Agriculture and Fisheries and Other Legislation Amendment Bill 2023

Explanatory Notes

Short title

The short title of the Bill is the Agriculture and Fisheries and Other Legislation Amendment Bill 2023

Policy objectives and the reasons for them

The main objectives of the Bill are to:

1. amend the *Animal Management (Cats and Dogs) Act 2008* (AMCD Act) to enhance community safety by significantly reforming control and management of dogs;
2. amend the *Fisheries Act 1994* (Fisheries Act) to:
   - introduce a framework for independent onboard monitoring (IOM) under the Fisheries Act as an outstanding element of the *Sustainable Fisheries Strategy 2017-2027* (the Strategy), and to meet key commitments made by the Queensland Government to support the Great Barrier Reef (GBR);
   - enhance the efficacy of and modernise provisions relating to fisheries enforcement; and,
   - streamline the process for amending aquaculture approvals by creating a separate approval for operational components to be processed under the Fisheries Act.
3. improve the operation of the *Biosecurity Act 2014* (Biosecurity Act) by implementing recommendations one to four, nine to eleven, and thirteen of the Biosecurity Act Review;
4. implement recommendations three and five of the *Farm Business Debt Mediation Act 2017* (FBDM Act) Review;
5. give effect to outstanding improvements to the industrial cannabis industry only achievable through amendments to the *Drugs Misuse Act 1986* (DM Act); and,
6. ensure businesses are appropriately responsible for the conduct of their employees or representatives under the *Animal Care and Protection Act 2001* (ACP Act).

Amendments to the Animal Management (Cats and Dogs) Act

On 25 June 2023, the *Strong dog laws: Safer communities* discussion paper was released for public consultation. The discussion paper sought community views on a number of proposals to promote responsible dog ownership and better protect the community from dangerous dogs, including:

- developing and implementing a comprehensive community education campaign;
- imposing a new statewide ban on restricted dog breeds;

- reviewing penalties for owners of dogs that cause harm;
- introducing a new offence that includes imprisonment as a maximum penalty for the most serious dog attacks;
- clarifying when a destruction order must be made for a regulated dog; and,
- streamlining the external review process for regulated dogs to minimise unnecessary delays experienced by councils and relevant parties.

An objective of the Bill is to amend the AMCD Act to implement the proposals.

Amendments to the Fisheries Act

Introducing independent onboard monitoring

On 28 November 2022, the International Union for Conservation of Nature (IUCN) and the United Nations Educational, Scientific and Cultural Organization (UNESCO) released the *Report on the Reactive Monitoring Mission to the Great Barrier Reef (GBR), 21-30 March 2022* (the Report). The Report recommended the GBR be inscribed on the List of World Heritage in Danger and identified 10 priority and 12 additional recommendations for urgent implementation. Impacts from the commercial fishing sector on threatened species is a key consideration for UNESCO in determining whether to list as 'in danger'. Such a listing would have major economic and reputational impacts on the Queensland tourism industry and the Queensland Government.

To address the priority and additional recommendations, the Queensland Government has six key commitments, including legislating the requirement for mandatory IOM for the remaining "N1-limited" gillnet licences, and the east coast trawl fishery, by March 2024.

If IOM is not implemented in priority Queensland commercial fisheries, WTO export approvals may be revoked. Consequently, fishing access particularly within the GBR World Heritage Area may be reviewed, resulting in reduced or restricted access and less commercial catch and supply of seafood to domestic and international markets.

Enhancing and clarifying fishing enforcement

A further objective of the Bill is to amend the Fisheries Act to enhance the efficacy of certain provisions relating to fisheries enforcement. The provisions in the Bill in this regard, generally fulfill the objectives under Item 9 of the Strategy and more specifically Action Item 9.3 to strengthen enforcement powers, particularly in relation to serious fisheries offences and black-market sales of seafood. Action Item 9.5 of the Strategy, to promote cross-decking with other enforcement organisations and establish formal arrangements to facilitate data sharing and collaborative compliance effort, is supported by the amendment to the powers of police when executing a warrant.

