.*[117]

[116] See for example, Michelle Jensen and Allan Bobbermen, Public hearing transcript, Cairns, 10 October 2018, p 18; Tony Riesenweber (Queensland Seafood Industry Association), Shane Card and Mark Kleinschmidt, public hearing transcript, Scarborough, 12 October 2018, pp 2, 10, 15; Submissions 7, 15.

[117] Public hearing transcript, Scarborough, 12 October 2018, p 2.

Ms Jensen, from the commercial sector, outlined to the committee her concerns about purchase cost, but also in regard to the quality of the VMS units:

> *We would have to put four units on our vessels, because we have three crab-fishing vessels and then we have a line-fishing vessel as well. To be quite frank—and I do not want to judge the units; I have not even looked at the units myself—we cannot even get a VHF radio to last 12 months on a crab boat. They are pretty rough and ready boats. I have very little confidence that a $250 VMS unit, which is the cheapest option, is going to last any great length of time, especially in North Queensland with 300 millimetres of rain every day in the summer—not every day, but on some days there is a lot of rain and it is a lot for an electronic unit to go through, I suppose. To me, the cost is definitely an issue*[118]

Ms Jensen also provided the committee with an example of the impracticality of the reporting obligations in the event of a VMS unit malfunctioning:

> *In the line fishery there was another example of a fisherman, Don, who is here today, who said that if he has a unit that breaks down—he is captaining a boat that has a number of dories—they would need seven units. If you have one or two units that break down on any of those dories, for whatever reason, you then have to manually report in using a satellite phone every four hours and he has concerns about sleep. How do you get a good night's sleep? You are in charge of seven boats worth of deckies and you are the one who has to be in charge of the driving of that boat and you need to get certain times because you have to be able to sleep when you are out at sea. You might be out for days or weeks. If you have to be up phoning in every four hours or even more frequently, that is a safety risk as well.*[119]

In response to concerns raised in regard to the cost and reliability of the VMS, the department advised:

> *There are five units that are available on the list of approved units that people can choose from. We have not indicated which one they have to use. We have said which ones are available for which fisheries….*
>
> *The ones that are available for net and crab boats, SPOT Trace, are around $200. They should get all of that back in the rebate. The cost of installation is around $200 as well and they will get the cost of the installation back. The YB3i, which is required on line boats, is about the same price. The monthly data plan is a little more. It is about $40 per month whereas SPOT Trace is I think $33 per month. They can be moved between vessels as well. If people are not using three vessels at one time they can move it quite easily between the vessels. That was one of the things that we wanted to maintain flexibility around.*[120]

The department also clarified the operation of the rebate system:

> *The rebate scheme has opened. People will be able to apply for a rebate for the unit cost and the cost of installation. There is an option with a number of the units for people to install them themselves if they want to. They do not necessarily have to get somebody else to install it, so they should not be out of pocket. There is $3 million available in the rebate scheme for people to do that. I do expect that there will probably be a rush before the end of the year. We are talking with providers regularly to make sure they have enough supply available for people up to the end of the year, as we expect there will be a bit of a rush in that period. The rebate scheme is going*

118 Public hearing transcript, Cairns, 10 October 2018, p 17.

119 Public hearing transcript, Cairns, 10 October 2018, p 17.

120 Public hearing transcript, Scarborough, 12 October 2018, p 50.

to be open for two years up until the middle of 2020, so people will have an opportunity over time depending on their needs.[121]

In response to concerns about the quality and reliability of VMS equipment, the department outlined to the committee the trials it had conducted, the warranty that was available and options for people if they had issues with their VMS equipment:

In terms of units malfunctioning, we have trialled a number of new units over the last six to 12 months on some of our own vessels in the Boating and Fisheries Patrol and commercial vessels that people have volunteered to take. We have made sure that they can work in different situations, particularly on smaller boats. We have been using them on trawlers for 15 years, but they have a wheelhouse and are a lot larger, obviously. The approved units that we have identified worked quite well. We have not had any major issues with those. Many of them come with a three-year warranty as well, so if there is a malfunction they would be provided with a new one.

We are giving people options. If there is any issue with a vessel-tracking unit while they are at sea, they have five days to come back to port and replace a broken system if they need to. In the meantime, they can report through phone reporting every four hours. Originally we were looking at hourly, but we have put that back to four-hourly. The other option is that we are investing in a commercial fishing app that will be available before the end of this year whereby they will be able to use that and the GPS on their phone to manually report. They will be able to press a button and it will do it for days. They will not need to do it every few hours; it will just automatically happen. It will happen outside of phone reception areas as well. When they come back in to port it will send us their locations from the last few days. [122]

Some stakeholders suggested that the use of mobile phones would be a cheaper and more effective alternative to the VMS units that are proposed. For example, Mr Kleinschmidt told the committee:

Even out while trawling, you get phone reception now—with whatever they do to the phones where they can track where you are. It is simple. My phone does not break down but these units do. They will. If I could just send it on my phone, that does not cost me anything. It is simple. It is already done.[123]

In response, the department advised the committee that cell coverage issues were a concern when considering the use of cell-phone technology as a replacement for a VMS unit. Ms Andersen stated:

In regard to the app, it is a good option for people to manually report if there is a malfunction. Because of the phone coverage issues that we have at sea, it will not be a replacement entirely, unfortunately, for a vessel tracking unit. It would be too patchy for us to be able to have real-time information on where they are. It is appropriate for manual reporting because they are coming back in within a certain period of time. Once they have phone reception, it will send us all of their previous location information from the last five days or however long it is, but we cannot rely on that all the time, particularly when reception is so patchy in a lot of areas of Queensland.[124]

121 Public hearing transcript, Cairns, 10 October 2018, p 29.

122 Public hearing transcript, Cairns, 10 October 2018, p 28.

123 Public hearing transcript, Scarborough, 12 October 2018, p 15.

124 Public hearing transcript, Scarborough, 12 October 2018, p 50.

Committee comment

Given the concerns raised by stakeholders with respect to VMS and tracking requirements, particularly the cost and reliability of units and reporting obligations, the committee considers that the operation of VMS should be reviewed by the department. The committee understands that vessel tracking requirements will be rolled out over a number of phases and therefore a review should take place after the VMS is well-established.

Further, the committee considers that the use of mobile phone technology as a means of vessel tracking has merit and that the department should conduct further research into the possibility of using such technology in the future.

Recommendation 5

The committee recommends the Department of Agriculture and Fisheries provide the committee with an update on the implementation of Vessel Monitoring Systems 18 months after the Bill is passed.

2.3.4 Expanded powers for inspectors

The Bill proposes expanded powers for fisheries inspectors to monitor compliance with the Act. The Bill will allow inspectors to enter premises used for trade and commerce without a warrant.[125] At the committee's public briefing, the department set out the rationale for this expanded power:

> *Currently, our inspectors do not have the power to go behind the scenes of a buyer. We do not have powers of entry. It can be done only through consent or under warrant. Obviously, with these processing facilities, it is very difficult to gauge what is going on just by what is happening at the shopfront.*[126]

> *When we are inspecting these sorts of trades, we need the capacity to enter seafood premises to do a normal inspection. Very clearly, we are not going into a residence. We would still require the warrant and we occasionally get warrants for those sorts of issues. Where there is a seafood premises trading in seafood, the Bill now provides the power—in fact, it returns the power—for inspectors to go into those premises and do their job. That is a very significant issue. We had to stop at the counter when we knew there was stuff going on behind the counter that we had to get to and we were unable to do that.*[127]

The explanatory notes also make clear that warrants will still be required to access residential premises (including tents) or any parts of premises used for residential purposes.[128]

The main concerns with respect to these provisions came from the Queensland Law Society (QLS). In its submission, the QLS raised concerns that the proposed powers for inspectors breach fundamental legal rights. At the public hearing in Scarborough, Mr Taylor, QLS President, stated:

> *While some of the provisions in the Bill do take these rights into account, others do cause us concern. These include proposed section 145A, which relates to an inspector's power of entry on to premises used for trade and commerce without a warrant, without consent and, in some circumstances, without notice or the requirement to inform the occupier, and proposed section 146, which provides that an inspector may board a boat to find out whether this Act is being complied with, again, without a warrant or consent.*[129]

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125 Bill cl 7, 8, Explanatory notes, p 10. Note that the Bill contains certain restrictions on the exercise of these powers, including notice requirements, wearing of body camera and that the premises is occupied.

126 Public briefing transcript, Brisbane, 17 September 2018, p 9.

127 Public briefing transcript, Brisbane, 17 September 2018, p 10.

128 Explanatory notes, p 5.

129 Public hearing transcript, Scarborough, 12 October 2018, p 39.

QLS also commented on the privacy concerns raised by the power of the chief executive to obtain a criminal report of a person under proposed s173E of the Bill. QLS's submission stated:

> *Obtaining a person's criminal history will not necessarily address the safety concerns of an inspector when entering a place without consent. If there are concerns, it would be more beneficial and appropriate to follow the due process of obtaining a warrant and seeking the assistance of the police to enter the place.*[130]

The issues of fundamental legislative principle are addressed in more detail in section 3 of this report.

