

Fisheries (Sustainable Fisheries Strategy) Amendment Bill 2018

Explanatory Notes

Short title

The short title of the Bill is the *Fisheries (Sustainable Fisheries Strategy) Amendment Bill 2018*.

Policy objectives and the reasons for the Bill

The *Fisheries (Sustainable Fisheries Strategy) Amendment Bill 2018* (the Bill) aims to:

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

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

Access to Queensland's fisheries is managed through the *Fisheries Act 1994* (the Fisheries Act) and the *Fisheries Regulation 2008* (the Regulation). The current fisheries management framework is outdated, cumbersome and incapable of appropriately responding to sustainability risks or issues. Decision-making processes are slow and unclear with Queensland's ability to respond to issues such as black-marketing lagging behind other Australian jurisdictions. Consequently, our fisheries management is failing to meet the standards expected by Queenslanders.

In 2016, the Government released the *Green Paper on fisheries management reform in Queensland* (the Green Paper) for consultation. The Green Paper outlined the issues facing Queensland's fisheries and priority areas for reform. All stakeholders agreed reform was needed. This feedback was used to inform the *Queensland Sustainable Fisheries Strategy 2017-2027* (the Strategy), which was released by the Government in June 2017. The Strategy outlines the government's vision for the future management of the Queensland's fisheries and sets out the reform agenda for the next ten years.

The Government is investing an additional \$20.9 million over three years to implement the Strategy, including investing in better data, more compliance, more responsive decision-

making and improved engagement with stakeholders. In order to deliver on the principles and commitments outlined in the Strategy, amendments to the Fisheries Act are required.

Prior to the Green Paper, the previous government also commissioned consulting firm MRAG Asia Pacific in 2014 to review the fisheries management framework in Queensland. The Strategy and the Bill is largely consistent with the approaches recommended by MRAG Asia Pacific.

While the Green Paper consultation process flagged changes to the Fisheries Act, it did not detail proposed amendments. Consequently, a discussion paper outlining the proposed changes to the Fisheries Act was released for public consultation for a period of nine weeks between 16 March and 20 May 2018. 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.

This Bill is a key step in implementing the Strategy and will support a more responsive, evidence-based approach to fisheries management, and strengthen compliance powers to better align Queensland with other Australian jurisdictions. Fundamentally, the Bill will establish the necessary powers, functions and tools for fisheries management. Other changes to implement the Strategy will be progressed as part of a review of the *Fisheries Regulation 2008* in 2019.

The changes to the Fisheries Act will not impact upon recreational, commercial, charter or indigenous fisher's access to Queensland's fisheries. The changes largely provide for better processes for future fisheries management rather than making changes to existing access arrangements. Persons convicted of repeated offences or black marketing will face new or increased penalties. However, this will not affect the majority of people fishing in Queensland who do not engage in illegal sales of fisheries products. Feedback received indicates that there is widespread support for stronger compliance powers and penalties to deal with repeat offenders and black-marketing.

Modernise the objectives of the Fisheries Act and recognise key stakeholder groups

The Bill modernises the objectives of the Fisheries Act and better recognises the key sectors accessing fisheries resources while ensuring there is appropriate regard to maximising the potential economic, social and cultural benefits that fisheries resources can provide to the Queensland community.

The amendments recognise the charter fishing sector as a distinct activity with social and economic benefits to Queensland. The Bill also formally acknowledges the importance of traditional fishing to many Aboriginal and Torres Strait Islander communities in Queensland to ensure harvest strategies appropriately consider maintaining their access to fisheries resources.

Consultation undertaken in recent years has consistently identified the need for ongoing and transparent stakeholder engagement not only with the fishing sectors but also with the general community. To ensure engagement is a key part of fisheries management, the Bill also provides that the main purpose of the Act is to be achieved as far as practicable *‘by consultation with all fishing sectors and the community generally using a transparent and responsive approach for the management of access to fisheries resources’*.

Clarify the decision-making processes and establish harvest strategies in Queensland’s fisheries legislation.

The Bill clarifies the decision making process for the management of Queensland’s fisheries between the Minister and the chief executive. This Minister for fisheries will maintain responsibility for strategic oversight of Queensland’s fisheries by approving harvest strategies and any reallocation decisions between sectors. The chief executive’s responsibilities will be for day-to-day management in accordance with approved harvest strategies including: consultation and preparation of a draft harvest strategy for the Minister’s approval; assessing performance of a fishery against its harvest strategy; taking management action in accordance with a harvest strategy; and periodically reviewing harvest strategies to ensure it continues to meet the objectives of the Fisheries Act.

Harvest strategies are the key management tool outlined in the Strategy and will contain pre-agreed and approved decision rules for each fishery that will allow for more responsive decision making based on the performance of each fishery. They streamline decision-making processes by clearly setting out pre-determined management actions for a defined species (for example the actions to be taken if the biomass of a fish stock falls below a certain level). Harvest strategies provide fishers with more certainty by clearly outlining the overall fishery objectives, fishery performance targets, triggers for management action and appropriate management responses.

Harvest strategies are considered best practice fisheries management across Australia and rely heavily upon decisions being made in a timely manner. To allow for more responsiveness in fisheries management decisions, the Bill provides for decisions made in accordance with an approved harvest strategy to be implemented by the chief executive through declarations. This approach has been used successfully to adjust the total allowable commercial catch for coral trout based on pre-agreed ‘decision rules’ in recent years.

The Bill also provides a safeguard allowing 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 resources. This is similar to a ‘call-in power’ and the Minister would be required to publish a statement of reason/s for the different decision to ensure transparency of

management is maintained. A direction to the chief executive which is inconsistent with a harvest strategy remains in force for 3 months.

Strengthen the compliance powers and penalties to address serious fisheries offences such as black marketing

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.

Reviews of fisheries management and public consultation have consistently identified concerns over the impact of ‘black marketing’ on fisheries resources and the fishing industry. Recent consultation reconfirmed this with more than 90 per cent of respondents agreeing that compliance powers and penalties to address serious fisheries offences should be strengthened.

Black marketing may involve recreational fishers selling their catch; commercial fishers not declaring their catch against quota holdings; or buyers facilitating black marketing by buying and then deliberately concealing the purchase of fisheries resources. Black marketing has serious consequences including the potential to undermine the viability of commercial fishing, lead to unsustainable fishing practices and increased the risk to biosecurity through unreported movement of fisheries resources.

The Australian Government recognised the potential for increased illegal fishing activity in 2004 commissioning the Australian Institute of Criminology (AIC) to report on organised crime in the fishing industry. The *National Study of Crime in the Australian Fishing Industry Report* (the Report) was released in 2008. It identified systematic criminal activity within fishing industries across Australia, is more likely to target valuable species and has the potential to undermine fisheries management strategies, sustainability of fisheries resources and the economic potential of legitimate commercial fisheries. The Report also identifies linkages between organised crime in fisheries with other criminal activity, including drug related offences and money laundering. The Report contained a number of recommendations, which were supported at ministerial council level. In 2010, the National Fisheries Compliance Committee released a nationally consistent compliance strategy committing to the implementation of the recommendations of the Report.

Fisheries legislation in New South Wales, Victoria and Western Australia provides for indictable trafficking offences with maximum prison terms up to 10 years due to the black market trade in abalone. Although abalone are not caught in Queensland, there have been instances where abalone has been smuggled from interstate and traded or exported from Queensland as compliance capabilities and penalties are not as strong as other jurisdictions.

An analysis of Queensland’s fisheries legislation has identified that 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.

To help combat black marketing, the Bill will provide inspectors with the ability to access businesses used for trade and commerce that are handling seafood products without a warrant which is essential to allow inspectors to identify the illegal trade of fisheries products. Importantly, inspectors will still be required to obtain a warrant in order to access residential premises (including tents) or any parts of premises used for residential purposes.

These powers are supported by changes to the penalties that can be imposed under the Fisheries Act. The Bill provides for sentencing options other than just fines to deter serious repeat offenders, including making an order for anything reasonably necessary to prevent a person committing further offences against the Fisheries Act. Non-compliance with an order against a serious repeat offender is an offence with a maximum penalty of two years imprisonment.

Increased penalties are also included for failing to comply with the vessel tracking requirements. This recognises the importance of vessel tracking to the future management of our fisheries.

There have been regular reported instances of people using the buoys as turning markers whilst paddling surf skis, kayaks and boards and boats have also frequently come into contact with the shark control apparatus. To minimise safety risks to persons handling or in close proximity to shark control apparatus, which may comprise of large mesh nets and drumlines with baited hooks that may cause a person to become entangled and drown, the Bill establishes an exclusion zone. Shark control apparatus should only be handled by an authorised, trained person.

Additional amendments are included to streamline compliance powers and functions. These changes recognise the increased availability and use of electronic technologies and address the lessons learnt through the application of the Fisheries Act since its inception. Importantly, the strengthened compliance powers will bring the Fisheries Act in line with powers afforded to inspectors under other Queensland legislation (e.g. the *Fair Trading Inspectors Act 2014* and *Nature Conservation Act 1992*).

Reduce complexity and remove any redundant provisions

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.

Minor amendments are included to clarify when compensation is payable to reflect the move to harvest strategies and declarations to manage fisheries. 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.

Achievement of policy objectives

The Bill will achieve its objectives by amending the Fisheries Act to clarify, strengthen and provide the necessary powers, functions and fisheries management tools to implement the Strategy and combat black marketing in Queensland.

The Bill will achieve its objective to *modernise the objectives of the Fisheries Act and recognise key stakeholder groups* by:

- amending section 3 (Particular purposes of the Act) to emphasise the principles of the Strategy, recognise charter fishing as a distinct fishing sector and formally acknowledge the importance of fisheries resources to Aboriginal and Torres Strait Islander communities in Queensland; and providing that access to fisheries resources is allocated in a way that maximises the potential economic social and cultural benefits to the community when balancing the principles of the ecologically sustainable development and giving the relative emphasis in the circumstances to achieve the main purpose of the Fisheries Act;
- amending section 3A (How particular purposes of the Fisheries Act are to be primarily achieved) to include charter fishing as a sector to be managed under the Act in relation to fisheries resources; and provide for greater transparency and responsiveness in relation to the access to fisheries resources with ongoing consultation with all the fishing sectors and the community in general.

The Bill will achieve its objective of *clarifying the role of the Minister and chief executive in the management of the State's fisheries* by:

- clearly outlining the roles of the Minister responsible for fisheries through a new framework in Part 2 that provides for the approval, amendment and departure from a harvest strategy by the Minister;
- clarifying that the Minister will make reallocation decisions to reallocate access to fisheries resources between fishing sectors in a fishery where it is necessary to maximise the potential economic, social and cultural benefits to the community;
- providing that the chief executive will prepare, amend and implement harvest strategies and regularly assess the performance of a fishery against the harvest strategy for that fishery;
- providing that the chief executive may make an authorising declaration in the event of an unforeseeable event such as a natural disaster or accident which prevents an authority holder to access their entitlement in a fishery. An authorising declaration authorises a holder of an authority to do something that they are not ordinarily authorised to do, for example, use a particular type of apparatus or access another area to provide them with continuous access to fisheries resources to offset the decrease in entitlement;
- omitting the former functions of the chief executive that are now redundant or inconsistent or with the Strategy.

The Bill will achieve its objective to *strengthen compliance powers and penalties to address serious fisheries offences such as black marketing* by:

- providing for a new offence to engage in trafficking activity for priority species to combat black marketing;
- providing for vessel tracking requirements;
- provide the court with additional sentencing options for persistent offenders such as prohibition orders and particular investigative costs on application by the chief executive;
- introducing new provisions to overcome evidential difficulties with the prosecution of offences for failing to comply with the information requirement so it is not necessary for prosecution prove that a person failed to comply with the information requirement at a particular time, provided that it can be shown that the documents or information are incomplete in a material particular and the incompleteness has or can only have resulted from the contravention of the information requirement during that period;
- providing additional entry powers for inspectors to access premises used for trade or commerce of fisheries resources; entry into vehicles that are used in connection with a fishing activity or which contains fish that is being transported for sale or another commercial purpose and entry to other places when authorised by a monitoring warrant when an inspector has reasonable suspicion a place may have commercial fish (fish taken or possessed in trade or commerce);
- providing a power to detain for a police officer assisting an inspector to exercise a power authorised by a warrant issued under the Fisheries Act if there is a risk to the safety of the inspector or police officer;
- providing for the use of body-worn cameras while exercising a compliance power under part 8 of the Fisheries Act;
- providing an exemption from liability for inspectors and other persons following a direction or otherwise carrying out their statutory duties;
- establishing a 20 metre exclusion zone around Shark Control Program equipment to improve public safety.

The Bill will achieve its objective to *reduce complexity and remove redundant provisions* by:

- clarifying when compensation is payable under the Act as a result of the Bill removing provisions relating to management plans and adopting the harvest strategy approach;
- 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;
- clarifying the management of non-indigenous fisheries resources.

Alternative ways of achieving policy objectives

Amending legislation is the only way to achieve the policy objectives. Fisheries resources are common property resources managed by the Queensland Government on behalf of the broader community. In order to ensure these resources do not become over-exploited through unsustainable fishing practices, legislation defines acceptable and unacceptable actions. Practices considered unacceptable are prohibited and may be subject to penalties. The regulatory approach used to manage Queensland's fisheries is consistent with that used in other jurisdictions both nationally and internationally and remains the most appropriate means of ensuring the long-term sustainability of Queensland's fisheries resources.

Extensive public consultation has been undertaken through the Green Paper and more recently through discussion papers released on the proposed changes to the Fisheries Act and reforms in Queensland's crab, trawl and east coast inshore fisheries. Prior to the Green Paper the previous government also commissioned MRAG Asia Pacific in 2014 to review the fisheries management framework in Queensland. The Bill is largely consistent with the approaches recommended by MRAG Asia Pacific.

Non-legislative options would not be able to effectively regulate fisheries and are not considered an appropriate or effective option for sustainable management of the common property resource.

Maintaining the status quo by not amending the Fisheries Act will not achieve the policy objectives to implement to give effect to the principles and commitments in the Strategy. It won't meet the Government's election commitment which is to "Review the *Fisheries Act 1994* and *Fisheries Regulation 2008* to create a legislative framework for recreational and commercial fishers that is contemporary, simple to understand reflective of community expectations".