Aquaculture Authority

Under the present framework, the vast majority of Queensland aquaculture development is authorised under a development approval (DA) issued under planning legislation, such as the Planning Act.

The current DA process is difficult to administer for aquaculture development, planning legislation limits the conditions that can be recommended for developments and any amendments to conditions must be requested by an applicant. A more responsive process is needed to address situations like an emerging biosecurity risk where the conditions attached to a DA for an aquaculture operation need to be amended to ensure that the operation does not contribute to the biosecurity risk.

Amendments to the Biosecurity Act 2014

On 1 July 2016, the Biosecurity Act commenced which included a provision requiring that the Minister review the efficacy and efficiency of the Act within three years after its commencement. On 2 October 2018, the Honourable Mark Furner MP, then Minister for Agricultural Industry Development and Fisheries, approved the Department of Agriculture and Fisheries (DAF) undertaking a review of the Biosecurity Act on his behalf.

The review examined learnings from the initial operation of the Act, including the use of emergency powers, application of shared responsibility and risk-based decision-making functions, performance of compliance and enforcement, and utilisation of third-party accreditation. The review report included 22 recommendations for legislative amendments for consideration. A key objective of the Bill is to amend the Biosecurity Act to implement suitable recommendations from the report.

Amendments to the Farm Business Debt Mediation Act

Under section 90A of the FBDM Act, the Minister responsible for the Act was required to review the Act within five years of 1 July 2017 to decide whether its provisions remain appropriate. On 1 July 2022, the report titled *Review of Farm Business Debt Mediation Act 2017* was tabled in Parliament.

The review concluded that the FBDM Act is meeting its objectives but also recommended that consideration be given to six possible amendments to improve the operation of the Act. The Bill will implement suitable recommendations from the FBDM Act Review.

Amendments to the Drugs Misuse Act

In October 2019, a Decision Regulatory Impact Statement (RIS) which examined potential reforms to the DM Act to support the industrial cannabis industry in Queensland was finalised. It was published in February 2022 when new fees to achieve full cost recovery, as proposed in the RIS, were introduced. The reforms examined in the RIS also included enabling different types of testing of industrial cannabis and information sharing for law enforcement and

regulatory efficiency purposes, which are only achievable through Act amendments. An objective of the Bill is to implement those outstanding reforms.

Amendment to the Animal Care and Protection Act

Section 181 of the ACP Act allows a person to be held responsible for the conduct of their representatives, for example an employee, in certain circumstances. In 2023, a prosecution was dismissed by a Magistrate on the basis that section 181 only applies to offences that require proof of a mental element. This is inconsistent with the purposes of the ACP Act, as the most significant offences, including breaching a duty of care (section 17) or cruelty (section 18) are primarily strict liability offences with limited mental elements. The Bill aims to correct this inconsistency.

Other amendments

The Bill makes a number of miscellaneous amendments to Acts within the portfolio jurisdiction of the Minister for Agricultural Industry Development and Fisheries, including:

- *Agricultural Chemicals Distribution Control Act 1966* – a minor definition clarification;
- *Chemical Usage (Agricultural and Veterinary) Control Act 1988* – aligning the forfeiture provision with human rights;
- *Exhibited Animals Act 2015* – consequential changes following amendments to the *Nature Conservation (Animal) Regulation 2020* (NCA Regulation);
- *Forestry Act 1959* – minor updates to prescribed state plantation forest lists;
- *Guide, Hearing and Assistance Dogs Act 2009* – correcting an erroneous legislation reference;
- *Sugar Industry Act 1999* – aligning an offence provision with human rights; and,
- *Veterinary Surgeons Act 1936* – amending the power to require record production to include veterinary premises approval holders.

The Bill also includes minor amendments to the *Nature Conservation Act 1992* and Fisheries Act replacing outdated and offensive language in reference to First Nations peoples.

Achievement of policy objectives

Amendments to the Animal Management (Cats and Dogs) Act

<u>Banning certain breeds of dog</u>

Under the AMCD Act, ownership of restricted dogs is limited to people who have been issued a restricted dog permit in relation to an individual dog. Restricted dogs must also be desexed and are not permitted to be supplied to another person except as part of a deceased estate.