Some stakeholders supported these expanded powers, highlighting the need to strengthen compliance and enforcement of the Act.[131] For example, the GBRMPA stated that it:

> *..fully supports all proposed enhancements to legislation and fisheries inspectors' powers, as they strengthen the capacity to effectively and sustainably manage Queensland's fisheries resources.*[132]

Mr Savige, a commercial fisherman, raised a point about the training of fisheries inspectors when carrying out the proposed powers:

> *One thing we have not touched on in the legislation is the extra powers that fisheries officers are going to have. I am just wondering how many times fisheries officers have to call the police to help them in their jobs, because it sort of gives them similar powers to the police. I think it gives them a bit too many powers, like coming into your premises without notice. Some of the changes in the legislation I think are a bit too hard, especially for when they do not have to have the training like a police officer has. I think the fisheries officers should be trained to the standard of police officers with the new powers that they want to be given.*[133]

In response to concerns raised by stakeholders regarding inspectors' powers, the department advised the committee:

> *Feedback received through the various consultation processes undertaken since 2014 indicates that the Queensland community strongly supports proposals to strengthen the enforcement powers of fisheries inspectors and penalties under the Fisheries Act to address serious fisheries offences such as black-marketing.*
>
> *The changes that are to be made to fisheries inspectors powers through the Bill are intended to:*
> - *Re-establish fisheries inspectors powers of entry to commercial premises that were inadvertently removed during the adoption of the Seafood Food Safety Scheme in 2010; and*
> - *Better align the powers and functions of fisheries inspectors with those afforded to inspectors under other Queensland legislation (e.g. Nature Conservation Act 1992).*[134]

The department advised the committee that it consulted with the Department of Justice and Attorney-General throughout the preparation of the Bill 'to ensure the powers afforded to fisheries inspectors were appropriate.'[135] Further, the department outlined:

> *Terms such as reasonable grounds, reasonable steps, reasonable force etc. have been applied in relation to the powers and functions afforded to fisheries inspectors in a manner that is*

130 Submission 22, p 3.

131 See, for example, submission 18.

132 Public hearing transcript, Cairns, 10 October 2018, p 2.

133 Public hearing transcript, Scarborough, 12 October 2018, p 16.

134 DAF, correspondence dated 8 October 2018, p 5.

135 DAF, correspondence dated 8 October 2018, p 5.

consistent with the powers and functions afforded to inspectors under other Queensland legislation.[136]

In regard to the training of compliance officers, the department stated:

We have a standard training program that we run every year for our compliance officers, and for new recruits we have a one-year training process. The 20 new recruits that we appointed about 12 months ago have just become fully authorised officers, and they go through a comprehensive training process around that. As these new powers come in, we would develop training packages around that as well.[137]

Committee comment

The committee notes the concerns raised by the QLS in regard to the proposed powers for inspectors. However, given the need to ensure greater compliance and address black-marketing of fisheries resources, the committee considers these provisions to be justified.

2.3.5 Additional sentencing options

Further to the introduction of new offences and penalties, the Bill will also provide the court with additional sentencing options for persistent offenders.[138] The department advised:

The bill provides for additional sentencing options other than just fines. Unfortunately, in the fishing sector we have repeat offenders. Our boating and fishery patrol people spend a lot of time with recidivists. We are looking to have some deterrents for serious fisheries offences. For three serious fisheries offences over five years, we would look at doing some additional actions such as preventing a person from fishing except in a boat fitted with a vessel tracking unit.

One of the issues we have a lot of feedback from our commercial colleagues on is that we are imposing the requirement to have a vessel tracking system on commercial fishers, but what about recreational fishers? It is not pragmatic to put it on 650,000 people, but there are recidivist recreational fishers to whom the magistrate could say, 'You're doing it so often that you are now going to have a vessel tracking system'. We would know where they are and that makes enforcement so much easier. It may be in the long run that the magistrate would have the power to put the person off the water. That is a significant step, but given that we have people who constantly defy the law, the courts will then have that responsibility.[139]

Although this issue was not raised by many stakeholders, Ms Lynne, Sunfish, stated that she would be supportive of recidivist offenders in the recreational fishing sector being enforced to fit VMS.[140]

2.3.6 Exclusion zone for shark control apparatus

The Bill proposes to introduce a new offence into the Act for being in an 'exclusion zone for shark control apparatus' without a reasonable excuse.[141] The department advised:

The Bill provides for an exclusion zone around a shark control apparatus. The fact of the matter is we have had some interference with our apparatus. People have either inadvertently or deliberately in some cases interfered with that apparatus. It is extremely dangerous. You can become entangled in that apparatus. We did have a death of a person after a storm several years

136 DAF, correspondence dated 8 October 2018, p 5.

137 Public hearing transcript, Scarborough, 12 October 2018, p 50.

138 Explanatory notes, p 31; Bill cl 20 (ss174, 174A).

139 Public briefing transcript, Brisbane, 17 September 2018, p 15.

140 Public hearing transcript, Scarborough, 12 October 2018, pp 38.

141 Bill, cl 31 (s31); Explanatory notes, pp 5, 14. The exclusion zone means the area within 20 metres of the shark control apparatus.

ago. We normally take the nets out in particular during those high-weather events because they end up getting washed on beaches because they will not hold.

The exclusion zone will have no impact on a person traversing the area—for instance, driving out of the Mooloolaba boat harbour heading towards Mudjimba Island. They will pass by the shark nets. Our patrol officers will do nothing. That is just standard practice. However, if a person is within 20 metres of the apparatus and clearly has an intent to do something with the apparatus, we will act. There is the public safety point of view, but there are two. Some of this apparatus is dangerous, as I said. The nets and the hooks are very large. They are sharp. If they interfere with the apparatus and remove the bait for instance, we have reduced the protection we are providing for bathers. Unfortunately, we face that on quite a regular basis.[142]

The Labour Environment Action Network Queensland (LEAN Qld) addressed the issue of shark control in its submission. It argued that the exclusion zone 'further decreases public transparency of the Shark Control Program (SCP) especially for independent community based observers who are currently the only ones providing independent oversight'.[143] Similar views were expressed in the joint submission of World Wildlife Fund/Humane Society International/Australian Marine Conservation Society and the submission of Sea Shepherd Australia.[144]

In response to issues raised by these submitters, the department advised:

The Queensland Shark Control Program was established in the 1960's. The continued operation of the program is a matter of Queensland Government policy.

The Bill establishes a 20-meter exclusion zone around Shark Control Program apparatus with an associated maximum penalty equivalent to 200 penalty units (currently $26,110). The exclusion zone is intended to ensure the continued operation of shark control gear, which protects bathers, and prevents people hurting themselves or putting themselves in danger by being too close to the gear.

In 1992, a nine-year-old surfer drowned after his leg rope became wrapped around a shark drum line at Nobby Beach on the Gold Coast. More recently, a diver in New South Wales drowned after becoming tangled in a shark net. There also is evidence that activists have interfered with the equipment reducing the overall effectiveness of Shark Control Program equipment and increasing risks to beach users.[145]

2.4 Reduce complexity and remove redundant provisions

2.4.1 Compensation

The explanatory notes state minor amendments are included in the Bill to clarify when compensation is payable 'to reflect the move to harvest strategies and declarations to manage fisheries'.[146] The explanatory notes further provide:

Fundamentally there is no change to what triggers compensation, compensation would still apply when access is permanently reallocated from one sector to another (e.g. through establishment of a net free zone), but not when changes are made through a harvest strategy or for sustainability reasons.[147]

142 Public briefing transcript, Brisbane, 17 September 2018, p 7.

143 Submission 13, p 3.

144 Submissions 18, 24.

145 DAF, correspondence dated 8 October 2018, p 8.

146 Explanatory notes, p 5.

147 Explanatory notes, pp 4-5.

The department further stated at the public briefing in Brisbane, that 'adjustments for sustainability purposes under a harvest strategy would not trigger compensation.'[148]

At its public briefing in Cairns, the committee heard from Ms Jensen, who stated:

> *There is the potential for declarations to be used that close an area. I do not think Fisheries, or governments in general, really understand the impact that even a small loss of area can have on a business. A perfect example of that is when we were in the sandy straits. We crabbed in the sandy straits. It is not a really super productive area to begin with. It is cooler in the cooler months, so you do not get a lot of crab in those cooler months. When the Great Sandy Marine Park zoning happened, a lot of the tops of creeks were zoned green zone to protect, I believe, white-tailed rats. We were told—if you have read the report that was done years down the track on the Great Sandy Marine Park—that it was a wonderful zoning plan and that no commercial fishers were adversely affected. We made $10,000 in the first year. That was our profit for the first year. We sold our property and moved to North Queensland, because we nearly went broke. They do not realise the impact that a small loss of area can have on a business, particularly in crabbing, because at some times at the tide of the moon the tops of creeks might be really productive but the flats might not be. If you close an area of the flats for three months and you cannot access it and you were going to be using that area frequently, that is a big loss to your income. That is a potential loss for us if those declarations are used and, of course, there is no compensation for that.*[149]

Some stakeholders commented to the committee that compensation was not a key concern, as their focus was on sustainably managing the fishery.[150] For example, Mr Savige, from the commercial sector, stated:

> *When you do what we do for an income—it is a bit like a farmer—the thought of compensation for something is not really in your business plan. It is something you do without doing it to get a big payout. We do this because we enjoy it; we love it. That is all we know, quite often. Compensation is—I do not know what you call it—maybe a consolation prize.*[151]

Some submitters raised the availability of compensation under these proposed amendments.[152] For example, one submitter stated that he had concerns that the Bill had insufficient regard to section 4 of the *Legislative Standards Act 1992* providing for fair compensation in the event of acquisition of property, in the event that a quota entitlement is adjusted by the Minister.[153] The nature and extent of compensation available under the Bill was also queried by the QSIA in its submission.[154]

The committee considered FLP issues in section 3 of this report.