Estimated cost for government implementation

To modernise our fisheries management approaches does require funding to develop effective harvest strategies and establish new supporting systems and processes. The Queensland Government approved an additional \$20.883 million over three years to support implementation of the Strategy. This funding is allocated primarily towards additional monitoring, enhanced compliance (including 20 new compliance officers and subsidising the cost of vessel tracking) and improved engagement with stakeholders.

These changes to the Fisheries Act outlined in this Bill will not impact upon recreational, commercial, charter or indigenous fisher's access to Queensland's fisheries. The changes largely provide for better processes for future fisheries management rather than making any actual changes to existing access arrangements. Persons convicted of repeated offences or black marketing will face stiffer penalties. However, this will not affect the majority of people fishing in Queensland who do not engage in illegal sales of fisheries products.

No new fees are included in the Bill. The Strategy commits to "developing a resourcing strategy based on a beneficiary pays system by 2020 to fund the management of the State's fisheries in the longer term". This will be subject to separate Government consideration in 2019-20.

Consistency with fundamental legislative principles

The Bill has been drafted to have sufficient regard to fundamental legislative principles (FLPs) as defined in section 4 of the *Legislative Standards Act 1992* (LSA). Potential breaches of FLPs are addressed below.

Legislation should have sufficient regard to rights and liberties of individuals –LSA s4(2)(a)

Does the legislation have sufficient regard to the rights and liberties of individuals, including unduly restricting ordinary activity without sufficient justification- LSA s4(2)(a)

Privacy and confidentiality rights

Clause 19 – New section 173E (Chief executive may obtain criminal history)

New section 173E provides that the chief executive may request the commissioner of police for a written report on a person's criminal history 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.

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 enter the 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.

Extended powers of inspectors

Functions of Inspectors

Clause 5 – Amendment of section 140A (Functions of inspectors)

New section 140A extends the functions of inspectors to include the monitoring and enforcement of the *Biosecurity Act 2014* (Biosecurity Act) to the extent it relates to fisheries resources or fish habitats,

Restricted matter under the Biosecurity Act which is a fish, may be detected by inspectors while performing their duties under the Fisheries Act. Allowing an inspector to exercise enforcement powers for a biosecurity purpose related to the Fisheries Act removes the need for additional administrative appointments and allows for compliance activities to be coordinated. This amendment to facilitate the administration of both the Fisheries Act and the Biosecurity Act is justified to capture the activities inspectors and ensure effective compliance across both statutes.

Clause 7 – Amendment of section 145 (Entry to places) and Clause 8 – New section 145A (Entry of premises used for trade or commerce)

Section 145 extends an inspector's entry powers under section 145 premises used for trade or commerce provided the entry is made in accordance with new section 145A. Section 145A

allows an inspector to enter premises used for trade or commerce to determine whether the Fisheries Act is being complied with. The potential FLP issue is whether the legislation unduly restricts ordinary activity without sufficient justification, including the right to conduct business without interference.

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.

Entry Power into vehicles

Clause 9 – New section 146 (Boarding of boats and entry of vehicles)

Section 146 provides an inspector with an additional power to enter a vehicle to determine whether the Fisheries Act is being complied with. The potential FLP issue is that the extended power of entry into vehicles creates a right of entry without the consent of the owner or by warrant. This approach 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.

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 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.

Electronic documents

The Bill includes new provisions to keep pace with developments in technology, including electronic record keeping and service of documents and providing inspectors the necessary powers to access the electronic documents.

Clause 4 – New section 139A (References to document includes reference to reproductions from electronic document)

Section 139A provides that a reference to a document in Part 8 includes a reference to an image or writing produced or capable of being produced from an electronic document.

The inclusion of electronic documents is justified, as it reflects developments in technology, including electronic record keeping and service of documents and providing inspectors the necessary powers to access the electronic documents. The power to require an electronic document already exists and is consistent with other contemporary legislation in Queensland.

Clause 14 – Amendment of section 150 (Inspector’s general powers for places, boats and vehicles)

Section 150 provides that after an inspector enters a place, boards a boat, or enters a vehicle, the inspector may at the time of entry produce an image or writing from an electronic document; or take a thing containing an electronic document or an article or device reasonably capable of producing an electronic document to another place to produce an image or writing. The inspector must produce the image or writing from an electronic document and return the thing, article or device as soon as practicable.

This approach is justified, as it extends the power to take extracts or copies to electronic documents under the Fisheries Act to keep pace with developments in technology. It is also consistent with other contemporary legislation, such the *Biosecurity Act 2014* and the *Fair Trading Inspectors Act 2014*.

Clause 21 – New section 181A (Use of body-worn cameras)

Section 181A allows inspectors to use a body-worn camera to record images or sounds while exercising their powers under Part 8 of the Fisheries Act (Enforcement). The potential FLP issue is that the use of body-worn camera breaches the principle that legislation should have sufficient regard to the rights and liberties of individuals, including the right to privacy and confidentiality.

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. Under section 43 of the *Invasion of Privacy Act 1971*, it is lawful to record a private conversation providing the person using the recording device is a party to that conversation. 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.

Warrants

Clause 11 – Amendment of section 148A (Monitoring warrants for abalone)

Section 148A extends the application of a monitoring warrant for abalone to be included as commercial fish. Commercial fish are fish that are taken or possessed in trade or commerce. The introduction of the *Food Productions Safety Act 2000* implemented a Safe Food accreditation scheme under which commercial fishers who hold appropriate accreditation are permitted to sell seafood directly to the public. This has provided opportunities sale of seafood directly from boats, homes, sheds or from roadside stalls. The potential FLP issue is whether the legislation unduly restricts ordinary activity without sufficient justification, including the right to conduct business without interference.

Places such as sheds and garages may provide opportunities for opportunistic black marketing. In order to prevent these activities, monitoring warrants allow inspectors to enter a place, other than parts of places that are used for residential purposes, to check compliance of commercial fishers selling seafood. The current restrictions on obtaining a warrant for abalone apply to the monitoring warrant for commercial fish, including the magistrate being 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 – New section 148B (Monitoring warrant for marine plants or fish habitat)

New section 148B provides that an inspector may apply for a monitoring warrant to access a place other than a place or part of a place used for residential purposes. The purpose of the monitoring warrant is to gain access to a body of water to find out whether the Fisheries Act is being complied with.

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.

Generally, these warrants would apply to places where access to a body of water is restricted and there is no other reasonable access. Entry into a place is restricted to a direct reasonable route for gaining access to a body of water and does not include entry to a site or curtilage of a building or other structure used for residential purposes.

***Use of information for a purpose other than under the Act under which it was obtained—
LSA - s4(2)(a)***

Clause 23 – New section 217A (Exchange of information with prescribed government entity)

New section 217A 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 holds or has access to. The potential FLP issue is whether there is sufficient regard to the rights and liberties of a person whose information is able to be used for a purpose other than under the Fisheries Act.

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. For example, information exchanged may include compliance history from the Commonwealth Department of Environment and Energy which administers Australian Marine Parks, to assist the chief executive to determine whether to issue an authority under the Fisheries Act.

An information-sharing arrangement will also allow the collection of information from logbooks and other sources for compliance, fisheries management and research. Statistical information on fishing activity that is to be used for management and research purposes would be aggregated, meaning it would be provided in a summary form rather than identifying individuals. Under section 217B, there is an obligation on a person involved in administering of the Fisheries Act not to disclose information unless expressly provided for in section 217B(3).

Common law right to personal liberty— LSA s4(2)(a)

Clause 18 – New section 173B (Additional power of police officer executing a warrant)

New section 173B allows a police officer who is exercising inspector powers, or assisting another person 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; or accompany the police officer while the police 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.

This potential FLP issue is whether a police officer's detainment affects the common law right to personal liberty. 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.

To mitigate the risks, police officers who assist inspectors require additional powers under the Fisheries Act to enable the directions to be given. The maximum penalty, 40 penalty units, for this offence is of an appropriate level and is justified because failing to comply with a police officer's direction may put a person's safety at risk.

Legislation should not, without sufficient justification, unduly restrict ordinary activity and Consequences imposed by legislation should be proportionate and relevant to the actions to which the consequences are applied by the legislation- whether the penalties are of an appropriate level – LSA s4(2)(a)

Inspector's general powers

Clause 15 – New sections 150A -150C

- Section 150A (No tampering with marked or sealed container or thing)
- Section 150B (Requirement to comply with help requirement)
- Section 150C (Requirement to take required action)

New sections 150A – 150C are existing inspector's powers, which replicate former sections 150(2) – (5). The existing provisions have been separated into new sections consistent with contemporary drafting practices. There is no change to the offences or the maximum penalty of 200 penalty units imposed for these offences.

Section 150B makes it an offence for a person to contravene a requirement to help an inspector under subsection (1). While self-incrimination is a reasonable excuse under subsection (2), it does not apply if the document is an authority or other document required to be held or kept under the Fisheries Act. It is considered appropriate to abrogate the privilege of self-incrimination in this instance when the person is specifically required under the Fisheries Act to keep the documents.

The offences and penalties in the sections 150A – 150C are consistent with other contemporary legislation such as the *Biosecurity Act 2014* and the *Fair Trading Inspectors Act 2014*.

Clause 18 – New section 173A (Power relating to fishing apparatus in water)

New section 173A provides inspectors the power to require persons to haul, pull, draw, reel in or otherwise recover or bring onto a boat or land a fishing apparatus from the water. This may be seen to affect the rights and liberties of individuals, including restricting the ordinary activity of commercial fishers e.g. requesting a fisher to winch up trawl gear for inspection.

This power is justified to detect unlawful activity and protect marine animals or bycatch at risk of interaction with fishing apparatus, for example if a turtle excluder or bycatch reduction device is not operational. To ensure compliance, fishing apparatus must be able to be inspected at sea and in use. Unlawful practices of fishers with submerged apparatus may severely impact the future sustainability of fisheries and risk export accreditations for commercial fisheries.

The proposed power will have sufficient regard to the rights and liberties of individuals by limiting the use of this power only to instances where the inspector has reasonable suspicion of an offence. The maximum penalty, 200 penalty units, is of an appropriate level to reflect the seriousness of non-compliance.

Clause 31 – New section 31 (Exclusion zone)

New section 31 provides an offence, prohibiting a person bringing a boat or being in water in an exclusion zone for shark control apparatus without a reasonable excuse. The offence is justified because shark control apparatus poses a safety risk to persons that are handling or in

close proximity to the apparatus, which may comprise of large mesh nets and drumlines with baited hooks, and may cause a person to become entangled and drown. The locations of the State's shark control apparatus are available on the department's website to assist persons comply with the exclusion zone.

This offence does not apply to a person in control of a boat that transits through the exclusion zone for shark control apparatus without stopping. The maximum penalty, 200 penalty units, is of an appropriate level and justified as it is consistent with the maximum penalty provided for in section s130B of the *Transport Operations (Marine Safety) Act 1994* of a 'Failure to comply with declaration of exclusion zone by general manager'.

Clause 54 – New section 89C (Offence to engage in trafficking activity for priority fish)

New section 89C provides for a new offence to engage in trafficking activity for a priority fish. Priority species are defined in new section 89A to include high-value species such as mud crab, shark fin, coral trout, spanish mackerel and tropical rock lobster.

The new offence is justified because of the extent of illegal marketing of fish. The Australian Government commissioned the Australian Institute of Criminology (AIC) to prepare a report on organised crime in the fishing industry, as being one of the main factors affecting the viability of licensed commercial fishing. Black marketing ranges from recreational fishers selling fish at hotels and clubs to major quota evasion by commercial fishers for high value species. Trafficking undermines the viability of commercial fishing, and potentially leads to unsustainable fishing practices, which are detrimental to fisheries resources and fisheries habitats.

A maximum penalty of 3000 penalty units or 3 years imprisonment applies for contravention of section 89C(a) which involves a person in trade or commerce, doing a thing or a combination of a thing listed in section 89B(1)(c) that involves a commercial quantity of fish. The maximum penalty is otherwise 1000 penalty units if the commercial quantity has been divided and a person engages in a trafficking activity with a part of a commercial quantity.

The maximum penalties are justified, as they are consistent with the other serious offences under the Fisheries Act, including section 122 (Protection of fisheries resources in declared fish habitat areas), which has a 3000 penalty unit maximum. The maximum penalties are also in the range of maximum penalties and values imposed in other Australian fisheries jurisdictions. The 3 year prison sentence is on the lower end in comparison to penalties for trafficking in other Australian jurisdictions, which range from 2 to 10 years. The maximum penalty, 3000 penalty units, is towards the higher end in comparison, with other Australian jurisdictions ranging from 400 – 5000 penalty units.

Comparable maximum penalties, including terms of imprisonment, are provided for in Queensland in relation to wildlife or environmental offences under the *Nature Conservation Act 1992*, the *Marine Parks Act 2004*, *Biosecurity Act 2014*, and the *Environmental Protection Act 1994*. The offence for trafficking in high value fisheries resources has a higher penalty than other offences under the Fisheries Act to align with the national approach and act as a deterrent for black marketing in Queensland.

Clause 50 – New section 79 (Quota offences)

New section 79 is equivalent to the previous section 79 (quota offence). The term ‘quota’ is replaced with ‘quota entitlement’ to reflect the terminology adopted in the new harvest strategy approach.

The maximum penalty, 2000 penalty units, remains the same. 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 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.

Clause 51 – New section 80 (Vessel tracking)

Section 80(2) imposes an obligation on an authority holder or a person acting under an authority to ensure each boat used under the authority has vessel tracking equipment installed and working properly, as prescribed. This may be a potential FLP issue as it restricts ordinary activity, including the right to conduct business without interference. The approach is justified because vessel tracking is of vital importance to the future management of our fisheries. Vessel tracking will ensure commercial fishing does not pose a threat to the Great Barrier Reef and provide community confidence that fishing does not pose an unacceptable risk to sustainability.

The vessel tracking obligations in section 80 replaces the current practice of imposing a vessel tracking by a condition of authority and is a more effective approach to implementing this requirements.