A restricted dog is defined as a dog of a breed included in schedule 1 of the *Customs (Prohibited Imports) Regulations 1956* (Cwlth) as being prohibited from being imported into Australia. The breeds currently listed are:

- Dogo Argentino
- Fila Brasileiro
- Japanese Tosa
- American pit bull terrier or pit bull terrier
- Perro de Presa Canario or Presa Canario.

While the importation of these dogs into Australia is prohibited, not all States and Territories have controls on the desexing and breeding of existing restricted breeds. The Bill amends the AMCD Act to remove the ability for new permits to be issued for restricted dogs and prohibit a person from owning the above breeds in Queensland, except under the transitional arrangements.

Chapter 4A of the Bill contains a number of amendments to the AMCD Act to give effect to the banning of restricted dog breeds. The amendments include inserting a new definition of prohibited dogs into the Act, replacing the existing definition of a restricted dog. The amendments also remove provisions that would otherwise be redundant following the ban including the power to issue permits for new restricted dogs or make restricted dog declarations.

The Bill also includes transitional provisions 'grandfathering' existing restricted dogs that have a permit in Queensland at the time of commencement of the ban. This ensures owners compliant with the existing restricted dog laws at commencement of the ban can continue to own their restricted dog for the life of the dog.

Statewide requirement for effective control

The AMCD Act imposes requirements on dogs that are restricted dogs or are declared dangerous or menacing – including that they be muzzled and under the effective control of an adult who has control of not more than one dog. However, these provisions do not address the risks from non-regulated dogs.

A number of local governments in Queensland have made local laws about the effective control of animals in public places. However, this creates inconsistency or uncertainty where the requirements for effective control differ between local government areas, and in some cases there is no effective control requirement.

The Bill aims to establish uniform effective control requirements for dogs in Queensland, combining the existing requirements applying to regulated dogs with new state-wide requirements for non-regulated dogs. This gives owners certainty of their obligations wherever they are in the State, and addresses community concerns about uncontrolled dogs.

Clause 25 of the Bill inserts a new definition of effective control for non-regulated dogs into the AMCD Act and consolidates the existing effective control requirements for regulated dogs. It also inserts a new offence where a relevant person fails to keep a dog under effective control.

The new effective control offence includes circumstances of aggravation where a dog not under effective control attacks a person or animal and takes into consideration other relevant factors. The factors include the level of harm caused, whether the dog is a regulated or prohibited dog, or if the relevant person has been convicted of a serious dog offence in the preceding five years.

The maximum penalties under the new effective control offence range from 50 penalty units (PU) to 600 PU depending on the circumstances of aggravation and level of harm, if any. The offence also includes maximum penalties of imprisonment between 6 months, where dog not under effective control attacked and caused harm to a person, and up to two years if the harm was grievous bodily harm or death. The penalties are in line with the amendments to sections 194 and 195 discussed below, where higher penalties up to and including imprisonment are introduced for existing offences related to dog attacks.

Higher penalties for dog attacks, including imprisonment

Under the AMCD Act, maximum penalties for offences related to the control of dogs or dog attacks range from 75 PU (for failure to comply with permit conditions or a compliance notice) to 300 PU (for dog attacks that result in grievous bodily harm or death to a person). The Bill amends the AMCD Act to increase penalties for key offences relating to the control and management of dogs, including dog attacks.

Clauses 11, 12, 13 and 14 increases the maximum penalties from 75 PU to 150 PU for owners failing to comply with permit conditions for restricted, or declared dangerous or menacing dogs. Clauses 15 also increases the maximum penalties from 75 PU to 150 PU for owners failing to comply with a compliance notice, or a person who owns restricted dog breed without permit after commencement of the ban.

Revised penalties for dog offences take into consideration the need for general deterrence to strengthen overall responsible dog ownership, and the need for individual deterrence to encourage people who have breached standards and requirements to do the right thing in the future.