Committee comment

The committee notes the Bill will clarify when compensation is payable. Although some submitters raised concerns in regard to the lack of compensation, the committee also heard that the long term sustainability of the resource was paramount. The committee has formed the view that fisheries are a shared resource and that compensation arrangements are effectively provided for under the legislative framework.

148 Public briefing transcript, Brisbane, 17 September 2018, p 4.

149 Public hearing transcript, Cairns, 10 October 2018, p 20.

150 See, for example, Mark Kleinschmidt, public hearing transcript, Scarborough, 12 October 2018, p 18.

151 Public hearing transcript, Scarborough, 12 October 2018, p 18.

152 See, for example, submissions 1, 10.

153 Submission 1 (name withheld).

154 Submission 12.

2.4.2 Other amendments

The Bill proposes a number of other amendments to reduce complexity and redundant provisions in the Act. The explanatory notes state that:

> *The management of Queensland's fisheries has evolved over the last two decades and certain parts of the Fisheries Act are now redundant. Furthermore, the application of the Fisheries Act has identified instances where provisions are failing to deliver their intended purpose or where additional clarity would be beneficial. Consequently, changes to the Fisheries Act are proposed to provide clarity where needed, remove redundant provisions and generally reduce the regulatory burden associated with Queensland's fisheries legislation.*[155]

These amendments include:

- providing additional functions to inspectors to assist the chief executive in the administration of the Fisheries Act; and to monitor and enforce the *Biosecurity Act 2014* in relation to fisheries resources and fish habitats
- amending the name of the 'Fisheries Research Fund' to 'Fisheries Fund' and remove 'fish habitat enhancement, rehabilitation or exchange' as a reason for the Fund
- limiting the making of codes of practice to fish habitat areas as they are no longer used in modern fisheries management
- clarifying the definition of 'waterway' to include 'drainage feature' for consistency with other Queensland legislation and to ensure compliance activities are not hindered
- making provisions to provide for internal review and appeal of decisions consistent with other Queensland legislation
- clarifying that the holder of a suspended authority is not entitled to engage in fishing, and
- clarifying the management of non-indigenous fisheries resources.

These amendments were not raised by stakeholders during the committee's Inquiry.

3 Compliance with the *Legislative Standards Act 1992*

3.1 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* (LSA) states that 'fundamental legislative principles' are the 'principles relating to legislation that underlie a parliamentary democracy based on the rule of law'. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals, and
- the institution of Parliament.

The committee has examined the application of the fundamental legislative principles to the Bill. The committee brings the following to the attention of the Legislative Assembly in relation to clauses 7, 11, 12, 15, 18, 19, 20, 21, 22, 23, 31, 33, 34, 50, 51, 54, 55, 56, 61, 62, 63 and 65.

3.1.1 Rights and liberties of individuals

Section 4(2)(a) of the *Legislative Standards Act 1992* requires that legislation has sufficient regard to the rights and liberties of individuals.

[155] Explanatory notes, p 5.

Clause	**19, 23**
FLP issue	**Rights and liberties of individuals** - Section 4(2)(a) *Legislative Standards Act 1992* Does the Bill have sufficient regard to the rights and liberties of individuals? – right to privacy regarding personal information.
Comment	*Criminal history reports* <u>Summary of provisions</u> **Clause 19** inserts new section 173E to allow the chief executive to apply to the Police Commissioner for a criminal history report on a person, without the person's consent, when an inspector is intending to enter a place, boat or vehicle where the person may be present and create an unacceptable level of risk to the inspector's safety. The chief executive may request a criminal history report if *an inspector* suspects, on reasonable grounds, that a person: • may be present at a place, boat or vehicle when the inspector enters the place, boat or vehicle under this part, and • may create an unacceptable level of risk to the inspector's safety. Any criminal history report provided by the commissioner must be examined by the chief executive to identify: *… to the extent it is reasonably practicable to do so, offences involving conduct, behaviour or circumstances that suggest the person's presence at the place, boat or vehicle may endanger the inspector's safety.*[156] The chief executive may give the inspector information in the report about any such identified offences. (There is no requirement for this information to be in writing.) The chief executive must ensure the report, and any information in the report given to an inspector in writing, is destroyed as soon as practicable after the report is no longer needed for the purpose for which it was requested. (A failure to do so is not however an offence, and there are no other sanctions specified in the provisions.) New section 173C describes the purpose of the provisions as being to 'help an inspector to decide whether the inspector's entry of a place, boat or vehicle under this part would create an unacceptable level of risk to the inspector's safety'. **Clause 23** inserts new section 217B. Section 217B makes it an offence (with a maximum penalty of 50 penalty units) for specified office holders (including the chief executive, an inspector, a public service employee and others) to disclose confidential information about another person that has been obtained 'in administering, or performing functions or exercising powers under, this Act'. <u>Potential fundamental legislative principle issue</u> Permitting the disclosure of a person's criminal history raises fundamental legislative principle issues relating to the rights and liberties of individuals (section 4(2)(a) *Legislative Standards Act 1992*), particularly regarding an individual's right to privacy with respect to their personal information.

[156] Proposed section 173E(5).

The explanatory notes address the power thus:

> *While there may be a concern that this can lead to an unnecessary collection of private information, the provision is necessary to determine whether there is an unacceptable level of risk to the inspector's safety* [if] *the inspector was to* [exercise] *entry powers under the Fisheries Act. The section is sufficiently limited to offences involving conduct, behaviour or circumstances that may suggest a person's presence at a place, boat or vehicle may endanger an inspector's safety. Additionally further safeguards are provided by new section 217B (Confidentiality of information) as it makes provision for confidentiality and new section 173E(6) provides for the destruction of the report or written information.*[157]

The explanatory notes offer these factors as justifications for the provision allowing access to a person's criminal history:

- It does not include unrecorded convictions [or] spent convictions that are prohibited under the *Criminal Law (Rehabilitation of Offenders) Act 1986*.
- The provisions are sufficiently limited so as to prevent 'blanket' criminal histories being obtained for any or all persons at a place.
- The Bill provides for safeguards of confidentiality and the destruction of criminal history reports.[158]

Committee comment

It can be observed that these three factors cannot properly be characterised as justifications for the actual grant of the power to seek criminal record information. It would be extremely unlikely, for example, that a provision allowing access to 'blanket' criminal histories being obtained as suggested above would be justified. The last two factors, being limits on further disclosure of the information, and a requirement for destruction of the information, are elements that are treated by committees as relevant in considering the scope of any impact on the right of privacy.

Consideration has also been given in the past to the extent of information covered by the term 'criminal history', including for example, whether the term extends to charges that do not result in convictions, and to 'spent' convictions, and convictions that are quashed or set aside, and convictions which are 'not recorded'.

In this regard, the amendment provides that 'criminal history' is as defined in the *Criminal Law (Rehabilitation of Offenders Act) 1986*, other than spent convictions.[159] The general definition in section 3 of that Act is:

> ***criminal history*** *means, in relation to any person, the convictions recorded against that person in respect of offences.*

Disclosure and confidentiality

As noted above, the new confidentiality offence created by section 217B attracts a maximum penalty of 50 penalty units. According to the explanatory notes:

> *The penalty for the offence, 50 penalty units, is of an appropriate level and consistent with the penalties for similar offences in current Queensland legislation, such as section 493 of the Biosecurity Act 2014*.[160]

157 Explanatory notes, p 9.

158 Explanatory notes, p 23.

159 Proposed section 173D.

160 Explanatory notes, p 17.

	The maximum penalty in the Ministerial and Other Office Holder Staff and Other Legislation Amendment Bill 2018 is 100 penalty units, and that amount is consistent with like provisions in some other legislation, including section 172 of the *Public Service Act 2008*.] The maximum penalty in some other recent Bills (including the Hospitals Foundation Bill 2018 and the Plumbing and Drainage Bill 2018) is also 100 penalty units. On the other hand, a maximum of 50 penalty units was prescribed in the Tow Truck and Other Legislation Amendment Bill 2018. Other considerations The provision has the feature that the request is triggered by a suspicion to be held on reasonable grounds, by an individual inspector, who would not be an officer at a very senior level.[161] As noted, the purpose of the provision is expressed to be to help an inspector decide whether or not there is an unacceptable level of risk to their safety. Noting that any application for a criminal history is to be obtained by the chief executive, it might arguably be preferable to require as a safeguard that the requisite reasonable suspicion be held by the chief executive, and that the purpose of the section be expressed to be to help the chief executive to make a decision about the level of risk to an inspector. The Queensland Law Society urged that the provision be reconsidered, as raising: *… serious privacy concerns which do not appear to be justified. Obtaining a person's criminal history will not necessarily address the safety concerns of an inspector when entering a place without consent. If there are concerns, it would be more beneficial and appropriate to follow the due process of obtaining a warrant and seeking the assistance of police to enter the place.*[162] Committee comment The committee considers this power is justified and that there are sufficient protections for the privacy of the individual. As a consequence, no amendments are required to be provided for: • the requisite reasonable suspicion to be held by the chief executive • the purpose of the section to be to help the chief executive to make a decision about the level of risk to an inspector, or • the penalty for a breach of section 217B to be increased to 100 penalty units, in line with like provisions in other legislation. *Body –worn cameras* **Clause 21** inserts new section to allow an inspector to use a body-worn camera to record images or sounds while exercising the enforcement powers under Part 8 of the *Fisheries Act*. Potential issues of fundamental legislative principle The use of body-worn cameras breaches the principle that legislation should have sufficient regard to the rights and liberties of individuals, including the right to privacy and confidentiality,