Section 80(3) also makes it an offence to interfere with the operation of approved vessel tracking equipment installed on a relevant boat and it justified to ensure that there is a high level of compliance to ensure that vessel tracking remains an effective fisheries management tool.

The maximum penalties of 1000 penalty units, for the offences are of an appropriate level and reflect the severity of the offences. Vessel tracking forms an integral part of the contemporary approach fisheries management and compliance. The penalty is consistent with other penalties under the Fisheries Act for hindering enforcement of the Act, such as obstruction of an inspector under section 182 that has a maximum penalty of 1000 penalty units.

Clause 20 – New section 174 (Restraining orders against persistent offenders)

New section 174 provides an offence for a person contravening a court order made specifically to stop a person from committing further serious offences under the Fisheries Act. The offence is justified, because there needs to be a deterrent to a person with a history of convictions who continues to offend.

The penalty for the offence, 3000 penalty units or 2 years imprisonment, is of an appropriate level and necessary to discourage a person from repeat offending. The penalty is comparable to other penalties with terms of imprisonment for wildlife or environmental offences under the

Nature Conservation Act 1992, the Marine Parks Act 2004, Planning Act 2016 and the Biosecurity Act 2014.

Clause 23 – New section 217B (Confidentiality of information)

New section 217B provides an offence for disclosing confidential information obtained in the administration or performance of a function under the Fisheries Act. The offence is justified because it is essential to safeguard a person's confidential information including in circumstances where information is received from other prescribed government entities.

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*.

Clause 63 – New part 10 (Review of decisions)

New part 10 provides for a new scheme for the review of administrative decisions in line with contemporary Queensland legislation. The Fisheries Act does not currently provide for any internal review of decisions by the chief executive before an application is made for external review to Queensland Civil and Administrative Tribunal (QCAT). Additionally, 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. Any existing review rights for decisions made before the commencement of the new scheme have been preserved by clause 66 (new sections 277 and 278).

Legislation does not reverse the onus of proof in criminal proceedings without adequate justification – LSA s4(3)(d)

- ***Clause 15- New offences***
 - Section 150B(1) (Requirement to comply with help requirement)
 - Section 150C (Requirement to take required action)
- ***Clause 18- New offences***
 - Section 173A(4) (Power relating to fishing apparatus in water)
 - Section 173B(3) (Additional power of police officer executing a warrant)
- ***Clause 31- New offence***
 - Section 31 (Exclusion zone)

The offence provisions in Sections 150B(1), 150C, 173A(4), 173B(3) and 31 provide that a person does not commit an offence if the person has a reasonable excuse. The potential FLP issue is whether the legislation reverses the onus of proof in criminal proceedings without adequate justification.

Under these sections, the person would bear the onus of proof to show that they had a reasonable excuse. The reversal of the onus of proof is justified because the offences involve

matters which would be within the defendant's knowledge and/or on which evidence would be available to them.

Clause 62– Amendment of section 184(4) (Evidentiary provisions)

New section 184(4)(a)(vi) 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. The potential FLP issue is whether the legislation reverses the onus of proof in criminal proceedings without adequate justification.

This approach is justified because it can facilitate court proceedings because the certificate may be put in evidence rather than needing to call witnesses.

Legislation does not confer immunity from proceeding or prosecution without adequate justification – LSA Section 4(3)(h)

Clause 22 – New section 216A (Immunity from prosecution)

New section 216A provides protection from prosecution for an inspector acting under the direction of the Minister or the chief executive, or in the exercise of a power or performance of a function under the Fisheries Act. For example, an inspector as part of their compliance functions may need to lift crab pots or nets to check whether they are marked correctly which could be considered an offence of interfering with fishing apparatus; or the chief executive may order an inspector under section 108, to take and remove or destroy non-indigenous fisheries resources at a place where non-indigenous fisheries resources are being farmed if there is a risk of escape of those non-indigenous resources which may be considered by the occupier of the place as a criminal act.

The potential FLP issue is that legislation should not confer immunity from proceeding or prosecution without adequate 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.

Legislation should have sufficient regard to the institution of Parliament – LSA s4(2)(b)

Legislation should only allow the delegation of legislative power only in appropriate cases and to appropriate persons – LSA s4(4)(a)

Clause 31 – New sections Part 2 Functions of Minister

- 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 provides the Minister responsible for fisheries with a power to approve harvest strategies, direct departure from harvest strategies and make reallocation decisions. The potential FLP issue is that these provisions effectively allow the Minister to control the way the Act is applied.

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.

Legislation should sufficiently subject the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly- LSA s4(4)(b)

Clause 31 – New sections Part 2 Functions of Minister

- 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 provides the Minister with a power to approve harvest strategies, direct departure from harvest strategies and make reallocation decisions. The potential FLP issue is that the decisions made under these provisions are not subject to parliamentary scrutiny and disallowance.

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 not be subject to Parliamentary scrutiny, they would be subject to internal and external review.

Further, a public notice of the decision is required, including publication on the department's website within 14 days. This will not only ensure transparency in management of our fisheries but will also ensure that these decisions are available for public scrutiny and can be raised in the Parliament.

Clause 33 – New sections Part 5, Division 1 subdivision 3 'Other declarations'

- Section 38 (Urgent declaration)
- Section 39 (Authorising declaration)

The chief executive may, where urgent action is needed, make an urgent declaration or authorising declaration. Under new section 42, an urgent declaration or authorising declaration may prevail over a regulation or a declaration to the extent of an inconsistency. This raises a potential FLP issue because it allows for the chief executive to exercise legislative power that includes overriding regulations and other declarations that have been subject to the scrutiny of Parliament.

Urgent declarations

The urgent declaration making power under section 38 was previously provided for in section 46 (Urgent fisheries declarations). The new provisions have been updated in line with current administrative practice, such as notification requirements and omitting references to management plans. Urgent declarations may be made where there is a significant threat to fisheries resources, a fish habitat or another emergency. Section 38 extends the chief executive's power to make an urgent declaration where there is a significant threat caused by fishing to a thing that is not fish. For example, there may be an urgent need to temporarily close an area to fishing where there is an unacceptable risk of interaction with a mammal such as

dugongs and dolphins. In this case, it is desirable and consistent with the purposes of the Fisheries Act to temporarily prohibit the use of certain apparatus to reduce the risk of accidental death of a mammal.

Authorising declarations

Authorising declarations provide the ability to provide access to fisheries resources where urgent action is required to offset the impact of an event or change in entitlement. This may be as a result of a natural disaster, accident or other unforeseeable event. Authorising declarations may allow fishers to access fisheries resources or fishing areas that were not already authorised. For example, if an area is closed as a result of a chemical spill, commercial fishers may not have access to the fisheries resources due to the conditions of their entitlement for access. An authorising declaration may allow commercial fishers to temporarily access fisheries resources outside of the fishery's normal area of operation or use alternative apparatus in a fishery to support ongoing viability of fishing businesses and supply of seafood where there are no sustainability risks.

Urgent and authorising declarations are a necessary administrative function of effective fisheries management and are justified, as the chief executive must first be satisfied that an authorising declaration does not create an unacceptable risk to fisheries resources or fish habitat and is consistent with the principles of ecologically sustainable development. Both urgent and authorising declarations are temporary, expiring three months after they are made (unless it is contrary to the regulation in which case it is 21 days), and must be repealed earlier if the chief executive is satisfied that the reason for which the declaration was made no longer exists. In addition, these declarations are subject to sections 49, 50 and 51 of the *Statutory Instruments Act 1992* and are subject to Parliamentary scrutiny and disallowance.

Clause 61 – New section 125A (Codes of practice)

Section 125A provides for the chief executive to make a code of practice for a declared fish habitat. The potential FLP issue is that this section creates a power for the chief executive to make codes of practice that are not subject to the scrutiny of Parliament.

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.

Legislation should only authorise the amendment of an Act only by another Act - LSA s4(4)(c)

Clause 34 – New section 49 (Authorities that may be issued)

Section 49 allows for a regulation to prescribe additional types of authorities that the chief executive may issue and for particular authorities that may or may not be issued for a stated activity or thing. 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.

Priority species and commercial quantities

Clause 54 – New sections 89 (Definitions for subdivision) and 89A (Meaning of priority fish)

New section 89B defines ‘commercial quantity’ to mean a quantity of fish which must be at least five times the recreational possession limit or weight equivalent prescribed by regulation. New section 89 allows for a regulation to prescribe other species or groups of species as ‘priority species’.

The potential FLP issue is that because these matters are prescribed by legislation, section 89 may be considered to be Henry VIII provisions because the Fisheries Act may potentially be amended expressly or impliedly by the prescription of new priority species and changes in the commercial quantity of priority fish by regulation.

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. The Minister must also be satisfied that prompt action is required to declare the species or group to be priority fish to prevent contraventions or further contraventions of the Fisheries Act. Further, the commercial quantity of a priority fish must not be less than five times the recreational possession limit prescribed in regulation.

The threshold amount for the commercial quantity could also be changed by amending the recreational possession limit through the regulated fish declaration. If it was reduced due to sustainability concerns, then the commercial quantity should also be reduced to reflect this and deter black market activity for the species. Any prescribed change to the commercial quantity will be subject to parliamentary review and disallowance.

Non-indigenous fisheries resources and plants

- **Clause 55 - New section 90 (Non-indigenous fisheries resources not to be released)**
- **Clause 56 - New section 92 (Duty of person who unlawfully takes or possesses non-indigenous plants)**

New section 90 is similar to the former section that makes it an offence for a person to unlawfully release non-indigenous resources into Queensland waters unless under subsection (2) they are non-indigenous fisheries prescribed by regulation.

New section 92 provides for an equivalent offence for a person who takes or processes a non-indigenous plant not to immediately destroy it unless under subsection (2) it is a non-indigenous plant prescribed by regulation.

The potential FLP issue is that because the offence provisions do not apply to non-indigenous resources and plants that are prescribed by legislation, sections 90(2) and 92(2) may be considered to be Henry VIII provisions because the Fisheries Act may be potentially amended expressly or impliedly to exclude non-indigenous resources and plants from the application of the offence.

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. For example, the release of a non-indigenous fish such as saratoga for approved stocking of Somerset Dam under a permit. In this circumstance, there is also a recreational possession limit and size limit for this species, meaning that if a person takes any more than one saratoga or an undersized saratoga, they must return fish, or release non-indigenous fisheries resources, to the water. Similarly, there may be circumstances in which it may be appropriate for an individual to take or possess a non-indigenous plant.

Regulation making power

Clause 65 – New section 223 (Regulation-making power)

Section 223(2) provides for a wide regulation-making power for the management of matters such a fisher or a fish habitat. 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 objective 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.

In the Scrutiny of Legislation Committee’s report on ‘the use of “Henry VIII Clauses” in Queensland Legislation’ of January 1997, the Committee notes (at page 23 of the report) that it is appropriate that Parliament consider a general principle and that matters of detail may be left to subordinate legislation. The regulation-making power does not create any new powers and any regulation will be subject to the scrutiny and disallowance of the Legislative Assembly.

Legislation should provide for the compulsory acquisition of property only with fair compensation — LSA s4(3)(i)

Clause 31 – New section 27 (Reallocation decision)

New section 27 provides that the Minister may make a decision to reallocate access to fisheries resources in a fishery from one fishing sector to another. A potential FLP issue is whether the Minister’s reallocation decision may result in an adjustment of property rights that may be akin to compulsory acquisition of property. The provision is justified because the existing entitlements to compensation are to remain available to a commercial fishing authority holder that is affected under the new provisions in part 5 division 2.

Individual’s rights and liberties- FLP not listed in the LSA

Abrogation of established statute law rights and liberties must be justified

Clause 19 – New part 8 division 4A ‘Obtaining criminal history reports’

To enable a person convicted of an offence to rehabilitate themselves, the *Criminal Law (Rehabilitation of Offenders) Act 1986* provides that only recorded convictions for offences are to be included in a person’s criminal history, and if the person remains conviction-free for a prescribed period, then disclosure of the conviction is not permitted.

The Office of the Queensland Parliamentary Counsel’s “Fundamental Legislative Principles: the OQPC Notebook” (Notebook) discusses the erosion of the policy of the *Criminal Law (Rehabilitation of Offenders) Act 1986* on pages 106-108. An example of how that policy is eroded is when legislation authorises access to the criminal history (including spent convictions) of persons, reasonably suspected of being present, to help an authorised person

decide whether unaccompanied entry to the premises would create an unacceptable level of risk to the authorised person's safety.

New sections 173C to 173E authorises access to criminal history, including a brief description of the circumstances of a conviction mentioned in the criminal history, about a person without requiring the person's consent to the report being given. A potential FLP issue is whether the access to a person's criminal history adversely affect rights and liberties previously granted under legislation.

The access to a person's criminal history in section 173 is justified because:

- it does not include unrecorded convictions of spent convictions that are prohibited under the *Criminal Law (Rehabilitation of Offenders) Act 1986*;
- the purpose of a criminal history report is to help an inspector decide whether entry of a place, boat or vehicle would create an unacceptable level of risk to an inspector's safety;
- the provisions in new division 4A are sufficiently limited so as to prevent 'blanket' criminal histories being obtained for any or all persons at a place; and
- the Bill provides for safeguards of confidentiality and the destruction of criminal history reports.

Consultation

There was significant public consultation following the release of the Green Paper in 2016, with more than 11,000 submissions received and 230 face to face meetings that the department held. 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.

The discussion paper outlining the proposed changes to the Fisheries Act was released for consultation with stakeholders for 9 weeks between the 16th of March and 20 May 2018, 240 submissions were received in response to the discussion paper with the feedback received indicating that there is widespread support among the majority of stakeholders for the proposed changes to the Fisheries Act.

Prior to the Green Paper, the previous government also commissioned consulting firm MRAG Asia Pacific in 2014 to review the fisheries management framework in Queensland. The Strategy and the Bill is largely consistent with the approaches recommended by MRAG Asia Pacific.

Consistency with legislation of other jurisdictions

The proposed changes to the Fisheries Act and supporting legislation will bring Queensland's fisheries management framework into line with the current best practice principles and the approaches employed by most other Australian fisheries management jurisdictions.