Clause 26 of the Bill also reforms and modernises the offences in sections 194 and 195 of the AMCD Act specifically related dog attacks. Amended sections 194 and 195 expand the circumstances of aggravation listed to take into consideration other relevant factors beyond the level of harm caused. The additional factors include whether the dog is a regulated or prohibited dog, or if the relevant person has been convicted of a serious dog offence in the preceding five years.

The amendments introduce higher financial penalties for persons who fail to take reasonable steps to ensure their dog does not attack or cause fear, or where a person encourages a dog to attack or cause fear. The highest financial penalties under sections 194 and 195 respectively will be:

- failure to take reasonable steps to ensure dog does not attack, if the attack causes death or grievous bodily harm to a person – from 300 PU to 600 PU; and,
- encouraging a dog to attack, if the attack causes death or grievous bodily harm to a person – from 300 PU to 700 PU.

To reinforce the serious risk to the community of dog attacks the amendments also introduce new penalties of imprisonment under section 194 and 195 for dog attacks that causes bodily harm, grievous bodily harm, or death to a person. The new penalties of imprisonment are up to and including:

- failure to take reasonable steps to ensure dog does not attack, if the attack causes death or grievous bodily harm to a person – two years imprisonment; and,
- encouraging a dog to attack, if the attack causes death or grievous bodily harm to a person – three years imprisonment.

These amendments will ensure there is a sufficient deterrent in place for an owner who fails to take steps to ensure a dog under their control does not attack, especially if it is a repeat offender and/or regulated dog. The increased penalties will also reflect community expectations that regulated dogs present a greater risk to the community and protect community safety and higher penalties are needed for incidents involving regulated dogs.

Clarifying when to make a destruction order

Under section 127(2) of the AMCD Act, a regulated dog may be destroyed immediately if the authorised person reasonably believes the dog is dangerous and cannot be controlled by the authorised person. Alternatively, under section 127(3), it may be destroyed 3 days after it is seized if it has no registered owner or its owner or a responsible person for the dog cannot be identified.

Otherwise, section 127(4) provides that an authorised person may make a destruction order for a regulated dog and give notice to the owner or a responsible person for the dog. The dog may then be destroyed 14 days after the order is served, if no application for internal review has been made.

The destruction order process in section 127(4) is designed to allow for all other circumstances where destruction may occur outside sections 127(2) or (3), and consequently section 127(4) does not place additional criteria on the making of a destruction order like sections 127(2) or (3). While this provides necessary flexibility in deciding when to make a destruction order, the consequence is limited guidance to assist an authorised person in when to exercise that power.

Clause 18 of the Bill addresses this consequence, without unnecessarily restricting the discretion of authorised persons, by introducing a new power for the chief executive to make guidelines about matters relating to compliance with the Act. This includes guidelines to help authorised persons perform their functions under the Act, which will allow the chief executive to make guidelines to assist authorised persons in deciding when a destruction order should be made.

Clause 66 of the Bill also introduces a mandatory requirement for an authorised person to make a destruction order where the seized dog attacked a person causing grievous bodily harm or death, or attacked an animal and maimed or killed the animal. This will promote consistency in the way in which dogs that cause significant harm are dealt with under the AMCD Act.

Removing the discretion about whether or not a destruction order is made where significant harm occurs is also aimed at streamlining review and appeal processes for a destruction order by eliminating discretion of whether or not to make a destruction order as a relevant factor for review.

Limitations on appeals about a destruction order

Under the AMCD Act a destruction order can be contested by the dog's owner or responsible person by applying for an internal review of the decision. If the person is not satisfied with the outcome of the internal review, they can then apply to the QCAT for the external review of the destruction order.

Currently, if the outcome of the QCAT external review is unsatisfactory the person can further appeal the decision to QCAT Appeals jurisdiction (QCATA) in most circumstance. However, under section 142 of the *Queensland Civil and Administrative Tribunal Act 2009,* a person must first seek leave to appeal decisions on questions of fact or a question of mixed law and fact. By the time a destruction order decision reaches QCATA, the decision will have been through the original decision maker, an internal review process, and a QCAT external review process.