[161] It can be noted that the statement in the explanatory notes (at page 9) that the power to seek a history applies 'when an inspector is intending to enter a place, boat or vehicle where the person may be present and create an unacceptable level of risk to the inspector's safety' is not quite accurate. Rather, it is triggered by the holding, on the part of the inspector, of a *reasonable suspicion* to that effect.

[162] Submission 22, p 3.

The explanatory notes provide by way of explanation:

> *Body-worn cameras act as a deterrent to aggressive behaviour and are important in the investigation of offences and evidence gathering by inspectors. They are increasingly being used by government agencies, including hospital security staff who are confronted with aggressive behaviour … Any recordings made by an inspector while exercising a power under the Fisheries Act are a record under the Public Records Act 2001, are confidential and must be retained in accordance with the Department's record keeping obligations.*
>
> *As a safeguard, new section 217B prohibits the disclosure of information gained by a person in administering or performing a function under the Fisheries Act unless expressly authorised. The recordings may also be subject to the Information Privacy Act 2009 and would form part of the evidence in a prosecution, making the recordings available for a defendant during the proceedings.*[163]

Committee comment

The committee considers on balance, the provision for use of such cameras by inspectors is justified.

Information sharing provisions

Summary of provisions

Clause 23 inserts new section 217A which allows the chief executive to enter into an information-sharing arrangement with a State, another State or Commonwealth government entity to share or exchange information which each party has access to.

The information sharing arrangement allows the chief executive to disclose information that helps the prescribed government entity to perform functions under a law of the State, another State or the Commonwealth.[164]

Potential issues of fundamental legislative principle

The disclosure of confidential information has been identified by past committees as relevant to consideration of whether legislation has sufficient regard to an individual's rights and liberties.

Committee comment

The explanatory notes provide by way of explanation:

> *An information-sharing arrangement is limited to sharing or exchanging information that assists the chief executive perform functions under the Fisheries Act or other prescribed government entity performing the functions under other legislation.*[165]

This is potentially a very broad disclosure of confidential information to an audience and for a purpose that extends beyond the purpose for which the information was initially obtained or required i.e. for fisheries and the administration of them. Confidential information is defined in the new section 217B and means information that:

- could identify an individual
- is about a person's current financial position or financial background; or

163 Explanatory notes, p 9.

164 Clause 23 – paragraph 217A(2)(b).

165 Explanatory notes, p 13.

	• would be likely to damage the commercial activities of a person to whom the information relates. The committee considers this disclosure of information has sufficient regard to the rights and liberties of individuals and is justified, given the breadth and extent of the information that is proposed to be shared.

Clause	**7**
FLP issue	**Rights and liberties of individuals** - Section 4(2)(a) *Legislative Standards Act 1992* Does the legislation unduly restrict ordinary activity (including the right to conduct business without interference) without sufficient justification?
Comment	<u>Summary of provisions</u> The bill contains a number of provisions which increase various powers of inspectors. The functions of inspectors are to conduct investigations and inspections to monitor and enforce compliance with legislation.[166] [In passing, it can be noted that Clause 5 expands the legislation across which these functions extend from (currently) the *Fisheries Act 1994* and the *Planning Act* (so far as it deals with fisheries development) to also include the *Biosecurity Act 2014*, insofar as it relates to fisheries resources or fish habitats. As stated in the explanatory notes, this extension of power is justified on the basis that it facilitates the administration of both the *Fisheries Act* and the *Biosecurity Act* and removes the need for additional administrative appointments and allows for compliance activities to be coordinated.[167]] By **clause 7**, an inspector's powers, under the current section 145, to enter premises are extended to premises used for trade or commerce, to determine whether the *Fisheries Act* is being complied with, and provided the entry is otherwise made in accordance with the new section 145A. In turn, proposed section 145A allows an inspector to enter premises used for trade or commerce to find out whether the Act is being complied with if: *(a) the trade or commerce relates to fisheries resources; and* *(b) any of the following applies -* *(i) the occupier of the premises is present* *(ii) a person other than the occupier of the premises is present and conducting activities for the trade or commerce* *(iii) the premises are otherwise open for entry, and* *(c) the inspector -* *(i) is wearing a body-worn camera that is working, or* *(ii) if the body-worn camera is not working - has activated an alternative device to record images or sound, or both, for the period of the entry.*

166 *Fisheries Act 1994*, section 140A.

167 Explanatory notes, p 9.

The section provides that before entry the inspector must give the occupier of the premises at least 20 days' notice of the entry 'unless the giving of notice would defeat the purpose of the entry'.

Potential fundamental legislative principle issue

The potential fundamental legislative principle issue is whether the legislation unduly restricts ordinary activity without sufficient justification, including the right to conduct business without interference.

In relation to the entry notice requirement, the Queensland Law Society was critical of the exception where 'giving of the notice would defeat the purpose of the entry' as:

> *… unduly broad and potentially a contravention of section 4(3)(e) of the [Legislative Standards Act.] QLS is concerned that there is no limitation or threshold placed on this provision and no circumstances provided in the Bill or explanatory notes that denote when this is appropriate.*[168]

The Queensland Seafood Industry Association similarly queried the limitations on the exception to the notice provision.[169]

The explanatory notes set out the rationale and justification:

> *The introduction of the Food Productions Safety Act 2000 repealed the licensing arrangements that allowed compliance inspections of premises involved in wholesale sale of seafood operated under a license. It also implemented a Safe Food accreditation scheme under which commercial fishers who hold appropriate accreditations are permitted to sell seafood directly to the public. This has provided opportunities to sell seafood directly from boats, homes, sheds or from roadside stalls. It has also provided greater opportunities for opportunistic black marketing, such as quota evasion. The approach is necessary, so inspectors have an entry power into premises used for trade or commerce to check compliance and combat black marketing. It is also consistent with the power of entry available to inspectors in other Australian jurisdictions.*
>
> *A number of restrictions are imposed on the entry to the premises. Those restrictions include that an inspector must give the occupier of the premises at least 20 days' notice of the entry unless the giving of the notice would defeat the purpose of the entry. Entry is also restricted to premises used for trade or commerce of fisheries resources and the occupier of the premises is present; or a person other than an occupier of the premises is present and conducting the activities for the trade or commerce; or the premises are otherwise open for entry. The inspector is also required to wear a working, activated body-worn camera or equivalent to capture evidence of the entry and act as a deterrent to the obstruction of inspectors in the course of their duties. An inspector will not be able to enter premises or parts of premises used for residential purposes.*[170]

[168] Submission 22, p 2.

[169] Submission 12, p 4.

[170] Explanatory notes, p 10.

	Committee comment Noting the rationale and the limitations in the Bill, the committee is satisfied that this extension of power and any consequential impact on the right to conduct a business without interference is justified.

Clause	**63 (inserting new part 10)**
FLP issue	**Administrative power** - Section 4(3)(a) *Legislative Standards Act 1992* Are rights, obligations and liberties of individuals dependent on administrative power only if the power is sufficiently defined and subject to appropriate review?
Comment	Summary of provisions Currently, section 185(1) of the *Fisheries Act* provides for a review by the Queensland Civil and Administrative Tribunal where a person is dissatisfied with 'an order, direction, requirement or other decision of the chief executive'. Review can be on any of the following grounds: • the decision of the chief executive was contrary to the Act • the decision of the chief executive was manifestly unfair • the decision of the chief executive will cause severe personal hardship to the person. By the current section 186(2), certain decisions are excepted: • a decision of the chief executive about policy, including, for example, a decision of the chief executive about the shark control program • a decision of the chief executive about starting or continuing a prosecution against a person for an offence against the Act • a decision of the chief executive about an officer or employee of the department in the person's capacity as an officer or employee • a decision of the chief executive about delegating a power by the chief executive • a decision of the chief executive about making a management plan or declaration • a decision of the chief executive about appointing a person as an inspector. There is currently no provision for internal review. The effects of the new part 10, as inserted by clause 63, are two-fold. Shortly put, the new provisions enhance review options by adding a right to seek internal review. On the other hand, the scope of decisions susceptible to review has been narrowed. Internal review will be a mandatory pre-cursor to any application to the Queensland Civil and Administrative Tribunal. By virtue of the definition in new section 187, decisions which are to be subject to internal review are decisions for which an information notice is required to be given under the Act or a requirement made under section 118(1). The latter refers to information requirements made by the chief executive. The receipt of an information notice triggers an entitlement to seek internal review of the decision. Information notices are required for the following decisions by the chief executive:

	• refusals to grant a claim for compensation (section 42H) • refusals to issue or renew an authority (section 60) • decisions to amend an authority (section 63(3)) • decisions to cancel or suspend an authority (section 68(4)) • refusals to give a fish movement exemption notice (section 76F(5)). If not satisfied with the outcome of an internal review, an applicant may request an external review of the decision by the Queensland Civil and Administrative Tribunal. Potential fundamental legislative principle issue Legislation should make rights and liberties, or obligations, dependent on administrative power only if subject to appropriate review. The OQPC Notebook states: *Depending on the seriousness of a decision and its consequences, it is generally inappropriate to provide for administrative decision-making in legislation without providing for a review process. If individual rights and liberties are in jeopardy, a merits-based review is the most appropriate type of review.*[171] Previous committees have taken care to ensure adherence to the principle that there should be a review or appeal against the exercise of administrative power. Regarding the reduction in the scope of decisions susceptible to review, the explanatory notes state: *… the scope of the decisions that were reviewable by QCAT was unclear because the provisions were expressed too broadly.* *The decisions that may be reviewed under the new scheme in part 10 have been narrowed, however, the decisions that may be reviewed reflects the types of decisions that have been subject to reviews under the current scheme.*[172] Committee comment The committee is satisfied that sufficient review and appeal rights have been provided for and that any fundamental legislative principle issues have been adequately addressed.

Clause	**20, 23, 50, 51, 54, 63**
FLP issue	**Penalties and proportionality** - Section 4(2)(a) *Legislative Standards Act 1992* Are the penalties imposed proportionate to the offence committed?
Comment	Summary of provisions **Clause 54 inserts** new section 89C which introduces an offence of engaging in trafficking activity for a priority fish. Priority fish include high-value species such as mud crab, shark fin, coral trout, spanish mackerel and tropical rock lobster (as defined in new section 89A). A maximum penalty of 3000 penalty units ($391,650) or 3 years imprisonment applies in relation to a commercial quantity of fish. Otherwise a maximum penalty of 1000 penalty units ($130,550) applies.

171 Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p 18.

172 Explanatory notes, p 17.

	The explanatory notes explain that the new offence is required to combat the extent of illegal marketing of fish. Trafficking undermines the viability of commercial fishing, and potentially leads to unsustainable fishing practices. The explanatory notes also state that the penalties are consistent with other serious offences under the Fisheries Act which also provide for a maximum penalty of 3000 penalty units. When comparing with penalties imposed in other Australian fishery jurisdictions, the maximum penalties are in the same 'range' (other jurisdictions impose between 400-5000 penalty units) and the prison sentence is on the lower end (where other jurisdictions impose between 2 to 10 years). The penalties align with the national approach and act as a deterrent for black marketing.[173] **Clause 50** introduces new section 79 (which replaces the old section 79) and relates to quota offences. The maximum penalty of 2000 penalty units ($261,100) remains the same. The explanatory notes provide the following justification: *The offence is justified because quota evasion has the potential to impact on the viability of a number of commercial fisheries, particularly the high value species susceptible to illegal trade, including mud crab, reef fish and tropical rock lobster. Quota entitlements are necessary to manage the sustainability of fisheries and there must be an effective deterrent. The maximum penalty is consistent with legislation in other jurisdictions.* [174] **Clause 51** implements a new section 80, which relates to vessel tracking. An authority holder must ensure each boat used under the authority has vessel tracking equipment installed and working properly. Penalties of up to 1000 penalty units are imposed for interfering with the operation of tracking equipment or failing to install or have working tracking equipment. The explanatory notes provide that vessel tracking forms an integral part of the contemporary approach to fisheries management and compliance and that penalty is consistent with other penalties under the *Fisheries Act* for hindering enforcement of the Act.[175] **Clause 20** introduces new section 174 and provides for an offence for a person contravening a court order made specifically to stop a person from committing further serious offences under the *Fisheries Act*. This introduces a penalty of up to 3000 penalty units ($391,650) or 2 years imprisonment. The explanatory notes explain that this penalty is appropriate to deter persons with a history of convictions from continuing to offend.[176] <u>Potential issues of fundamental legislative principle</u> In determining whether legislation has sufficient regard to the rights and liberties of individuals, it is necessary to consider whether the penalties imposed for offences are proportionate and relevant to the actions to which the consequences are applied by the legislation. There are a number of offence provisions in the Bill (see **annexure A** to this briefing). For some, the penalties are relatively high.

173 Explanatory notes, p 15.

174 Explanatory notes, p 16.

175 Explanatory notes, p 16.

176 Explanatory notes, p 16.

	The OQPC Notebook states: *the desirable attitude should be to maximise the reasonableness, appropriateness and proportionality of the legislative provisions devised to give effect to policy*.[177] The OQPC Notebook also states, "Legislation should provide a higher penalty for an offence of greater seriousness than for a lesser offence. Penalties within legislation should be consistent with each other".[178] Committee comment The committee considers, on balance, the high penalties in the Bill are proportionate and appropriate and justified in the circumstances.

Clause	**15, 18, 31, 62**
FLP issue	**Onus of proof** – Section 4(3)(d) *Legislative Standards Act 1992* Does the Bill reverse the onus of proof in criminal proceedings without adequate justification?
Comment	Summary of provisions *Reverse onus of proof* **Clause 15** introduces new offences in section 150B and 150C relating to a requirement to comply with a help requirement and a requirement to take required action. **Clause 18** introduces new offences in section 173A and 173B in relation to fishing apparatus in water and additional power of a police officer executing a warrant. **Clause 31** provides for a new offence in section 31 relating to exclusion zones. Potential issues of fundamental legislative principle Legislation should not reverse the onus of proof in criminal matters, and it should not provide that it is the responsibility of an alleged offender in court proceedings to prove innocence. *For a reversal to be justified, the relevant fact must be something inherently impractical to test by alternative evidential means and the defendant would be particularly well positioned to disprove guilt.*[179] Committee comment All these offences provide that a person does not commit an offence if the person has a reasonable excuse. The person bears the onus of proof to show that they had a reasonable excuse.

177 Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p 120.

178 Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p 120.

179 Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p 36.

	The explanatory notes justify this reversal of the onus of proof on the basis that establishing the defence would involve matters which would be within the defendant's knowledge and/or on which evidence would be available to them.[180] In light of the justification set out in the explanatory notes, it is considered that, on balance, the reversal of onus of proof in the remaining clauses are justified in the circumstances. *Evidentiary certificates* Summary of provisions: **Clause 62** introduces new subparagraph 184(4)(a)(vi) which provides that a certificate signed by the chief executive or an inspector stating that a document is a decision, or a copy of a decision, made by the chief executive, under the *Planning Act* is evidence of a matter. Potential issues of fundamental legislative principle It has been argued that provisions that state that something is evidence, without requiring it to be proved, assist one party in the making of their case, to the detriment of the other party. Committee comment The evidentiary matters to be included in the certificate are set out in subsection 184(4) and will include an order, direction, notice, record, document made under the Act and will now also include a decision made by the chief executive under the *Planning Act*. Although the section states that it is evidence of a matter, it however does not purport to be conclusive evidence. It is therefore likely that the accuracy or veracity of the information contained in any certificate is able to be challenged by contrary evidence put forward by a defendant if required. The explanatory notes explain the reasoning behind this provision: *The approach is justified because it can facilitate court proceedings because the certificate may be put in evidence rather than the needing to call witnesses.*[181] Such evidentiary provisions are fairly common, administratively convenient and avoid the need to unnecessarily protract court hearings in that the prosecution is not require to waste the court's time adducing evidence to prove matters that are not likely to be in contention anyway. The committee is not unduly concerned by clause 62.

Clause	**11, 12, 9**
FLP issue	**Power to enter premises** – Section 4(3)(e) *Legislative Standards Act 1992* Does the Bill confer power to enter premises and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer?

[180] Explanatory notes, p 18.

[181] Explanatory notes, p 18.