The proposed changes will not affect the majority of commercial or recreational fishers. The stronger compliance powers and penalties are primarily focused around black-marketing with

the majority of stakeholders supportive of this approach. The powers are also consistent with other Queensland legislation (e.g. land and vegetation management, biosecurity etc.) and will bring Queensland into line with other Australian fisheries jurisdictions.

The proposed Bill will give effect to the Sustainable Fisheries Strategy and deliver a more responsive, evidence-based approach to fisheries management. It is also the first step in meeting the Government's election commitment to "Review the *Fisheries Act 1994* and *Fisheries Regulation 2008*" to create a legislative framework for recreational and commercial fishers that is contemporary, simple to understand and reflective of community expectations". A review of the *Fisheries Regulation 2008* is scheduled for 2019 and will include amendments to give effect to other fisheries reforms as part of the Strategy.

Notes on Provisions

Part 1 Preliminary

Clause 1 states that when enacted, the short title will be the *Fisheries (Sustainable Fisheries Strategy) Amendment Act 2018*.

Clause 2 provides that part 2, division 3; part 3, division 1; section 68(2); and schedule 1 will commence on a date to be fixed by proclamation.

Part 2 Amendment of Fisheries Act 1994

Division 1 Preliminary

Clause 3 provides that part 2 amend the *Fisheries Act 1994*. A note directs the reader to amendments in Schedule 1 which provide for minor and consequential amendments.

Division 2 Amendments commencing on assent

Clause 4 inserts a new division 1A in part 8 (Enforcement). In the new division, new section 139A provides references to a document in part 8 include images or writing produced from an electronic document or are capable of being produced from an electronic document.

Clause 5 amends section 140A to provide inspectors appointed under the Fisheries Act with additional monitoring and compliance functions with the *Biosecurity Act 2014* (Biosecurity Act). These functions only extend to monitoring and compliance of fisheries resources or fish habitats. They negate the need for inspectors to be appointed under and exercise a power under the Biosecurity Act for fisheries related functions. Similarly, it provides for monitoring and enforcing compliance with the *Planning Act 2006* in relation to fisheries development.

Section 140A(b) will facilitate the administration of the Fisheries Act by helping the chief executive perform the chief executive's functions under the Fisheries Act. These may include inspecting or monitoring contractor activities and performing any marine mammal release duties relating to the shark control program.

Clause 6 amends section 144 by inserting new subsections (4) and (5) which clarify that an inspector does not exercise a power in relation to another person when entering a public place open to the public under section 145(1)(b). Therefore an inspector is not required to produce the inspector's identity card for inspection in these situations. For example, attending a hotel to observe the sale of seafood would not require identification.

New section 144(5) provides that a failure to comply with section 144 does not affect the validity of the exercise of power under this Act.

Clause 7 amends section 145 by inserting a new section 145(1)(f) to provide an entry power for an inspector to enter premises used for trade or commerce subject to new section 145A. Section 145A prescribes the circumstances in which an inspector may enter premises used for trade and commerce.

Clause 8 inserts new section 145A to provide that an inspector may enter premises used for trade or commerce, to find out whether the Fisheries Act is being complied with if the trade or commerce relates to fisheries resources and:

- the occupier of the premises is present; or
- another person who is conducting activities for the trade and commerce is present; or
- the premises are otherwise open for entry.

Section 145A(1)(c) provides that entry is also subject to the inspector recording images and/or sounds through the use of a body-worn camera that is working or an alternative device has been activated for the period of the entry. The requirement serves an evidence capture tool and as a deterrent to the obstruction of an inspector performing the functions under the Fisheries Act.

Section 145A(2) provides that at least 20 days prior to entering the premises, the inspector must give the occupier notice of the entry unless the notice would defeat the purpose of the entry.

Clause 9 replaces section 146 to make provision for additional inspector powers relating to the boarding a boat or entry of a vehicle. Under section 146(1) an inspector may board a boat or enter a vehicle if:

- it is with the consent of the owner or person in control of the boat or vehicle;
- permitted by a warrant; or
- entry is made under subsections (2), (3) or (5).

Subsection (2) provides that an inspector may board a boat to find out whether the Fisheries Act is being complied with.

Subsection (3) provides that an inspector may, for the purposes of finding out if the Fisheries Act is being complied with, enter a vehicle if the inspector reasonably believes:

- it is being, or has just been used in connection with a fishing activity; or
- it contains fish that is being transported for sale or for another commercial purpose.

The additional powers are required to uncover shore-based unlawful activities including inspecting vehicles on beaches and at boat ramps for the storage of fisheries resources taken in excess of possession limits or regulated fish; and vehicles used to transport fish from remote landing locations carrying under-reported or not reported fish to areas where it can be black-marketed.

However, subsection (4) clarifies under subsection (3) an inspector may not enter a vehicle if it is a caravan or other vehicle used, or reasonably expected to be used mainly for residential purposes including for temporary periods.

Subsection (5) provides that an inspector may board a boat or enter a vehicle if the inspector reasonably suspects it has been used in the commission of an offence under the Fisheries Act; or the boat, vehicle or a thing in or on the boat or vehicle may provide evidence of an offence against the Fisheries Act.

Subsection (6) defines 'fishing activity' for the purposes of section 146.

Clause 9 also inserts new section 146A which applies to inspectors that board a boat or enter a vehicle under part 8, division 1.

Section 146A(2) provides that an inspector must take all reasonable steps to notify the owner or person in control of the boat or vehicle that the inspector intends to board the boat or enter the vehicle that is unattended.

Section 146A(3) provides that an inspector requires either consent from the owner or person in control, or a warrant to enter a secured part of an unattended boat or vehicle.

Sections 146A(4) and (5) provides that if an inspector may decide to exercise the powers under Part 8 (Enforcement) from alongside or outside of a boat or vehicle if it is more appropriate and if the inspector decides to do so, the inspector is taken to have boarded the boat or entered the vehicle for the exercises of the powers.

Clause 10 extends the power of inspectors to apply for warrants under section 148 to include the inspection of vehicles under a warrant in sections 148(1) and 148(4)(b). Section 148(5)(a) includes that an inspector other than the inspector applied for the warrant may enter a place, board the boat or enter the vehicle under the warrant.

Clause 11 amends section 148A by:

- clause 11(1) amending section 148A to enable monitoring warrants that have been available for abalone to be sought for commercial fish. Monitoring warrants allow an inspector to enter a place if it is necessary to find out if the Fisheries Act is being complied with in relation to abalone and now abalone;
- clause 11(2) amending section 148(4)(b) to provide that inspector other than the inspector who has applied for a warrant under the Fisheries Act may execute the warrant. For example for operational purposes where the location in which the warrant is going to be executed is in a different area of the State to which the warrant is issued;
- clause 11(3) inserting a new subsection (6) to define the term ‘commercial fish’ to mean fish taken or possessed in trade or commerce.

Clause 12 inserts new section 148B that provides that an inspector may apply to a magistrate for a monitoring warrant if the inspector is satisfied in relation to the following:

- place is part of a direct reasonable route for gaining access to a body of water; and
- the body of water includes marine plants or fish habitat or has been or is about to be used for a fishing activity; or
- access to the body of water is required to find out if the Fisheries Act is being complied with in relation to marine plants, fish habitat or fishing activity.

Section 148B does not authorise entry to a place or part of a place used exclusively as a person’s exclusive residence.

Section 148B(2) requires the application must be sworn and the grounds for the warrant to be stated.

Section 148B(3) provides that the magistrate may refuse to consider the application until the inspector gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

Section 148B(4) provides that the magistrate may issue a warrant for the place if the magistrate is satisfied it is reasonably necessary to access the body of water to find out if the Fisheries Act

is being complied with in relation to marine plants, fish habitat or fishing activity; and the place is part of a direct reasonable route to gain access to the body of water.

Section 148B(5) provides the matters the warrant must state.

Section 148B(6) defines the term ‘fishing activity’ used in section 148B to mean taking or possessing or using fishing resources; or possessing or using apparatus or aquaculture furniture.

Clause 13 omits section 149 and replaces it with a new sections 149, 149A and 149B.

New section 149 makes provision for the application for a warrant under sections 148, 148A and 148B to be made by videoconferencing or other electronic communication if the inspector considers it necessary because of urgent circumstances or other special circumstances including the inspector’s remote location.

New section 149A provides the additional procedures for an application made by electronic communication.

New section 149B provides that a warrant is not invalidated by a defect in the warrant or in compliance with division 1A of part 8 unless the defect affects the substance of the warrant in a material particular. Subsection (2) defines warrant to include a duplicate warrant mentioned in section 149A(3).

Clause 14 amends section 150 by:

- clause 14(1) inserting a new section 150(1)(fa) to allow an inspector to produce an image or writing at the place, in the boat or in the vehicle from an electronic document, or to the extent it is not practicable, take a thing containing an electronic document to another place to produce an image or writing;
- clause 14(2) updating references in subsections 150(1)(h) and (i) and (8) by omitting all of the references ‘to g’ and replacing them with ‘to h’ as a consequence of new paragraph (fa) inserted by clause 14(1);
- clause 14(3) updating the references in subsections 150(1)(j) and (9) by omitting all of the references ‘to (8)’ and replacing them with ‘(5)’. This is a consequence of the omission of subsections by clause 14(4);
- clause 14(4) renumbering section 150(1)(fa) to (j) as section 150(1)(g) to (k) as a consequence of new paragraph (fa) inserted by clause 14(1);
- clause 14(5) omitting sections 150(2) to (5). These provisions are replaced with equivalent provisions by clause 15;
- clause 14(6) inserting a new subsection (2) to provide that if an inspector has taken a thing, article or device for producing an image or writing from an electronic document, the inspector produce the image or writing from the document and return the it to the place, boat or vehicle as soon as practicable.
- clause 14(7) updating references in subsections (6) and (7) by omitting ‘subsection (1)(i)’ and replacing it with ‘subsection (1)(j)’. This is as a consequence of the new paragraph (fa) inserted by clause 14(1);
- clause 14(8) renumbering sections 150(6) to (9) as section 150(3) to (6) as a result of sections 150(2) to (5) omitted by clause 14(4).

Clause 15 inserts new provisions sections 150A to 150C as equivalent provisions to sections 150(2) to (5) which are omitted by clause 14(4).

New section 150A makes it an offence for a person to unlawfully break, remove or change a mark or seal on a container or other thing placed by an inspector under section 150(1)(c). A maximum penalty of 200 penalty units applies for contravention.

New section 150B makes it an offence to contravene a requirement to give the inspector reasonable help unless the person has a reasonable excuse not to comply with it. A maximum penalty of 200 penalty units applies to the contravention.

Section 150B(2) provides that it is a reasonable excuse for an individual not to comply with a requirement to help by answering a question or producing a document, if complying might tend to incriminate the individual. However subsection (3) provides that subsection (2) does not apply if an authority or other document is required to be kept by the defendant under the Fisheries Act.

Section 150C makes it an offence not to comply with a requirement made by an inspector under section 150(1)(j) to take action in relation to a boat or vehicle unless they have a reasonable excuse not to. A maximum penalty of 200 penalty units applies for contravention.

Clause 16 amends the appeal provisions in section 165 by:

- clause 16(1) inserting new subsection (2A) to provide that a person may not appeal if the fisheries resources are returned to the wild under section 159(2). This allows an inspector to return live fisheries resources such as fish or crabs that the inspector has seized and believes have been unlawfully taken back into the water which is appropriate for the sustainability of a fishery;
- clause 16(2) amending section 165(4) by replacing the reference ‘subsection (3)(b)’ with ‘subsection (4)(b)’;
- clause 16(3) renumbering sections 165(2A) to (5) as 165(3) to (6) as a consequence of the new subsection (2A) inserted by clause 16(1).

Clause 17 amends section 173 by:

- clause 17(1) amending subsection (1) by inserting a new paragraph (c). Paragraph (c) provides that an inspector may require a person to produce for inspection a document that is a clear written reproduction of the stored or recorded document if it a document required to be kept by the person under the Fisheries Act; and it is stored by means of a device;
- clause 17(2) inserting a new subsection (6) to provide that a requirement by an inspector to produce an electronic document for inspection requires the making available or production a clear written reproduction of the electronic document.

Clause 18 inserts new sections 173A and 173B in division 4 of Part 8 of the Fisheries Act.

New section 173A applies where an inspector suspects on reasonable grounds that an offence under the Fisheries Act has or is being committed by a person in relation to fishing apparatus that is in the water. Subsection (2) provides that the inspector may require the person to bring the fishing apparatus onto the boat or land by various means. The fishing apparatus includes turtle excluders and bycatch reduction devices used at sea and need to be inspected to identify unlawful modifications that has a potential to affect export accreditations for the whole industry.

Section 173A(3) provides that when making a requirement, the inspector must give the person an offence warning for the requirement. That is, the inspector must warn the person that without reasonable excuse, it is an offence not to comply with the requirement made under subsection (2).

Section 173A(4) makes it an offence to contravene the requirement unless the person has a reasonable excuse not to comply with it. A maximum penalty of 200 penalty units applies for a contravention.

Clause 18 also inserts new section 173B which applies to a police officer who is an inspector, or is helping a person who is an inspector who is not a police officer, to exercise powers under a warrant issued under the Fisheries Act. Subsection (2) provides that if the police officer reasonably believes that a person's presence while powers are being executed under a warrant places the safety of an inspector or a police officer at risk, the police officer may direct the person:

- to remain in a stated position at the place or boat or in the vehicle where the powers are being exercised or leave the boat where the powers are being exercised; or
- to accompany the police officer while the police officer or an inspector exercises the powers; or
- to leave the place, boat or vehicle where the powers are being exercised and not return to the place, boat or vehicle while the police officer or an inspector is exercising the powers.

Section 173B(3) provides that when the police officer gives a direction the police officer must give the person an offence warning for not complying with the direction, unless the person has a reasonable excuse.

Section 173B(4) provides that a direction given under section 173B is taken to be given under the *Police Powers and Responsibilities Act 2000* for the purposes of section 791 (Offence to contravene direction or requirement of police officer) of that Act.

Clause 19 inserts a new part 8 division 4A 'Obtaining criminal history reports'.

New section 173C states the purpose of new division 4A which is to help an inspector to decide whether the inspector's entry of a place, boat or vehicle would create an unacceptable level of risk to the inspector's safety.