This process typically takes a significant period of time, sometimes exceeding 12 months, during which time the relevant dog remains under the care of the local government. The emotional attachment an owner justifiably has towards a dog can also result in a person appealing to QCATA just to see if QCATA views the facts differently, despite the matter having been through three decision makers.

To reduce the financial and administrative burden on local government and QCAT, clause 17 of the Bill restricts appeals of QCAT external review decisions on destruction orders to only questions of law. This amendment is intended to ensure QCATA and local governments are not burdened by unmeritorious appeals where the factual matters have already been reviewed twice.

Streamlining review processes would provide greater certainty for local government and the community and ensure more humane outcomes for dogs. Providing clarity on when a review can be lodged will also reduce emotional uncertainty experienced by the dog owner.

Amendments to the Fisheries Act

Independent Onboard Monitoring

The Department of Agriculture and Fisheries (DAF) collects information on commercial fishing through various means including compulsory logbooks, quota reporting, satellite tracking on all commercial fishing vessels (vessel tracking), biological monitoring, and

research. Retained catch validation occurs through routine and risk-based inspections by the Queensland Boating and Fisheries Patrol and fishing effort is validated through vessel tracking. There is currently no process in place for independently monitoring catch that has not been retained or protected animal interactions.

Implementing IOM in Queensland will:

- improve understanding and management of fishing and its impacts on the wider marine ecosystem;
- satisfy the conditions of Wildlife Trade Operation (WTO) approvals under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act) and thereby maintain access to export markets;
- support sustainable management of the GBR World Heritage Area and maintain access to key fishing grounds; and,
- support industry-led third-party sustainability certification schemes and provide opportunities to improve seafood traceability, demonstrate provenance and develop new markets.

Clause 173 of the Bill amends the Fisheries Act to establish a framework for IOM requirements which allows data reported by commercial fishers on bycatch or interactions with protected species, to be independently validated.

The amendments support two methods of IOM: independent onboard observers and onboard camera systems. Both methods can collect accurate information on bycatch and detect interactions with protected species during commercial fishing activities. The information collected can then be compared with logbooks provided by fishers to validate the logbook data independently.

Onboard observer conditions under the amendments will authorise the chief executive or a regulation to impose an onboard observer condition where it is reasonably necessary to monitor whether the purposes of the Fisheries Act are being achieved or how commercial fishing activities are conducted under an authority. This would require an authority holder to permit an independent onboard observer to be on the fishing vessel monitoring commercial fisheries activities being undertaken and collecting information, such as the catch of protected marine animals or other compliance data.

Video monitoring conditions under the amendments will similarly authorise the chief executive or a regulation to impose a video monitoring condition where it is reasonably necessary for monitoring purposes, for example on boats fishing in select high-risk fisheries. This would require an authority holder to install approved camera monitoring equipment on their boat to record and monitor commercial fishing activities. The footage will be supplied to DAF to be used in independently validating data.

Enhancing and clarifying fishing enforcement

Seizure powers

Inspectors appointed under section 140 of the Fisheries Act have the power to seize a thing in certain circumstances (see sections 151 – 156). The present seizure powers are unnecessarily complex, clauses 147, 148 and 149 of the Bill addresses this by consolidating seizure powers, simplifying and removing duplication across provisions which currently.

Clause 150 of the Bill also addresses burdensome administrative processes relating to seizures by inserting an exception to the general requirement for an inspector to provide a receipt of seizure, where an inspector has exercised a power to immediately dispose of a fisheries resource. This ensures inspectors are not required to issue a receipt for property that is incapable or being returned due to its disposal.

Appealing seizure

Under section 165 of the Fisheries Act a person is already restricted from appealing a seizure decision where a fisheries resource, which is alive, is immediately returned to the wild by an inspector. Clause 152 of the Bill amends section 165 of the Fisheries Act to also provide that a person may not appeal if a dead seized fisheries resource is immediately disposed of by an inspector who, on reasonable grounds, believes the fisheries resources are putrid, unfit for sale, of no value or of insufficient value to justify their sale.