Comment	Summary of provisions **Clause 11** amends section 148A to enable monitoring warrants that have been available for abalone to be sought for commercial fish. The warrant will allow an inspector to enter into a place if it is necessary to find out if the *Fisheries Act* is being complied with in relation to abalone and commercial fish. An inspector other than the inspector who applied for the warrant, may execute the warrant. Commercial fishers that hold appropriate accreditation are able to sell seafood directly to the public, meaning that seafood is sold from homes, shed or roadside stalls. The explanatory notes recognised that opportunities for black marketing exist and the warrants are necessary to enter places to check compliance of commercial fishers selling seafood. [182] Restrictions will apply on the issue of a warrant, including requiring that the Magistrate hearing the application must be satisfied that an inspector should have access to the place for the purpose of finding out whether the *Fisheries Act* is being complied with. **Clause 12** inserts new section 148B and provides that an inspector may apply for a monitoring warrant to access a place other a place or part of a place used for residential purposes. The warrant is issued to grant access to a body of water to find out whether the *Fisheries Act* is being complied with. Potential fundamental legislative principle issue By virtue of section 4(3)(e) of the *Legislative Standards Act 1992* whether legislation has sufficient regard to the rights and liberties of the individual depends on whether, for example, it confers power to enter premises and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer. Legislation should confer power to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer.[183] The OQPC handbook provides that this principle supports a long established rule of common law that protects the property of citizens. Power to enter premises should generally be permitted only with the occupier's consent or under a warrant issued by a judge or magistrate. Strict adherence to the principle may not be required if the premises are business premises operating under a licence or premises of a public authority. The OQPC Notebook states: FLPs are particularly important when powers of inspectors and similar officials are prescribed in legislation because these powers are very likely to interfere directly with the rights and liberties of individuals.[184] The explanatory notes provide by way of justification: *A monitoring warrant to authorise entry onto private land to access land or water is justified to ensure compliance with the Fisheries Act and enable a timely response to complaints from the community regarding habitat damage, unlawful fishing or the possession of fishing apparatus.*[185]

182 Explanatory notes, p 12.

183 *Legislative Standards Act 1992*, s 4(3)(e).

184 Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p 45.

185 Explanatory notes, p 12.

	Committee comment The committee is satisfied that sufficient regard has been given to the fundamental legislative principles and any potential breach in clause 12 has been sufficiently justified. **Clause 9** inserts new section 146, giving an inspector an additional power of entry of a vehicle to determine whether the *Fisheries Act* is being complied with. Potential fundamental legislative principle issue By virtue of section 4(3)(e) of the *Legislative Standards Act 1992* whether legislation has sufficient regard to the rights and liberties of the individual depends on whether, for example, it confers power to enter premises and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer. The OQPC Notebook states: *FLPs are particularly important when powers of inspectors and similar officials are prescribed in legislation because these powers are very likely to interfere directly with the rights and liberties of individuals …*[186] *Residential premises should not be entered except with consent or under a warrant or in the most exceptional circumstances.*[187] Under the proposed *Fisheries Act* provisions, entry can be by consent of the owner or upon warrant (current section 148 of the *Fisheries Act* specifically provides for the latter), but neither consent nor a warrant is required in these situations: • An inspector may board a boat to find out whether the Act is being complied with. • An inspector may board a boat or enter a vehicle if the inspector suspects, on reasonable ground that the boat or vehicle is being, or has been, used in the commission of an offence against the Act or the boat or vehicle, or a thing in or on the boat or vehicle, may provide evidence of the commission of an offence against the Act. • An inspector may enter a vehicle to find out whether the Act is being complied with if the inspector believes, on reasonable grounds, that the vehicle is being, or has just been, used in connection with a fishing activity, or contains fish being transported for sale or another commercial purpose. The last-mentioned power does not extend to a caravan or another vehicle used, or reasonably expected to be used, predominantly for residential purposes, including for temporary periods. Under proposed section 146A, where an inspector has power to board a boat or enter a vehicle: • The inspector may board an unattended boat or enter an unattended vehicle only if, before boarding the boat or entering the vehicle, the inspector takes reasonable steps to advise the owner or person in control of the boat or vehicle of the inspector's intention to board the boat or enter the vehicle.

[186] Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p 45.

[187] Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles*: *The OQPC Notebook*, p 46.

- The inspector may enter a secured part of an unattended boat or unattended vehicle only if the owner or person in control of the boat or vehicle consents to the entry or the entry is permitted by a warrant.
- If the inspector considers it would be more appropriate in the circumstances to do so, the inspector may decide not to board a boat or enter a vehicle and exercise powers under this part from immediately alongside or outside of the boat or vehicle. In this case, the inspector is taken to have boarded the boat or entered the vehicle for the exercise of powers under this part.

If an inspector enters a place or vehicle or boards a boat in exercise or a power under the *Fisheries Act*, a number of other powers result, as set out in the Act.[188] These include power to:

- search any part of the place, boat or vehicle
- photograph, film, test, film, inspect, examine or take a sample of anything contained therein
- take an extract from, or copy, a document
- seize evidence
- produce an image or writing from an electronic document (including, if necessary, taking a thing containing the electronic document to another place for this purpose)
- take onto the place, boat or vehicle and use any equipment reasonably required to exercise the powers.
- require a person in or on the place or boat or vehicle, or the occupier, to give reasonable help for the exercise of the powers.

The Queensland Law Society criticised the scope of the power to board a boat or enter a vehicle to find out if the Act is being complied as being:

> *… unjustifiably broad. If an inspector believes that an offence is being committed or has been committed, then the inspector should undertake proper investigative processes including obtaining a warrant and /or making a request to enter or for the provision of information.*[189]

Addressing the power of entry regarding an unattended boat or vehicle, the Queensland Law Society:

> *… considers the words 'reasonable steps' are vague and open to the interpretation of inspectors. Guidelines as to the meaning of 'reasonable steps' should be provided. There must also be a justifiable reason as to why the inspector needs to board the boat or vehicle.*[190]

According to the explanatory notes, the approach taken in the Bill is justified:

> *… as it is crucial that inspectors have inspection powers to uncover unlawful shore-based activities, including inspecting vehicles on beaches and at boat ramps, for fisheries resources taken in excess of possession limits or regulated fish. It is also necessary to inspect vehicles used in the transport of fish, including for under-reported, not reported fisheries resources and to combat black marketing. Unlawful activities like these can affect the sustainability of our fisheries and undermine fisheries management, particularly quota-managed fisheries.*

188 See sections 150 and following.

189 Submission 22, p 3.

190 Submission 22, p 3.

	The power to enter vehicles is restricted to circumstances where the inspector believes the vehicle is being or has just been used in connection with a fishing activity; or contains fisheries resources being transported for sale or another commercial purpose; or contained regulated fishing apparatus. It will not apply to a caravan or similar vehicle that is being used for a residential purpose or a person who has purchased fishing equipment for recreational fishing purposes, such as fish hooks. The power to board a boat or enter a vehicle that is unattended is also restricted and requires [an] *inspector to take reasonable steps to advise the owner or person in control of the boat or vehicle that the inspector intends to board the boat or enter the vehicle. Further, an inspector may only entry a secured part of an unattended boat or vehicle if the owner or the person in control of the boat or vehicle has consented or it is permitted by a warrant.* [191] A possible addition concern in this context is the range of additional powers that become exercisable after entry without a warrant or consent.[192] The OQPC Notebook states: *FLPs are particularly important when powers of inspectors and similar officials are prescribed in legislation because these powers are very likely to interfere directly with the rights and liberties of individuals*.[193] As identified above, a range of powers flow from the entry provided for by the Bill, including search and seizure powers and provisions for possible forfeiture of property and to the State. <u>Committee comment</u> The Bill provides for powers of entry, and consequential powers, including powers of search and seizure and potential forfeiture of property, which are not subject to consent or the issuing of a warrant. The committee considers these powers (and the breach of fundamental legislative principles through the infringements on the rights and liberties of individuals that are involved) are justified in the circumstances.

Clause	**22**
FLP issue	**Immunity from proceedings** – Section 4(3)(h) *Legislative Standards Act 1992* Does the Bill confer immunity from proceeding or prosecution without adequate justification?
Comment	<u>Summary of provisions</u> **Clause 22** proposes new section 216A, to provide: *(1) An inspector is not liable to be prosecuted for an offence against this Act for anything done or omitted to be done -* *(a) under the direction of the Minister or chief executive; or*

191 Explanatory notes, p 10.

192 Alert Digest 2004/5, p 31, paras 30-36; Alert Digest 2004/1, pp 7-8, paras 49-54; Alert Digest 2003/11, pp 20-21, paras 14-19; Alert Digest 2003/9, p 4, para 23 and p 31, paras 21-24; Alert Digest 2003/7, pp 34-35, paras 24-27; cited in Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p 45.

193 Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p 45.

	(b) in the exercise of a power or performance of a function under this Act. *(2) A person acting under the direction of the Minister, chief executive or an inspector is not liable to be prosecuted for an offence against this Act for anything done or omitted to be done under the direction.* <u>Potential issues of fundamental legislative principle</u> This provision potentially breaches section 4(3)(h) of the *Legislative Standards Act 1992* which provides that legislation should not confer immunity from proceeding or prosecution without adequate justification. One of the fundamental principles of law is that everyone is equal before the law, and each person should therefore be fully liable for their acts or omissions. Notwithstanding that position, committees recognise that conferral of immunity is appropriate in certain situations.[194] The explanatory notes provide the following justification: *The conferral of immunity is justified because it will allow inspectors to properly fulfil their functions in following directions given to them and undertaking any monitoring compliance activities under the Fisheries Act without being subject to prosecution. This confers a public benefit by supporting inspectors carrying out their statutory functions without a risk of criminal liability.*[195] The Queensland Law Society was critical of the proposed provision: … [it] *is appropriate for there to be an effective and appropriate counterbalance against possible abuses of power. This could be achieved by allowing for prosecution of inspectors if the circumstances of their conduct warrant this.*[196] The OQPC notebook states: *Although actions taken in carrying out statutory functions normally do not attract liability, legislation sometimes expressly provides for immunity, usually to clarify the matter to assure the persons taking the action that the immunity is in place.*[197] <u>Committee comment</u> The committee considers the immunity is warranted.