New section 173D defines the terms 'criminal history' and 'spent conviction' used in the new division 4A.

New section 173E makes provision for the chief executive to obtain a criminal history report if an inspector suspects, on reasonable grounds that a person who may be present at a place, boat or vehicle when the inspector enters, may create an unacceptable level of risk to the inspector's safety.

Section 173E(2) provides that the chief executive may ask the commissioner of the police service for a written report about the criminal history of the person that includes a brief description of the circumstances of a conviction mentioned in the criminal history. Under subsection (3) the commissioner of police must comply with the request.

However, subsection (4) provides that the duty to comply applies only to information in the commissioner's possession or to which the commissioner has access.

Section 173E(5) provides that the chief executive must examine the report and identify as far as reasonably practicable to do so, offences involving conduct, behaviour or circumstances that indicate the person's presence at the place, boat or vehicle may endanger the inspector's safety. For example, obstructing the course of justice or investigation, use of a weapon or violence against a person.

Under section 173E(6) the chief executive may give the inspector information in the report about the offences identified under subsection (5).

Section 173E(7) provides that 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.

Clause 20 omits section 174 and replaces it with a new section 174 to provide a court additional sentencing orders. Subsection (1) states that section 174 applies if a person has been convicted of a serious fisheries offence, and the person has been convicted of the same or different serious fisheries offence at least 2 other times in the previous 5 years.

Section 174(2) makes provision for the court to make an order against a person the court is convicting to stop them from committing further serious offences. The court may make an order:

- to prohibit the person from carrying out an activity related to fishing. For example to prohibit fishing or possession of fishing apparatus;
- to prohibit the person from carrying out the activity related to fishing except in particular circumstances. For example, prohibiting person using a boat unless it is installed with vessel tracking equipment that is working and the details have been given to the chief executive;
- any other order the court considers appropriate.

Section 174(3) provides that it is an offence to contravene a court order made under section 174. A maximum penalty of 3000 penalty units or 2 years if provided for contravention.

Clause 20 also inserts new section 174A to provide for the recovery of particular investigation costs where:

- the court convicts a person for an offence under the Fisheries Act; and
- the chief executive has applied for a court order for the person to pay particular costs incurred by the State in the investigation of the offence; and
- the court finds the costs that were reasonably incurred were not and were not reasonably have been expected to be incurred for the investigation.

Section 174A(2) provides that the court may order the person to pay the State amount of the costs if it is satisfied it would be just to make the order in the circumstances of the particular case.

Section 174A(3) provides that the court must when deciding whether to make the order have regard to:

- the extent to which the person's conduct during the investigation contributed to the incurred costs; and
- whether there was wholly or partly a commercial purpose for the offence; and
- any other relevant matter.

Section 174A(4) states that the section 174A does not limit the court's powers under the *Penalties and Sentences Act 1992* or another law.

Section 174A(5) and (6) provides that the application and order made under section 174A is a judgement in the court's civil jurisdiction with any issue is to be decided on the balance of probabilities.

Clause 21 inserts new section 181A after section 181 to make provision for the use of body-worn cameras.

Section 181A provides that an inspector may lawfully use a body-worn camera to record images or sounds while the inspector is exercising a power under Part 8 of the Fisheries Act. Subsection (2) provides that use includes use that is inadvertent or unexpected; or incidental to use while exercising the inspector's power. The requirement to wear body-worn cameras serves as an evidence capture tool and as a deterrent to the obstruction of inspectors performing their functions under the Fisheries Act.

Section 181A(3) states that subsection (1) does not affect an ability the inspector has at common law or under fisheries legislation or another Act to record images or sounds.

Section 181A(4) clarifies that for the purposes of section 43(2)(d) of the *Invasion of Privacy Act 1971*, subsection (1) is a provision authorising the use by an inspector of a listening device.

Clause 22 inserts section 216A after section 216 to provide an immunity from prosecution for an inspector.

Section 216(1) provides the circumstances under which an inspector will not liable for prosecution for an offence under the Fisheries Act for something the inspector has done or omitted to do under the direction of the Minister or chief executive or exercising powers under this Act.

Also under subsection(2) provides a person acting under the direction of the Minister, the chief executive or an inspector will not be liable to be prosecuted for an offence under the Fisheries Act.

Clause 23 omits section 217A and inserts new sections 217A and 217B.

New section 217A provides that the chief executive may enter into an information-sharing arrangement with a prescribed government entity (for example an agreement with the New South Wales government department) for the purpose of sharing or exchanging information the chief executive or the prescribed government entity holds or has access to. For example, the information exchanged may include compliance history from the Department of

Environment and Energy which administer Australian Marine Parks, to assist the chief executive to determine whether to issue an authority under the Fisheries Act.

An information-sharing arrangement may also allow the collection of information from logbooks and other sources for sustainable fisheries management and research purposes.

Section 217A(2) provides the information-sharing arrangement may only relate to information that helps the chief executive or an inspector perform functions under the Fisheries Act; or the prescribed government entity or an employee of the entity to perform functions under their legislation.

Section 217A(3) provides that under the information sharing arrangement, despite another Act or law under an information-sharing arrangement, the chief executive and the prescribed government entity are authorised to ask and receive information held by each other or to which they have access to, and disclose information to each other.

However, under section 217A(4) the chief executive or the prescribed government entity may only use the information for the purpose it was given under the arrangement.

Section 217A(5) defines the term ‘prescribed government entity’ to mean the chief executive of a department; or an entity of or representing another State or the Commonwealth.

Clause 23 replaces the former section 217A with more contemporary confidentiality provisions in new section 217B to extend the prohibition to disclose confidential information to other officers and employees of the Department other than the chief executive.

New section 217B(1) applies to a person who is or has been:

- (i) the chief executive;
- (ii) an inspector;
- (iii) a public service employee;
- (iv) a local government or prescribed entity;
- (v) an officer or employee of a local government or prescribed entity;
- (vi) an officer or employee of the Commonwealth or another State;
- (vii) a person to whom a function or power under the Fisheries Act has been subdelegated to by a person mentioned in subparagraphs (iv), (v) or (vi).

And who has obtained confidential information about another person in administering, or performing functions or exercising powers under the Fisheries Act.

Section 217B(2) provides that it is an offence for a person to directly or indirectly disclose the confidential information unless it is:

- in the performance of a function or exercise of a power under the Fisheries Act; or
- with the consent of the person to whom the information relates;
- otherwise required or permitted by law.

A maximum penalty of 50 penalty units applies for a contravention.

Section 217B(3) defines ‘confidential information’ and ‘prescribed entity’.

Confidential information means any information that:

- could identify an individual, or

- is about a person's current financial position or background; or
- would likely to damage the commercial activities of a person to whom the information relates.

However, confidential information does not include information that is publicly available; or statistical or other information that could not reasonably be expected to result in the identification of the individual to whom it relates.

Prescribed entity means a local government or an entity prescribed by regulation provided for by new section 222(1)(b) or the former section 21(1)(c).

Clause 24 inserts after section 221A new sections 222 and 222A.

New section 222 allows for the delegation of functions by the chief executive. Under subsection (1) provides the chief executive may delegate the chief executive's functions under the Fisheries Act to

- an appropriately qualified public service employee; or
- an officer or employee of a local government or prescribed authority; or
- an officer or employee of the Commonwealth or another State.

Section 222(2) provides that an officer or employee of an entity may subdelegate a function to another appropriately qualified officer or employee of the same entity.

Section 222(3) defines 'functions' to include powers.

The new section 222A make provision for the chief executive or an inspector to give a notice or other document electronically to an electronic address such as an email address or mobile number provided the holder of the authority has given the address to the chief executive of the purpose of communicating with the holder; and the person has not asked the chief executive to discontinue the use of the address.

Clause 25 inserts new part 12, division 11

Division 11 Transitional provisions for *Fisheries (Sustainable Fisheries Strategy) Amendment Act 2018*

Subdivision 1 Preliminary

New section 266 defines terms used in the new division 11, part 12.

Subdivision 2 Provisions for amendments commencing on assent.

New section 267 provides that new section 165(3) does not apply to fisheries resources seized under the Fisheries Act before commencement. New section 165(3) does not allow the appeal of fisheries resources that are returned to the wild by an inspector under section 159(2).

New section 268(1) states section 268 applies if before the commencement the chief executive has applied to the District Court for an order under the former section 174, and the application has not been decided. Under subsection (2) the District Court may decide the application under

the former section 174. The former section 174 will continue to apply in relation to the application as if the amendment Act has not been enacted.

New section 269 provides under subsection (1) that a court may make an order under new section 174 to stop the person from committing further serious offences only if the serious fisheries offence for which the court convicted the person, was committed after the commencement.

However, under subsection (2) the Court may consider any previous serious fisheries offences person committed by the person before the commencement for the purposes of applying new section 174(1)(b). That is the person has been convicted of the same or different serious fisheries offence at least 2 other times in the previous 5 years.

New section 270 provides that section 174A which provides for the recovery of investigation costs applies only to a person convicted of an offence against the Fisheries Act committed after the commencement.

Clause 26 amends the schedule by clause 26(1) and (2) to omit and replace the definition of ‘serious fisheries offence’ and to define the new terms used in the Bill.

Clause 26(3) clarifies that waterway includes a ‘drainage feature’. The former definition of ‘waterway’ in the Fisheries Act excludes ‘drainage feature’ by the definition of ‘watercourse’ in schedule 4 of the *Water Act 2000*. However, the inclusion of ‘drainage feature’ in the definition of waterway in the Fisheries Act will clarify that waterway barriers constructed on drainage features are subject to the approvals under the *Planning Act 2016*.

Division 3 Amendments commencing by proclamation

Clause 27 amends section 3 which sets out the main purpose of the Act by amending section 3(2) to provide that, regard must be had to ensuring access to the fisheries resources is allocated in a way that maximises the potential economic, social and cultural benefits to the community when balancing the principles of the ecologically sustainable development and giving the relative emphasis in the circumstances to achieve the main purpose of the Fisheries Act.

Clause 28 amends section 3A by omitting and replacing section 3A(1) and inserting a new section 3A(1A).

New section 3A(1) includes charter fishing as another fishing sector to be managed along with the other fishing sectors (commercial, recreational and indigenous) to achieve the main purpose of the Act in relation to the use, conservation and enhancement of fisheries resources.

New section 3A(1A) provides that the main purpose of the Act to provide for the use, conservation and enhancement of the community’s fisheries resources and fish habitats is to be achieved as far as practicable in consultation with all fishers and the community and by using a transparent and responsive approach to the management of access to fisheries resources. This is in recognition of the policy objectives of the Bill and to reflect the Sustainable Fisheries Strategy 2017-2027.

Clause 28(2) renumbers sections 3A(1A) to (3) as section 3A(2) to (4). This is a consequence of inserting the new section 3A(1A).

Clause 29 amends section 4 by replacing ‘the schedule’ with ‘schedule 1’ in line with current drafting practices.

Clause 30 omits section 9. Former section 9 defined ‘quota’ broadly in terms of a restriction on activities that are to do with fishing such as the maximum quantity of fish, the period of time that particular fish may be taken, and the area. The Bill adopts a new approach that relates to an entitlement rather than a restriction with new terms such as ‘quota entitlement under an authority’ and ‘total quota entitlement for a fishery or part of a fishery’.

Clause 31 omits Parts 2 and 3 and replaces them with a new Parts 2 and 3.

Part 2 Functions of Minister

Division 1 Harvest strategies

Subdivision 1 Preliminary

New section 15 defines terms used in part 2, division 1.

Subdivision 2 Harvest strategy

New section 16 outlines the process for the approval of a harvest strategy by the Minister.

Section 16 (1) states that the Minister may approve a harvest strategy prepared by the chief executive if the Minister is satisfied that it is consistent with the main purpose of the Act and it complies with the requirements prescribed under subdivision 2.

Section 16 (2) requires that the Minister must as soon as practicable but within 3 months after the chief executive has given the Minister a harvest strategy, either approve, approve subject to changes or decide not to approve the harvest strategy.

Section 16 (3) provides for the publication of a copy of an approved harvest strategy including a harvest strategy with stated changes on the department’s website.

Section 16 (4) provides that the Minister within 14 days give public notice of a decision made under subsection (2). Public notice is defined in new section 15.

Section 16 (5) prescribes the content of the public notice.

New section 17 makes provision for the chief executive to prepare a harvest strategy complies with the requirements in new section 19 for a fishery.

Section 17 (2) provides that the chief executive must also comply with the with the approved harvest strategy policy in new section 15 when preparing a draft harvest strategy.

Section 17(3) provides that the chief executive must give public notice of the draft harvest strategy and outlines its content, when and where it can be inspected and the acceptance of submissions.

New section 18 makes provision for the preparation and submission of a final harvest strategy.

Section 18(1) states the section applies if the chief executive has prepares a draft harvest strategy for a fishery in compliance with section 17.

Section 18(2) provides that the chief executive must prepare the final harvest strategy which includes the contents outlines in section 19.

Section 18(3) provides that the chief executive must prepare the final harvest strategy, having regard to every submission made about the draft harvest strategy.

Section 18(4) provides that the chief executive must give the Minister the final harvest strategy and a written report about the submissions made about the draft harvest strategy including any changes because of a submission; and any other consultation undertaken by the chief executive in preparing the draft or final harvest strategy.

New section 19 prescribes the content of a draft and final harvest strategy. Subsection (1) lists the matters that must be included:

- the fishery it applies to, and
- the ecological, economic and social objectives for the fishery; and
- how access to fisheries resources has been allocated for each fishing sector and to another purpose or group of persons; and
- the framework for the management of the fishery. The framework includes:
 - the targets and limits for maintaining fisheries resources at levels that achieve the ecological, economic and social objectives for the fishery;
 - the triggers for when action must be taken under the Fisheries Act to ensure the ecological, economic and social objectives for the fishery are being achieved;
 - how the performance of the fishery is measured against the targets, limits and trigger is to be measured; and
 - the action must be taken under the Fisheries Act to ensure the ecological, economic and social objectives for the fishery are being achieved.

Section 19(2) states that the draft and final harvest strategy may also state when the performance of the fishery must be assessed against the harvest strategy under new section 25; or when the harvest strategy must be reviewed to assess whether it is achieving the main purpose of the Fisheries Act under section 26. The draft and final harvest strategy may also provide for other matters for achieving the main purpose of the Fisheries Act.

Subdivision 3 Amendment of harvest strategy

New section 20 makes provision for an amendment of a harvest strategy.

Section 20(1) provides that the Minister may approve an amendment of an approved harvest strategy if the Minister is satisfied that the amendment is consistent with the main purpose of the Act and it complies with the requirements prescribed under subdivision 3.

Section 20(2) provides that the Minister must as soon as practicable but within 3 months after the chief executive has given the Minister an amendment of an approved harvest strategy approve it, approve it subject to stated changes, or not approve it.

Section 20(3) provides for the publication on the department's website of copies of the approved amendment and the approved harvest strategy that includes the approved amendment.

Section 20(4) provides that the Minister must give public notice of the decision within 14 days of making a decision under subsection (2).

Section 20(5) prescribes the contents of the public notice.

New section 21 prescribes the requirements for the preparation of a draft amendment to an approved harvest strategy and the giving of public notice. A draft amendment must comply with the approved harvest strategy policy and the chief executive must give public notice of the draft amendment and outlines its content, when and where it can be inspected and the acceptance of submissions. Subsection (3) provides that the requirements do not comply if the amendment is to correct an error or make a change that is not substantial.

New section 22 makes provision for the preparation and submission of the final amendment of an approved harvest strategy. Subsection (1) states that section 22 applies if the chief executive prepares an amendment of a harvest strategy in accordance with the requirements prescribed in new section 21.

Sections 22(2) and (3) provides that the chief executive may prepare a final amendment of the amendment of a harvest strategy by having regard to each submission made about the draft amendment within the period stated in the public notice.

Section 22(4) provides that the chief executive must give the Minister the final amendment; a written report about the submissions including any changes made to the draft amendment resulting from any of the submissions; and any other consultation undertaken by the chief executive in preparing the draft or final amendment.

Subdivision 4 Implementation of harvest strategy

New section 23 provides that the chief executive or another person involved in the administration of the Act must not make a decision or do another thing under this Act that is inconsistent with an approved harvest strategy. However, subsection (2) provides that it does not apply to a person acting under a Ministerial direction to depart from a harvest strategy under section 24.

New section 24 provides that the Minister may direct the chief executive or another person involved in the administration of the act to make a decision or do another thing under the Fisheries Act that is inconsistent with an approved harvest strategy provided:

- the chief executive or the other person is authorised to make the decision or do the thing under the Act; and
- it is consistent with the main purpose of the Act.

Sections 24(2) and (3) provides that the chief executive or other person must comply with the direction which remains in force for 3 months after it is given.

Sections 24(4) and (5) requires that the Minister must give public notice of the direction within 14 days after the direction is given and the lists the content of the public notice.

Subdivision 5 Reviews relating to harvest strategy

New sections 25 (1)-(3) requires the chief executive to assess the performance of a fishery against the approved harvest strategy for the fishery at the time stated in the harvest strategy, or annually if no time is stated in the harvest strategy; and give the Minister a written report about the assessment within 21 day of completing it.

Section 25(4) and (5) provides that the report must state the action that the chief executive considers should be taken to address any concerns about the performance of the fishery against the harvest strategy. The chief executive must take that action within 21 days of giving the Minister the report unless the Minister directs otherwise.

New section 26 requires that the chief executive must review each approved harvest strategy to assess whether it is achieving the purposes of the Act in an appropriate and effective way. Subsection (2) provides that the review must be conducted at the times states in the harvest strategy, or if the harvest strategy has not stated any times, then within 5 years after the harvest strategy was approved by the Minister, or the last time the harvest strategy was reviewed.

Sections 26(3) and (4) provide that the chief executive must give the Minister a written report about the review within 21 days of completing it. The report should state the action the chief executive considers necessary to address any concerns including for example, whether the harvest strategy should be amended and how it should be amended and whether the Minister should issue a direction under to make a decision or do another thing under the Fisheries Act that is inconsistent the harvest strategy under section 24; or make a reallocation decision to reallocate access to fisheries resources under Division 2.

Division 2 Resource reallocation

New section 27 provides that if the Minister is satisfied that a reallocation in a fishery is necessary to maximise the potential economic, social and cultural benefits to the community., the Minister may make a decision to reallocate access to fisheries resources for a fishery. The Minister's reallocation decision may be on the application by a person including the chief executive of a department or on the Minister's own initiative.

The Minister must have regard to and advice of the persons prescribed in subsection (3) when the Minister is making a reallocation decision.

Section 27(4) provides that the chief executive must give public notice of a reallocation decision within 14 days after the Minister has made the decision. Subsection (5) prescribes the content of the public notice.

Section 27(6) defines the term "reallocation" as used in new section 27.

New section 28 provides that the chief executive must take all necessary steps to give effect to a reallocation decision including for example the preparation of and submission of an amendment of an approved harvest strategy to the Minister for approval; or making or amending a declaration. Subsection (2) provides that the chief executive may advise the Minister and obtain approval for alternative ways to give effect to the Minister's decision.

Division 3 Ministerial advisory bodies

New section 29 provides that the Minister may establish an advisory committee or other body to help the Minister in the administration of the Act.

Part 3 Shark control program

New section 30(1) provides that the chief executive must establish and manage the shark control program for the coastal waters of Queensland if the chief executive considers it is necessary or desirable. Subsection provides that this is despite the main purpose of the Act under section 3(1). Section 3(1) provides for the use, conservation and enhancement of the fisheries resources and fish habitats in a way that seeks to apply and balance the principles of ecologically sustainable development and promote ecologically sustainable development. Section 30(3) clarifies that it is not a function of the chief executive to establish or manage the shark control program other than as provided for in subsection (1).

Shark control apparatus pose a safety risk to persons that are handling or in close proximity to the apparatus which may comprise of large mesh nets and drumlines with baited hooks that may cause a person to become entangled and drown. Shark control apparatus should only be handled by an authorised, trained person to reduce the risk as much as possible to those in contact with it. There have been regular reported instances of people using the buoys as turning markers whilst paddling surf skis, kayaks and boards. Boats also have frequently come into contact with the apparatus.

New section 31(1) provides it is an offence for a person without reasonable excuse be in the exclusion zone for shark control apparatus. A maximum penalty of 200 penalty units applies for contravention. A note states that the locations of shark control apparatus are available on the department's website.

However, subsections (2) and (3) provide that subsection (1) does not apply if a person:

- is authorised in writing by the chief executive or an inspector to be in the exclusion zone to:
 - install, repair or maintain apparatus; or
 - free animals, person or things caught in the apparatus;
- on a boat that transits through the exclusion zone without stopping in a straight line or in the most appropriate or direct route, taking into account of the waters.

Section 31(4) defines the terms 'exclusion zone' and 'shark control apparatus' used in section 31.

Clause 32 renumbers section 23 as section 32 as a consequence of the Bill restructuring the Fisheries Act.

Clause 33 omits part 5, divisions 1 to 2 and inserts new part 5, divisions 1, 1A and 2.

Division 1 Chief executive declarations

Subdivision 1 Fisheries declarations

New section 33 provides that the chief executive may make the fisheries declarations under this subdivision including a fisheries declaration to protect things that are not fish. For example a fisheries declaration to regulate taking or possessing fish in an area to protect dugong.

Subsection (3) states that the fisheries declaration made under this subdivision is subordinate legislation.

New section 34 prescribes that a regulated fisheries declaration may regulate the taking, purchase, sale, possession or use of particular fish. Section 34 includes examples of what may be regulated under a regulated fish declaration.

New section 35 prescribes that a regulated waters declaration may regulate in particular waters any or all of the following - the taking or possessing of fish, engaging in particular activities or using or possessing a boat, aquaculture furniture, fishing apparatus or anything else. Subsection (2) provides that a regulated waters declaration does not apply to an activity authorised by a development approval unless the declaration expressly states that it applies to the activity.

New section 36 makes provision for the chief executive to make a regulated fishing apparatus declaration to regulate the purchase, sale, possession or use of particular fishing apparatus; and a regulated fishing method declaration may regulate how fish may be taken.

Subdivision 2 Quota declarations

New section 37(1) provides that the chief executive may make a quota declaration about the total quota entitlement for a fishery or part of a fishery. Total quota entitlement is defined in schedule 1.

Section 37(2) provides that a regulation may specify the proportion of the total quota entitlement allocated for each quota authority for a fishery or part of a fishery.

Section 37(3) provides that the total quota entitlement and the quota entitlement for a quota authority, may be by reference to an amount of fish or effort, or another matter prescribed by regulation.

Section 37(4) states that a quota declaration is subordinate legislation.

Subdivision 3 Other declarations

Subdivision 3 makes provision for the making of urgent declarations to deal with a significant threats or emergencies or authorising declarations to allow authority holders to do things that they are not authorised to do under the authority.

New section 38 provides that the chief executive may make a fisheries declaration or a quota declaration that is an urgent fisheries declaration if the chief executive is satisfied that urgent action is needed to meet either a significant threat to fisheries resources or fish habitat; or meet a significant threat caused by fishing to a thing that is not fish; or for another emergency.

New section 39(1) states that section 30 applies if any of the following applies:

- there has been a natural disaster, accident or other event happens;
- the chief executive makes an urgent declaration; and

the chief executive is satisfied-

- because of the event or declaration, holders of particular authorities are prevented from doing things authorised under the authorities for a temporary period to the extent that the entitlement of some fishers is significantly decreased; and
- urgent action is needed to authorise the doing of a stated thing for the temporary period to maintain continuous access to fisheries resources or to offset the decrease in entitlement; and
- authorising the doing of the stated thing for the temporary period does not create an unacceptable risk to fisheries resources or fish habitats and is consistent with the principles of ecologically sustainable development.

Section 39(2) provides the chief executive may make an authorising declaration that authorises holders of the particular authorities to do something for a stated period. The things an authorising declaration may authorise is taking of stated fish in a stated area as if authorised by an authority; or using stated fishing apparatus in a stated fishery despite a regulated fishing apparatus declaration.

New sections 40(1) and (2) provide that the chief executive makes an urgent or authorising declaration by publishing it on the department's website. The declaration must state whether it is an urgent or authorising declaration; the reasons for which the temporary declaration is made; and must be signed by the chief executive.

Section 40(3) provides that the chief executive must take all reasonable steps to ensure that the persons who may be affected by the temporary declaration are made aware of the declaration. For example, publishing the notice of the declaration or a copy of the declaration in relevant newspapers or on social media; or communicating the notice electronically including by email or SMS.

Section 40(4) states sections 49-51 of the *Statutory Instruments Act 1992* apply to temporary declarations as if it were subordinate legislation. This means that an urgent or authorising declaration must be tabled and be subject to disallowance.

New section 41(1) provides that the chief executive must repeal an urgent or authorising declaration as soon as practicable after the chief executive is satisfied the reason for making it no longer exists.

Sections 41(2) and (3) provides that an urgent or authorising declaration expires 3 months after 3 months after it is made unless it is earlier repealed, or if the declaration is inconsistent with a regulation, the declaration expires 21 days after it is made unless it is repealed earlier.

Subdivision 4 Relationships between regulations and declarations

New section 42 identifies how potential inconsistencies between declarations and other subordinate legislation are to be addressed.

Section 42(1) provides that if there is an inconsistency between a regulation and a fisheries declaration the regulation prevails to the extent of the inconsistency.

Section 42(2) provides that if there is an inconsistency between an urgent or authorising declaration and regulation or fisheries declaration, the urgent or authorising declaration prevails to the extent of the inconsistency.

Section 42(3) provides that if there is an inconsistency between an urgent fisheries declaration and an authorising declaration, the urgent declaration prevails to the extent of the inconsistency.

Section 42(4) provides that if there is an inconsistency between 2 or more urgent fisheries declarations, the more recently made urgent fisheries declaration prevails to the extent of the inconsistency.

Section 42(5) provides that if there is an inconsistency between 2 or more authorising declarations, the more recently made authorising declaration prevails to the extent of the inconsistency.

Division 2 Compensation for particular management action

Subdivision 1 Right to compensation in particular circumstances

New section 43 applies to a person if they hold an authority (other than by a temporary transfer) that is:

- a licence, a quota authority or another authority to which a quota entitlement applies; and
- authorises the taking of fish for trade or commerce in a fishery that is described as a commercial fishery by a regulation; and
- a regulation or a fisheries or quota declaration excluding an urgent declaration is amended; and
- as a result of the amendment a person's entitlement to take fisheries resources which the person had under the eligible authority before the amendment commenced, is lost or reduced.

Section 43(2) provides that a person is entitled to be paid compensation by the State for the value of the loss or reduction subject to the eligibility provisions in new section 44 and new section 48D which prohibits the payment of compensation unless another person who has a registered interest in the eligible authority has agreed in writing to the claimant.

Section 43(3) provides that compensation is only payable if a claim for compensation has been made in accordance with subdivision 2 and chief executive has decided to grant the claim.

Section 43(4) provides that section 43 does not prevent a regulation, fisheries declaration or a quota declaration providing for payment of compensation for the making, amendment or repeal of an urgent declaration.

New section 43(5) provides that for the purposes of section 43, the term 'amend' includes make and repeal in relation to a regulation, fisheries declaration or quota.

New section 44 provides that entitlement for compensation under section 43 only arises if the loss or reduction was caused by:

- a reallocation of an entitlement under the relevant amendment to take fisheries resources to a person who do not hold an authority to which section 43 applies. Section 43 provides the circumstances a person is entitled to claim compensation; or
- a restriction or prohibition of the exercise of the entitlement in an area, for the purposes of protecting a thing that is not fish.

Section 44(2) states that compensation is not payable for a loss or reduction if:

- if compensation has already been paid for the same loss or reduction to a previous or another holder of the eligible authority entitled to make an application under section 43; or
- compensation is payable for a similar loss or reduction of an entitlement under other Queensland legislation or other State or Commonwealth legislation.

New section 45(1) clarifies that a person is not entitled other than under section 43, to make a claim or be paid by the State for in connection with the making, amendment of a regulation or a fisheries declaration; or the prohibition or regulation of something that was previously permitted under a regulation or fisheries declaration. Subsection (2) provides that subsection (1) applies regardless whether the amount is claimed as compensation, reimbursement or otherwise.