Clause	**18**
FLP issue	**Common law right to personal liberty** – Section 4(2)(a) *Legislative Standards Act 1992* Does the Bill have sufficient regard to the common law right to personal liberty?
Comment	<u>Summary of provisions</u>

194 Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p 64.

195 Explanatory notes, p 18.

196 Submission 22, p 3.

197 Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The* OQPC Notebook, p 67.

	Clause 18 inserts new section 173B which allows a police officer who is exercising inspector powers, or assisting another person who is exercising inspector powers under a warrant issued under the *Fisheries Act*, to direct a person to: • remain in a stated position at the place or on the boat or in the vehicle where the powers are being exercised • accompany the police officer while the officer or an inspector exercises the powers, or • leave the place, boat or vehicle where the powers are being exercised and not return while the powers are being exercised. <u>Potential issues of fundamental legislative principle</u> Previous committees have noted that the right to personal liberty is the most elemental and important of all common law rights. The OQPC Notebook states: *In the High Court decision of* Trowbridge v Hardy *(1955) 94 CLR 147 at 152, Justice Fullagar described the right to personal liberty as 'the most elementary and important of all common law rights'. In another High Court case,* Williams v R *(1986) 161 CLR 278 at 92, Justices Mason and Brennan noted Blackstone's view that it was an absolute right vested in the individual by the immutable laws of nature and had never been abridged by the law of England 'without sufficient cause':* Commentaries on the Laws of England *(Oxford, 1765), Bk. 1, pp 120-121.*[198] <u>Committee comment</u> The explanatory notes provide some justification for the use of this power: *The power to detain is restricted to circumstances where the police officer believes, on reasonable grounds, that the presence of the person places the safety of an inspector or a police officer at risk. The detainment power is justified because inspectors frequently encounter high-risk situations involving incidents of aggression, abuse and threats of violence.*[199] The power relies on the police officer making a judgement on whether the person will create a safety risk. The committee is satisfied that the potential breach relating to the rights and liberties of an individual has been sufficiently justified.

3.1.2 Institution of Parliament

Section 4(2)(b) of the *Legislative Standards Act 1992* requires legislation to have sufficient regard to the institution of Parliament.

Clause	**31 (sections 16, 20, 24, 27), 33, 34, 54, 55, 56 and 65**
FLP issue	**Delegation of legislative power** – Section 4(4)(a) *Legislative Standards Act 1992* Does the Bill allow the delegation of legislative power only in appropriate cases and to appropriate persons?

198 Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: the OQPC Notebook,* p 96.

199 Explanatory notes, p 13.

	Scrutiny by the Legislative Assembly – Section 4(4)(b) *Legislative Standards Act 1992* Does the Bill sufficiently subject the exercise of a proposed delegated legislative power (instrument) to the scrutiny of the Legislative Assembly?
Comment	Summary of provisions The following new sections are introduced under **clause 31**: • section 16 – approval of harvest strategy • section 20 – amendment of harvest strategy • section 24 – Ministerial direction about action inconsistent with harvest strategy • section 27 – reallocation decision Part 2 of the Act provides the Minister responsible for fisheries with a power to approve harvest strategies, direct departure from harvest strategies and make reallocation decisions. These decisions must be set out in a public notice and in some instances these decisions must also be published on the department's website. **Clause 34** introduces new section 49, which allows the chief executive to issue various authorities, such as licences and quotas. Subsection 49(2) states that a regulation may provide that an authority of a particular kind may or may not be issued for a stated activity or thing. **Clause 54** introduces new section 89 defines 'commercial quantity' to mean at least five times the recreation possession limit. The recreation limit is prescribed by regulation. Further, under section 89A, a priority fish includes in the definition other species prescribed by regulation. **Clauses 55 and 56** introduce new sections 90 and 92. Section 90 makes it an offence for a person to unlawfully release non-indigenous resources into Queensland waters unless they are non-indigenous fisheries prescribed by regulation. Section 92 provides for an equivalent offence for a person who takes or processes a non-indigenous plant prescribed by regulation. **Clause 65** introduces new subsection 223(2) which is a wide regulation making power for the management of matters such as a fishery or a fish habitat. Potential issues of fundamental legislative principle Section 4(4)(a) of the *Legislative Standards Act 1992* provides that whether a Bill has sufficient regard to the institution of parliament depends on whether the Bill, for example, allows the delegation of legislative power only in appropriate cases and to appropriate persons. This question is concerned with the level at which delegated legislative power is used. Generally, the greater the level of political interference with individual rights and liberties, or the institution of Parliament, the greater the likelihood that the power should be prescribed in an Act of Parliament and not delegated below Parliament. The issue of whether delegated legislative power is sufficiently subjected to the scrutiny of the Legislative Assembly often arises when power to regulate an activity is contained in a guideline or similar instrument that is not subordinate legislation and therefore is not subject to parliamentary scrutiny. The explanatory notes state in relation to clause 31: *These provisions are justified, as the Minister would only be able to make a decision or approve a harvest strategy that is consistent with the main purpose of the*

	Fisheries Act. This decision is then given effect through legislative and/or administrative changes, such as a regulation or declaration. These instruments are subject to Parliamentary scrutiny and disallowance. The Fisheries Act also provides a number of avenues for internal and external review.[200] In relation to the power (for clause 31) not being subject to the scrutiny of Parliament, the explanatory notes state: *The approach is justified, as the Minister's decisions would not have any effect unless implemented by legislative and/or administrative changes such as a regulation or declaration. Although other administrative changes, such as amendment of condition of an authority to give effect to a Ministerial decision, would be subject to Parliamentary scrutiny, they would be subject to internal and external review.*[201] In relation to clause 34, the explanatory notes state: *Issuing authorities is a necessary administrative function, and the provision provides for authorities that have not been currently identified* [but] *may be required to be issued for effective fisheries management in accordance with the objectives of the Fisheries Act. Any additional prescribed types of authorities will be subject to parliamentary scrutiny and disallowance.*[202] The explanatory notes provide this further explanation in relation to clause 54: *This approach is necessary to provide the flexibility to address new targeting of species or emerging markets for trafficking. As a safeguard, the power to prescribe additional species, would be limited to the Minister being satisfied that there has been a significant increase in unlawful activity to the taking, possessing, using or selling of the species or group; or there has been a significant increase in demand for the species or group that is likely to cause a significant increase in the level of unlawful activity.*[203] In relation to non-indigenous fisheries resources and plants, the explanatory notes provide: *This approach is justified because there may be circumstances where it is appropriate for an individual to release a non-indigenous fish species in certain Queensland waters.*[204] The regulation-making power under clause 65 is given further explanation in the explanatory notes: *The regulation-making power is consistent with the main purpose of the Fisheries Act to provide for the use, conservation and enhancement of the community's fisheries resources and fish habitats. It is impractical to identify all the matters that are required to meet the objectives of the Fisheries Act. The Bill provides the flexibility required to accommodate any action that is required to manage the fisheries resources and fish habitats.*[205]

200 Explanatory notes, p 18.

201 Explanatory notes, p 19.

202 Explanatory notes, p 20.

203 Explanatory notes, p 21.

204 Explanatory notes, p 22.

205 Explanatory notes, p 22.

	Committee comment It is considered that, on balance, the clauses have sufficient regard to the institution of Parliament.

Clause	**61**
FLP issue	**Scrutiny by the Legislative Assembly** – Section 4(4)(b) *Legislative Standards Act 1992* Does the Bill sufficiently subject the exercise of a proposed delegated legislative power (instrument) to the scrutiny of the Legislative Assembly?
Comment	Summary of provisions Clause 61 inserts new section 125A. The proposed section provides in part: ***125A Codes of practice*** *(1) The chief executive may make a code of practice for a declared fish habitat area.* *(2) A code of practice may, for example, state ways that persons may carry out activities in the declared fish habitat area in compliance with this Act.* *(3) In preparing a code of practice, the chief executive must take reasonable steps to engage in consultation about the code with persons the chief executive considers appropriate.* The chief executive must publish any code on the department's website and make it available for public inspection at head office (section 125A(4)). Potential issues of fundamental legislative principle The section will give the chief executive power to make codes of practice that are not subject to the scrutiny of Parliament. This provision allows creation of and reliance on external documents that do not necessarily have the status of subordinate legislation or need to be approved by regulation. The issue of whether delegated legislative power is sufficiently subjected to the scrutiny of the Legislative Assembly often arises when power to regulate an activity is contained in a guideline or similar instrument that is not subordinate legislation and therefore is not subject to parliamentary scrutiny.[206] Committee comment The explanatory notes state: *Codes of practice for declared fish habitat areas can be extensive, technical documents, which may be subject to frequent change. It would be impractical to include the detail of a code of practice in legislation to the degree required to ensure enforceability. It would also be overly burdensome on Parliament's time to consider changes to codes of practice each time they occur. It is therefore more practical and timely for the chief executive to exercise administrative power to make and amend codes of practice based on the chief executive's expertise and knowledge.*[207]

[206] See the discussion in the Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p 155.

[207] Explanatory notes, page 20.

	Committees have commented adversely on provisions allowing matters, which it might reasonably be anticipated would be dealt with by regulation, to be processed through some alternative means that does not constitute subordinate legislation and therefore is not subject to the tabling and disallowance provisions of the *Statutory Instruments Act 1992*. In considering whether it is appropriate that delegated matters be dealt with through an alternative process to the subordinate legislation, committees have taken into account: • the importance of the subject being dealt with • the practicality or otherwise of including those matters entirely in subordinate legislation • the commercial or technical nature of the subject matter, and • whether the provisions were mandatory rules or merely to be had regard to. Committees have considered that despite an instrument not being subordinate legislation, if there is a provision requiring tabling and providing for disallowance there is less concern raised.[208] If a document that is not subordinate legislation is intended to be incorporated into subordinate legislation, then an express provision should require the tabling of the document at the same time as the subordinate legislation.[209] Similar considerations apply when a non-legislative document is required to be approved by an instrument of subordinate legislation.[210] At this stage, it is not clear what form the codes will take and the size of them as the code has not been provided. In considering the effect of such external documents, the committee notes the context of the subject matter of the Bill and the relevant clauses, in light of the four factors detailed above. In addition, the committee considers that there has been in more recent times, in respect of such documents, an increased quality in the drafting of, and increased public access to, such external documents, and thus increased accountability to the public and Parliament.

208 *Alert Digest 2004/3*, pp 5-6, paras 30-40; *Alert Digest 2000/*9, pp 24-25, paras 47-56.

209 *Alert Digest 2001/8*, p 16, para 7; *Alert Digest 1996/*5, p 9, para 3.8.

210 *Alert Digest 2003/11*, p 23, paras 33-40.

Appendix A – Submitters

Sub #	Submitter
001	Name withheld
002	Sunfish Queensland Inc.
003	Lukasz Lukaszewicz
004	Shane Card
005	Dane King
006	Christopher John Gatti
007	Fishermans Portal Inc.
008	Kevin Jorgensen
009	Michelle Jensen
010	Michael Wood
011	Leanne King
012	Queensland Seafood Industry Association
013	Labor Environment Action Network QLD
014	Environmental Defenders Office of Northern Queensland
015	Scott Butterworth
016	Alexander White
017	Allan Bobbermen
018	WWF/Humane Society International/Australian Marine Conservation Society
019	Ben Matt
020	Cameron King
021	Great Barrier Reef Marine Park Authority
022	Queensland Law Society
023	GJ & CG Pearce
024	Sea Shepherd Australia
025	Cape York Land Council Aboriginal Corporation
026	Quandamooka Yoolooburrabee Aboriginal Corporation

027 Attila Feher-Holan

Appendix B – Officials at public departmental briefing

Department of Agriculture and Fisheries

- Scott Spencer, Deputy Director General, Fisheries and Forestry
- Claire Andersen, Executive Director, Fisheries Queensland
- Michael Mikitis, Principal Compliance Officer, Fisheries Queensland
- Ben Westlake, Principal Policy Officer, Fisheries Queensland

Appendix C – Witnesses at public hearings

Cairns – 10 October 2018

Great Barrier Reef Marine Park Authority

- Bruce Elliot, General Manager, Reef Engagement Branch
- Randall Owens, Assistant Director, Sustainable Fishing and Partnerships

Queensland Game Fishing Association

- Dianne Hance, President
- Ian Bladin, Senior Executive/Past President

Commercial representatives

- Brett Alridge, General Manager, MG Kallis Pty Ltd
- Allan Bobbermen
- Michelle Jensen

Queensland Seafood Marketers Association

- Marshall Betzel, President

Scarborough – 12 October 2018

Queensland Seafood Industry Association

- Tony Riesenweber, Director
- Lionel Riesenweber, Crab Committee Coordinator
- Wayne Craven, Policy and Project Officer

Commercial representatives

- Greg Savige – Commercial fisherman, Bribie Island
- Mark Kleinschmidt – Commercial/crab, Moreton bay
- Shane Card
- John Reid

World Wildlife Fund

- Jim Higgs, Acting Senior Manager, Marine Sustainable Development

Recreational representatives

- Allan Sutherland, private capacity
- Judith Lynne, Executive officer, Sunfish Queensland Inc.
- Dr Barry Pollock, Scientific Adviser, Sunfish Queensland Inc.
- David Bateman, Deputy Chair, Sunfish Queensland Inc.

Queensland Law Society

- Ken Taylor, President
- Kurt Fowler, Criminal Law Committee Chair

Department of Agriculture and Fisheries

- Scott Spencer, Deputy Director-General, Fisheries and Forestry
- Claire Andersen, Executive Director, Fisheries Queensland

Statement of Reservation

The non-government members of the State Development, Natural Resources and Agricultural Industry Development Committee submit this Statement of Reservation to outline our concerns in relation to the committee's final report.

Specifically, the non-government members of the committee express reservations in relation to the following aspects of the proposed legislation:

Vessel Monitoring System (VMS)
The roll-out of VMS on crab, net and line commercial fisheries vessels has elicited strong responses from the commercial industry.

From the outset LNP members of the committee were concerned that there has been no cost analysis for the introduction of VMS on a business by business basis.

Of further concern is the protection of VMS data to ensure that all data and therefore intellectual property, collected from the proposed VMS, is protected and remains confidential.

Commercial fishers consider their intellectual property is often worth more than the actual state issued license. This intellectual property is often built up over years of fisheries experience and has a high commercial value. Therefore like any business interest this should be valued and protected.

As such, there is significant concern that the penalties associated with protecting this information from illegal distribution and misused are not reflective of the seriousness of the act and are inadequate. The LNP committee members believe that the penalties for misusing or sharing this information unlawfully should attract the same significant penalties as a commercial fisher would receive for breaching VMS compliance. For example, the maximums penalties for illegally disclosing vessel tracking date is 50 penalty units or $6,527.50 in fines, while commercial fishers guilty of breaching VMS compliance, face maximum penalties of 1,000 penalty units or $130,55.00.

There is significant and legitimate concern that the data and information collected through VMS could be illegally passed onto environmental groups which possess the long-term goal of completely shutting down elements of Queensland's commercial fisheries industry or on sold to other interests.

The Government needs to do more to ensure that the penalties associated with compromising commercial fisher's intellectual property are increased and appropriately reflect the crime.

Powers on entry
As outlined by the Queensland Law Society (QLS) there are significant concerns with this Bill in regards to the powers it grants inspectors to enter a place, including a boat or vehicle, without a warrant or consent, or reasonable notice period.

The Liberal National Party members of the committee have strong philosophical oppositions to laws that empower fisheries inspectors with powers that amount to an unjustifiable intrusion of a person's rights.

These powers breach fundamental legislative principles and the *Legislative Standards Act 1992 (Qld)*. The QLS outlines their concerns at the Scarborough public hearing:

> *While some of the provisions in the bill do take these rights into account, others do cause us concern. These include proposed section 145A, which relates to an inspector's power of entry*

on to premises used for trade and commerce without a warrant, without consent and, in some circumstances, without notice or the requirement to inform the occupier, and proposed section 146, which provides that an inspector may board a boat to find out whether this act is being complied with, again, without a warrant or consent.

In our opinion, the drafting could be corrected to protect an individual's rights by ensuring that entry powers are subject to consent, a warrant, a reasonable notice period or, at the very least, a reasonable suspicion that an offence has been or is being committed and that entry without a warrant, consent or notice is necessary to prevent evidence from being destroyed. We urge the committee to recommend these changes to the drafters of this bill. We also call on all parliamentary committees to robustly review these types of provisions where they appear in bills and to provide strong recommendations to the relevant department that such provisions should not infringe upon fundamental legal rights. [211]

In their submission the QLS argued that 'section 4(3) [of the Legislative Standards Act 1992 (Qld)] provides that legislation should generally confer power to enter premises, and search for or seize documents or the other property, only with a warrant issued by a judge or other judicial officer'.[212]

The LNP committee members believe this is a disturbing legislative precedent which this State Labor government has and continues to undertake. We saw earlier this year with the Vegetation Management laws that the rights of property owners and individuals against the misappropriation of bureaucratic power with a warrant being eroded.

The LNP committee members want an amendment to the Bill to remove the power of inspectors to enter premises used for trade or commerce without a warrant.

The LNP will not support laws that undermine the basic legal rights of the individual as we see in this Bill.

No Regulatory Impact Statement

The lack of any Regulation Impact Statement (RIS) from the Department of Agriculture and Fisheries into the impact of the Fisheries (Sustainable Fisheries Strategy) Amendment Bill 2018 fails the good governance test.

Like the recently passed Vegetation Management laws, the government has opted not to conduct its due diligence in considering the overall economic and social impact of its laws on the industry and communities. The LNP members of the committee find this trend of government arrogance, around conducting relevant investigations into Bills, as reckless and should be called out and condemned.

Pat Weir MP

Deputy Chair
State Development Natural Resources Agricultural Industry Development Committee
31 October 2018

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211 Public hearing transcript, Scarborough, 12 October 2018.

212 Queensland Law Society, Submission 22, p 1.