Subdivision 2 Claiming and payment of compensation

New section 46 states that subdivision 2 applies for a claim for compensation under section 43.

New section 47 sets out how a claim for compensation must be made. Subsection (2) provides that a claim must be made within 6 months after the relevant amendment commences.

New section 48(1) makes provision for the chief executive by written notice to require the claimant to give the chief executive additional information or a document relating to the claim for compensation, or a statutory declaration verifying information in the claim or additional information required by the chief executive within a stated reasonable period. Subsection (2) provides that the notice may be given at any time before the claim is decided.

Section 48(3) provides that a claim is taken to be withdrawn if the claimant does not comply the requirement within the stated period in the notice; or within a longer period that the chief executive has agreed to in writing.

New sections 48A(1) and (2) provide that subject to 48B and 48C, the chief executive must within a reasonable period after the making of the claim decide whether to grant the claim and the amount of compensation payable or refuse the claim. The chief executive must give the claimant an information notice if the chief executive decides to refuse the claim or decides that the amount of compensation that is less than the amount claimed or agreed to by the claimant.

Section 48(3) provides that the chief executive must have regard to whether the chief executive may need to request further information or evidence under section 48B and the time to consider that information in determining what a reasonable period is to decide a compensation claim.

New section 48B makes provision for the chief executive to obtain further information or evidence that the chief executive considers necessary to make the decision from a person other than the claimant. Subsection (2)(a) provides that if further information or evidence has been

obtained from another person other than the claimant, the chief executive must give a claimant a written notice if the chief executive proposes to adversely act on the information or evidence.

The written notice must state what the further information or evidence is and that the claimant may respond in writing to the further information or evidence within a stated period that is reasonable after giving the notice.

Section 48B(2)(b) provides that the chief executive must not make the adverse decision unless the claimant has given the response or at the end of the period stated in the notice, or in a longer period that the chief executive has agreed in writing.

New section 48C makes provision for the amount of compensation. Subclause (1) provides that the amount of compensation decided may only be either:

- the differences between the market value of the eligible authority immediately before the commencement of the relevant amendment and immediately after if the eligible authority had continued in force after the relevant commencement; or
- if relevant amendment ends the eligible authority, then its market value immediately before the commencement; and
- the loss for no more than 3 years from the relevant commencement of probable taxable income from lost or reduced fishing entitlement that is subject of the claim.

Subsection (2) provides that when working out the market value any reduction in the value of the eligible authority caused by the making, or the prospect of the making, of the relevant amendment must be disregarded.

Subsection (3) provides that when working out lost or reduced taxable fishing income, regard can only be had to the income from fishing under the eligible authority as stated in taxation returns lodged by the claimant and relevant notices of assessment provided by the claimant either with the claim, or given to the chief executive by or for the claimant.

Sections 48C(4) and (5) provide that if the chief executive considers that the ground on which the claim is made was not the sole cause of the loss or reduction claimed and it is not a cause or causes compensation may not be claimed, the chief executive may reduce the amount to reflect the other cause or causes.

Section 48C(6) defines the terms ‘commencement’ and ‘taxable income’ for the purposes of section 48C.

New section 48D makes provision that if the claim and a compensation amount has been decided, but a person other than the claimant has a registered interest in the eligible authority, the chief executive must not pay the claimant an amount of compensation unless the other person has agreed in writing.

Clause 34 replaces section 49 with a new section 49. New section 49 (1) prescribes the authorities that the chief executive may issue. Subsection (2) provides that a regulation may provide that a particular kind of authority may or may not be issued for a stated activity of thing.

Clauses 35 to 37 amend sections 52(1) and (2), 55(2), and 58(2) to replace ‘management plan’ with ‘declaration’ as a consequence of removal of the chief executive’s function to make management plans.

Clause 38 amends section 61 by:

- clause 38(1) omitting and replacing section 61(1)(a) to provide that the chief executive may impose a condition on an authority other than a permit, a condition fixing a quota entitlement under the authority if no quota declaration is in force for the fishery or part of the fishery;
- clause 38(2) omitting section 61(1)(d) to remove the redundant example of a condition requiring the holder to install, maintain and use VMS equipment;
- clause 38(3) omitting section 61(3) and inserting new sections 61(3) and (3A) to provide that when the chief executive fixes a quota entitlement for an authority the chief executive must comply with any relevant regulation or declaration and give the holder of the authority an information notice for the decision to impose the condition;
- clause 38(4) amending section 61(9) to remove the reference to ‘management plan’;
- clause 38(5) renumbering section 61(3A) to (9) as section 61(4) to (10) as a consequence of the additional new subsection(3A) inserted by clause 38(3).

Clause 39 amends section 63 by omitting the redundant section 63(4)(e) as the Bill provides that a fishing declaration may determine quota entitlement under an authority.

Clause 40 amends section 65 by:

- clause 40(1) omitting the reference to ‘management plan’ as a consequence of the chief executive’s function to make management plans;
- clause 40(2) renumbering section 65(2) as 65(3);
- clause 40(3) inserting new section 65(2) to provide that a transfer or a purported transfer of an authority has not effect unless it is registered under section 65B.

Clause 41 amends section 65C by:

- clause 41(1) omitting and replacing section 65C(2)(a) to correct the reference to paragraph (d) to (c) and to update the example provided to reflect the new approach of quota entitlements;
- clause 41(2) omitting section 65C(2)(ca) because it is redundant as it is reflected in the example in new section 65C(2)(a).

Clause 42 amends section 65D(2)(b) to omit ‘or management plan’ and replacing it with ‘or declaration’ to reflect the new approach adopted in the Bill.

Clause 43 inserts new section 68AC after section 68AB.

Section 68AC (1) states that section 68AC applies if:

- an inspector has started an investigation under part 9, regarding an contravention of an information requirement about the quantity of fisheries resources taken under a quota entitlement for the authority by a holder of a quota; and
- the chief executive is satisfied that it is necessary to suspend a part of the quota entitlement provided for the quota authority to ensure there is no or continuing contravention of the quota entitlement.

Section 68AC(2) provides that the chief executive may by written notice to the holder of the authority suspend a part of the quota entitlement for the authority for a stated period. Subsection (3) provides that the stated period must not be more than 6 months after the day the investigation started and must end either on or before the end of the period to which the quota entitlement applies.

Section 68AC(4) provides that if the chief executive has suspended a part of the quota entitlement for the authority, the quota entitlement is taken to be the original quota entitlement less the stated part that has been suspended.

Section 68AC(5) provides that if the investigation is completed within the stated period of the quota entitlement suspension but no proceeding for an offence has not commenced against the holder of the authority:

- the chief executive must cancel the suspension by written notice to the holder of the authority; and
- the amount of the original quota entitlement is taken to be the quota entitlement for the authority.

Section 68AC(6) provides that if a proceeding for an offence against the holder of the quota authority has started the chief executive may before the quota suspension ends, suspend the stated part of the quota entitlement for a further period by written notice. The further period of suspension must end either at the end of the period to which the quota entitlement applies or when the proceeding is decided, whichever is the earliest.

Section 68AC(7) states that a notice of suspension under subsections (2) or (6) must be an information notice.

Section 68AC(8) defines 'information requirement' as an information requirement for the purposes of section 68AC(8) to mean an information requirement under division 10 or a requirement to give the chief executive under a condition of an authority.

Clause 44 amends section 68B by:

- clause 44(1) amending section 68B(2) by omitting 'and any quota relating to the authority' as a result of the insertion of a new section 68C that makes states the effect of a suspended authority;
- clause 44(2) omitting 68B(3) as a result of the insertion of a new section 68C that makes states the effect of a suspended authority;
- clause 44(3) amending section 68B(4)(b)(i) to omit and replace the criteria the court must have regard to any criteria prescribed only by regulation and not a management plan as provided formerly by paragraph (b)(i);
- clause 44(4) amending section 68B(7) by omitting reference to management plan;
- clause 44(5) renumbering section 68B(4) to (7) as 68B(3) to (6) as a consequence of the former subsection (3) being omitted by clause 43(2).

Clause 45 inserts new section 68C to clarify that if a suspended authority does not authorise the authority holder to do anything during the period of suspension other than to possess the fishing apparatus the holder is entitled to possess under sections 52(1) or (2).

Clause 46 amends section 69A by inserting a new subsection (4) to provide that if a quota entitlement for a quota authority has been suspended under section 68AC, the chief executive must not accept an application:

- for another quota authority; or
- to register a transfer of quota authority if it would give the holder an entitlement to take fisheries resources the holder would have had under the suspended quota entitlement; or
- to register a transfer of the quota authority which the suspended quota entitlement applies to another person during the period of the suspension.

Clause 47 amends section 69B by:

- clause 47(1) amending the heading of section 69B to reflect that the further fees continue to be payable despite suspension;
- clauses 47(2) to (4) amending section 69B(1) to (3) to provide the provisions apply to a quota authority to which the suspended quota entitlement applies.

Clause 48 inserts a new heading ‘Subdivision 1 Fisheries management generally’ in part 5, division 4 to separate the current offences from the new trafficking offence which will be provided for in subdivision 2. This is in keeping with contemporary drafting practices.

Clause 49 amends section 77A by:

- clause 49(1) amending section 77A(1)(d) to replace the reference to management plan with declaration. This is consistent with the replacement of the use of management plans with declarations as a management tool;
- clause 49(2) inserting a new subsection (4) to state that the meaning of ‘stowed and secured’ has the meaning given under a regulation.

Clause 50 omits section 79 and replaces it with a new section 79 to reflect the use of the new term ‘quota entitlement for a quota authority’ instead of ‘quota’. The offence and the maximum penalty remains the same.

Clause 51 inserts new section 80.

New section 80(1) states that section 79B applies to an authority and a relevant boat for the authority that is prescribed by regulation for the purposes of this section 80.

Section 80(2) provides that a holder of an authority or another person acting under an authority must ensure each relevant boat used under the authority has approved vessel tracking equipment for the boat installed and working properly during the periods prescribed by regulation. A maximum penalty of 1000 penalty units apply for contravention.

Section 80(3) makes it an offence for a person to interfere with the operation of approved vessel tracking equipment installed on a relevant boat. A maximum penalty of 1000 penalty units applies for a contravention.

Section 80(4) provides that a regulation may prescribe the requirements that apply if the approved vessel tracking equipment is malfunctioning during the period during the periods prescribed by regulation.

Section 80(5) provides that if the prescribed requirements under subsection (4) are complied with when the vessel tracking equipment is malfunctioning, the holder or person acting under the holder's authority is taken to be complying with the requirements in subsection (2)(b).

Section 80(6) defines the terms 'malfunction' and 'working properly' for the purposes of section 80.

Clause 52 amends section 82 by removing the reference to 'management plan' and replacing it with 'by regulation or declared by a declaration' consistent with the new approach for the use of declarations rather than management plans as a fishing management tool.

Clause 53 amends section 87(2) by omitting and inserting a new paragraph (b) to extend the definition of 'interfere with' for fishing apparatus by including that a person interferes with fishing apparatus if they haul, pull, draw or reel in, or otherwise bring out of water the apparatus.

Clause 54 inserts after section 88B a new part 5, division 4, subdivision 2 'Trafficking in priority fish'.

New section 89 defines the terms 'commercial quantity', 'engages in a trafficking activity' 'priority fish' and 'recreational limit' for the purposes of new subdivision 2.

New section 89A defines priority fish for the new offences in the subdivision 2 another species or group of species prescribed by regulation under subsection (2). Subsection (2) provides that prior to recommending to the Governor in Council a regulation to prescribe priority fish the Minister must be satisfied there has been a significant increase in:

- contraventions relating to the taking, possessing, using or selling of the species or group of species; or
- demand for the species or group of species that is likely to cause a significant increase in contraventions mentioned above; and
- prompt action is required to declare the species or group of species by regulation as priority fish to prevent any or further contraventions of the Fisheries Act.

New section 89B prescribes when a person engages in a trafficking activity for a priority fish.

New section 89C provides that it is an offence for a person to engage in a trafficking activity for a priority fish. A maximum penalty of 3000 penalty units or 3 years imprisonment applies for activities listed in section 89B(1)(c) in relation to commercial quantity of the priority fish; otherwise 1000 penalty units applies.

Clause 55 omits and replaces section 90 to remove the restrictions relating to bringing into Queensland and the possessing of non-indigenous fishing resources. Subsection (1) provides an offence for a person to unlawfully release or cause non-indigenous resources to be placed or released into Queensland waters. A maximum penalty of 2000 penalty units applies for a contravention. However subsection (2) provides that subsection (1) does not apply to the release or placing of non-indigenous fisheries resources in the circumstances prescribed by regulation.

Clause 56 omits and replaces section 92 to provide that it is an offence for a person who unlawfully takes or possesses a non-indigenous plant must destroy it immediately. A maximum

penalty of 2000 penalty units applies for a contravention. However it does not apply to a non-indigenous plant prescribed by regulation. Subsection defines the term ‘non-indigenous plant’ to mean a non-indigenous resource that is a plant.

Clause 57 amends the heading ‘Fisheries Research Fund’ for part 5, division 9 to remove ‘Research’ as the fund’s sole purpose is not research.

Clause 58 amends section 117 by:

- clause 58(1) amending the heading by removing “research’ from the name of the fund;
- clause 58(2) omitting and replacing section 117(1) to state that the Fisheries Fund is continued in existence to make it clear that it is not a new fund;
- clause 58(3) omitting ‘training of person’ for the expenditure of amounts out of the Fund;
- clause 58(4) omitting section 117(5)(b) to remove ‘fish habitat enhancement, rehabilitation or exchange’ as a reason for the Fund;
- clause 58(5) renumbering section 117(5)(c) as 117(5)(b) as a consequence of former paragraph (b) being omitted.

Clause 59 amends section 118 by:

- clause 59(1) amending section 118(1) by replacing ‘management plan’ with ‘declaration’ as the Bill removes the provisions relating to management plans;
- clause 59(2) amending section 118(1)(a) replacing ‘fishing, a fishery or fisheries resources’ with ‘fisheries matter’. A definition of ‘fisheries matter’ is provided by clause 59(5);
- clause 59(3) amending section 118(1)(b) replacing the examples of ‘by VMS equipment’ and ‘by recording the required information on the department’s website’ to update the examples including to reflect the new terminology ‘approved vessel tracking equipment’ and provide an additional example ‘using an electronic logbook provided by the chief executive’;
- clause 59(4) amending section 118(4) to omit ‘for subsection (4)’ as it is redundant because the maximum penalty is provided for in subsection (4);
- clause 59(5) amending section 118 by inserting a new subsection (5). Subsection (5) provides that in a proceeding for an offence against subsection (4), it is not necessary for prosecution to provide that a person failed to comply with the information requirement at a particular time if it is proved that the documents or information are incomplete and the incompleteness has or can only have resulted from the contravention of the information requirement during that period;
- clause 59(5) also inserts new subsection (6) which defines the terms ‘fisheries matter’ and ‘protected animal’ used in section 118.

Clause 60 omits section 119 as codes of practice are no longer used as management tools for matters other than for declared fish habitats. Clause 61 provides for codes of practice for fish habitats.

Clause 61 inserts new section 125A provides for the chief executive may make a code of practice for a declared fish habitat area.

Section 125A(2) a code of practice may state ways that a person may carry out activities in a declared fish habitat area to comply with the Fisheries Act.

Section 125A(3) provides that chief executive must take reasonable steps to engage in consultation with persons that the chief executive considers appropriate when preparing a code of practice. Example of persons that the chief executive may engage in consultation with are industry representatives, relevant experts and key stakeholders.

Section 125A(4) provides that the chief executive must publish a copy of each code of practice on the department's website and keep them available for inspection at the department's head office.

Clause 62 amends section 184 by:

- clause 62(1) amending section 184(4)(a) by inserting a new paragraph (vi) to provide that a certificate signed by the chief executive stating that decision or a copy of a decision made under the Planning Act is evidence of the matter;
- clause 62(2) amending section 184(5) to replace the terms 'equipment prescribed under a regulation' with 'stated equipment' and 'VMS equipment' with 'approved vessel tracking equipment' which is consistent with the new terminology used and the new approach provided in the Bill for the chief executive to approve vessel tracking equipment;
- clause 62(3) amending section 184(6) to replace the term 'VMS equipment' with 'approved vessel tracking equipment' consistent with new terminology and the new approach provided in the Bill for the chief executive approving vessel tracking equipment;
- clause 60(4) omitting the redundant definition of VMS equipment.

Clause 63 omits part 9 (Review of decisions by QCAT) and inserts new parts 9 (Interstate agreements) and 10 (Review of decisions).

Part 9 Interstate Agreements

Queensland inspectors can be currently authorised to exercise powers under other States' fisheries legislation, but this does not allow an inspector to investigate and exercise powers under the Fisheries Act in those States. For example, when a fisher fishing in Queensland crosses into other another State such as New South Wales.

New section 185 makes provision for the Minister to enter into interstate agreements to enable inspectors under the Fisheries Act to exercise the powers under the Act.

Section 185(1) provides that the Minister enter into agreements with a Minister from another State who is responsible for administering a law about fishing, fisheries resources or fish habitat to enable cooperation between the States to achieve either the objectives of the Fisheries Act or the law of the other State.

Section 185(2) states that an agreement may provide for:

- the exercise of the powers of the Fisheries Act in another State; and
- the exercise of the legislative powers of another State in Queensland; and
- an exchange of information between the Ministers about any action taken or information about fishing, fishing resources or fish habitat other than confidential information.

Section 185(3) defines ‘confidential information’ for the purposes of section 185.

New section 186 provides for the exercise of reciprocal powers.

Section 186(1) states that section 186 has effect in relation to another State if the Minister has entered into an interstate agreement under section 185 and the other State’s legislation has a corresponding or substantially corresponding section to section 186.

Section 186(2) provides that an inspector or interstate officer may exercise in Queensland or the other State exercise a power in relation to a fisheries matter under the Fisheries Act, or law that confers a power on an interstate officer. This is important where commercial fishers are licensed in both Queensland and New South Wales. For example, the fisher may reside in New South Wales but take spanner crab in Queensland waters under an authority in Queensland. The Fisheries Act provides for additional reporting requirements for spanner crab such as prior notice of landing and unload reports to record their catch and the remaining quota entitlement. The additional reporting requirements are an important compliance aspect to provide a basis for inspectors to conduct audits at landing places to ensure reported catch match to actual catch. As these landings occur in New South Wales, inspectors are unable to exercise their powers such as inspection or seizure under the Fisheries Act in the other State.

Section 186(3) provides that anything done or not done by an inspector under subsection (2)(a) is taken to be done under the Fisheries Act as well as under the other State’s law.

Section 186(4) provides that a regulation may provide for the exercise of a power under section 186.

Section 186(5) defines the terms ‘fisheries matter’ and ‘interstate officer’ for the purposes of section 186.

Part 10 Review of decisions

Division 1 Preliminary

New section 187 defines terms used in part 10.

Division 2 Internal review

This new division provides for a new scheme for the review of administrative decisions in line with contemporary Queensland legislation. The former part 9 provisions did not provide for any internal review of decisions by the chief executive before an application was made for external review to Queensland Civil and Administrative Tribunal (QCAT), and the scope of the decisions that were reviewable by QCAT was unclear because the provisions were expressed broadly.

New section 188 provides that a person who is an ‘affected person’ (for an original decision) may only apply to QCAT for a review of the decision provided that an internal review application has been made.

New section 189 provides that an affected person for an original decision may apply to the chief executive for an internal review of the decision. Subsection (2) provide that the affected

person is entitled to ask the chief executive for an information notice for the original decision if the person has not been given one. Subsection (3) provides that a person's right to apply for an internal review is not affected by not receiving an information notice from the chief executive. The person still has the ability to apply to QCAT as well for a review of the decision.

New section 190 sets out matters the application requirements.

Section 190(1) sets how to apply for review of an original decision.

Section 190(2) provides that the chief executive may extend the application period at any time.

Subsection 190(3) clarifies that the application for review does not affect the operation or implementation of the original decision.

New section 191 makes provision for the chief executive's review decision and the giving of a QCAT information notice to the applicant. The chief executive must within 20 days review the decision and confirm the original decision, or amend the original decision or substitute another decision for the original decision.

Section 191(2) provides that chief executive may take longer than 20 days to conduct the internal review provided it was agreed to by the chief executive and the affected person before the end of the 20 days.

Section 191(3) and (4) provide that the application must only be dealt with by a person who is not the same person, and is senior to the person who made the original decision. However it does not apply if the chief executive made the original decision.

Section 191(5) clarifies that if the chief executive does not give affected person a QCAT information notice within the time allowed or agreed to, it is taken the chief executive has confirmed the original decision.

Division 3 External review

New section 192 makes provision for external review by QCAT.

Section 192(1) states that section 192 applies to a person who must be given a QCAT information notice for an internal review decision.

Section 192(2) provides that the person may apply for QCAT to review the internal review decision in accordance with the QCAT Act. A note is provided that states section 22(3) of the QCAT Act enables QCAT stay the operation of the internal review decision either on application by a person or on its own initiative.

Clause 64 omits section 220 and inserts new sections 220, 220A and 220B

New section 220 provides that an offence against the Act, other than section 89C is a summary offence, and an offence against section 89C is a misdemeanour.

New section 220A provides that a summary proceeding under the *Justices Act 1886* for a summary offence must start within whichever of the following periods ends later:

- 1 year after the commission of the offence;
- 1 year after the offence comes to the complainant's knowledge, but within 2 years after the commission of the offence.

New section 220B provides for the proceedings for an indictable offence against the Fisheries Act may be taken at the election of the prosecution by way of a summary proceeding under the *Justices Act 1886* or on indictment.

However subsection (2) provides that a magistrate must not hear an indictable offence against the Fisheries Act if the defence has made application and the magistrate is satisfied that due to exception circumstances the offence should not be heard and decided summarily.

Section 220B(3) provides that if subsection (2) applies, the magistrate:

- must proceed by way of an examination of witnesses for an indictable offence; and
- the plea given at the start of the proceeding disregarded; and
- the evidence brought in the when the matter was being heard summarily, taken to be evidence in the proceeding for the committal of the person for trial or sentence; and
- the magistrate making a statement to the person as required by section 104(2)(b) of the *Justices Act 1886* before committing the person for trial or sentence.

Clause 65 amends section 223 (Regulation-making power) by:

- clause 65(1) renumbering sections 223(2)(a) to (d) and 223(2)(c) to (f) as a consequence of additional paragraphs inserted by clause 65(2);
- clause 65(2) amends section 223(2) by inserting new paragraphs (a) and (b) to provide a regulation making power to prescribe matters relating to the management of matters of a fishery, a fish habitat; declared fish habitat area, a fish way, fisheries resources, aquaculture or to provide for the protection of things that are not fish, for example the protection of dugong.

Clause 66 inserts new part 12, division 11, subdivision 3.

Subdivision 3 Provisions for amendments commencing by proclamation

Subdivision 3 provides for the savings and transitional provisions.

New section 271(1) provides for the continuation of the application of former part 5, division 1, continues to apply in relation to an amendment of a regulation or management plan happening before commencement of the amendment.

Section 271(2) provides that new part 5, division 2 applies in relation to the making, amendment or repeal of a regulation, or a fisheries declaration or a quota declaration other than an urgent declaration that happens after the commencement.

Section 271(3) defines 'management plan' for the purposes of section 271 to mean a management plan in for under section 32 or 42 that was in force before the commencement.

The new section 272 provides that an existing urgent fisheries declaration is taken to be an urgent declaration made by the chief executive under section 38.

Subsection (2) defines ‘existing emergency fisheries declaration’ to mean for section 272 as a fisheries declaration made by the chief executive under the former section 46 which was in force immediately before the commencement.

New section 273 provides that new section 68AC which allows for the suspension of a quota entitlement for investigation, only applies in relation to an investigation under part 9 starting after the commencement’.

New section 274 provides that former section 68B which provided for further fees to continue for a suspended authority, continues to apply in relation to a proceeding for an offence started as if the amendment Act had not been enacted.

New section 275 affirms that the Fisheries Research Fund continued in existence under former section 117 continues in existence as the Fisheries Fund under the amended section 117(1).

New section 276 provides that a code of practice for a declared fish habitat made under the former section 119 for a declared fish habitat, is taken to have been made under new section 125A which provides for the making of codes of practice for fish habitats.

New section 277 provides for the continuation of existing reviewable rights under the former part 9. Section 277 applies if immediately before the commencement a person could have applied to QCAT for a review of a matter and the person and at the commencement the person has not applied for the review and the period within which the person may apply for the review has not ended. Subsection (2) provides that the person may apply for the review and QCAT may hear and decide the review under former part 9.

New section 278 provides that where a review has started under former part 9 before the commencement that has not been decided, QCAT may continue to hear and decide the review under former part 9.

Clause 67 amends the schedule (Dictionary) by:

- clause 67(1) omitting redundant definitions;
- clause 67(2) inserting newly required definitions as a consequence of amendments in the Bill;
- clause 67(3) updating the reference ‘section 23’ to ‘section 32’ as a result of the relocation of the section;
- clause 67(4) amending the definition of ‘noxious substance’ by amending paragraph (b) to remove the replace the term management plan with ‘declared by a declaration’ to reflect the new approach to fisheries management provided for in the Bill;
- clause 67(5) amending the definition of ‘offence against this Act by replacing ‘section 220’ with ‘sections 220 to 220B’ to include the new provisions that were inserted by clause 64 to provide for summary and indicatable proceedings.
- clause 67(6) updating the reference ‘section 3A(3)’ with ‘section 3A(4)’ as a consequence of section 3A by clause 28;
- clause 67(7) amending the definition of ‘transfer’ to include ‘authority’ after ‘quota’ to reflect the new terminology provided for in the Bill;
- clause numbering the schedule as schedule 1.

Part 3 Amendment of other Acts

Division 1 Amendment of Public Interest Disclosure Act 2010

Clause 68 provides that part 3 division 1 of the Bill amends the *Public Interest Disclosure Act 2010*.

Schedule 2 of the *Public Interest Disclosure Act 2010* prescribes details of legislation and conditions imposed under legislation including the Fisheries Act which if breached or contravened could be subject of a public interest disclosure.

Clause 69 amends Schedule 2 (Offences or contravention endangering the environment) by:

- clause 67(1) inserting in the entry for *Fisheries Act 1994*, the first dot point, section 90 (Non-indigenous fisheries resources not to be released) which makes it unlawful for a person to release or cause non-indigenous resources to be placed or released into Queensland waters unless they are excluded by regulation;
- clause 67(2) inserting in the entry for *Fisheries Act 1994*, the third dot point, section 92 (Duty of person who unlawfully takes or possess non-indigenous plants). Section 92 provides that a person who takes or possesses a non-indigenous plant must destroy it immediately unless the non-indigenous plant is excluded by regulation.

Division 2 Amendment of Transport Operations (Marine Safety) Act 1994

Clause 70 provides that part 3 division 2 of the Bill amends the *Transport Operations (Marine Safety) Act 1994*.

Section 186A of the *Transport Operations (Marine Safety) Act 1994* allows the chief executive (transport) to ask the chief executive (fisheries) for particular information relating to navigational safety and minimising the risk of marine incidents.

Clause 71 amends section 186A by:

- clause 68(1) amending section 186A(3) by omitting ‘section 217A’ and replacing it with ‘section 217B’ as a consequence of the new confidentiality provisions inserted in the Bill;
- clause 186A(6) replacing the definition of ‘relevant information’ to reflect the new terminology ‘approved vessel tracking equipment’ used in the Bill.

Schedule 1 Minor and consequential amendments

Schedule 1 makes the following minor and consequential amendments:

- updates references to bring the Fisheries Act into consistency with current drafting standards by replacing the terms ‘under a regulation or ‘under the regulations’ with ‘by regulation’;
- removes references to management plan as a consequence of the Bill removing the provisions relating to management plans;
- amends section 65A(1) and (3) and section 65D(6)(c) to replace the term ‘temporary quota transfer’ with ‘temporary transfer of a quota authority; and
- omits redundant section 145(4) which defines ‘self-assessable development code’.