Further limiting appeals where a fisheries resource is disposed reduces the administrative burden of ineffective appeals where the department would have no way to return the fisheries resources in the event of a successful appeal. This amendment does not remove the ability for a person to otherwise seek compensation for the disposed of fisheries resource. Section 179 of the Fisheries Act provides an alternative where a person may seek to claim compensation where a person incurs a loss or expense because of the exercise of a power under Part 8.

Proof of appointment

Currently, during some fisheries prosecutions, a small number of defendants create a significant administrative burden for the department by frustrating the prosecution process. For example, by claiming that they are sovereign and the state has no lawful jurisdiction or challenging the validity of the appointments or authority of members of the department to fine or prosecute them. This can result in the department needing to hold trials often involving a significant number of witnesses for offences that would otherwise often be dealt with by way of fine.

Clause 156 of the Bill intends to mitigate this issue by inserting a new section 184A which provides that in a proceeding for an offence against the Fisheries Act, the appointment of the chief executive, a delegate of the chief executive who gives written notices or approves forms, or an inspector must be presumed unless the contrary is proved.

This will reduce the burden on the department to make witnesses available to give in-person evidence on matters that can otherwise be satisfied by an instrument of delegation, letter of

appointment, or similar document that could be provided to a defendant as part of the evidence brief.

Prescribing section 87 as a serious fisheries offence

Under section 87 of the Fisheries Act, it is an offence to interfere with an aquaculture activity or fishing apparatus. Interference includes the removal of fisheries resources, as well as activities such as removing lawfully caught mud crabs from another fisher's apparatus, moving or damaging another fisher's apparatus to claim prime fishing locations, or stealing another fisher's apparatus.

Section 87 is currently not prescribed as a serious fisheries offence (SFO) under the Fisheries Act, which means courts are limited to imposing fines for the above conduct. Due to the personal and financial gain associated with unlawful interference, the imposition of fines has not been an effective deterrent for offending under the provision.

Clause 157 of the Bill addresses this issue by prescribing section 87 as a serious fisheries offence under the Fisheries Act. If a holder of an authority under the Act is convicted of an SFO, the court may (in addition to imposing the prescribed fine) suspend or cancel the authority, or, in the case of persistent offenders, issue an order banning an authority holder from certain fishing activities.

Broaden the meaning of 'obstruct' to include 'abuse' and 'intimidate'

Under section 182 of the Fisheries Act, a person must not, without reasonable excuse, obstruct an inspector in the exercise of a power. Obstruct is currently defined to include assault, hinder, resist and attempt or threaten to obstruct. To provide appropriate workplace protections for fisheries inspectors, clause 154 of the Bill amends the meaning of obstruct to capture abusive and intimidating behaviour that does not meet the threshold of, and is not currently captured by, assault.

Non-payment suspensions

The current process for collecting annual fisheries authority fees takes considerable resources and comes at a substantial cost to the department to administer the process over a 6-month period. The costs to collect fees on average outweighs the fees being collected. The process also requires the department to wait for non-payment to occur, issue a notice regarding the non-payment, and then wait for a further period to lapse prior to the authority being suspended.

In addition, it is unfair to authority holders who have paid their annual fee on time to effectively allows an authority holder to lawfully continue to operate despite not having paid their fee. Similar to other fees such as vehicle registration, these fees are due annually, and are predictable by the authority holder.

Clause 143 of the Bill will align the process for suspension of an authority, following non-payment of the annual fee, with similar processes such as vehicle registration. If an authority

holder fails to pay their annual fee by the date on their issued fee notice their authority will be automatically suspended until the fee is paid or a payment plan established.

Written notice of a condition of authority

The Fisheries Act does not allow the chief executive to direct someone to do a thing in relation to repeated fisheries offences or interactions with threatened, endangered, or protected animals. Currently, the chief executive only has power to refuse the issue or renewal of an authority and can suspend or cancel an existing authority if satisfied that such action is 'necessary or desirable for the best management, use, development or protection of fisheries resources or fish habitats'.

To address concerns relating to interactions with threatened, endangered, or protected species clause 140 of the Bill will amend the Fisheries Act to enable the chief executive to amend the conditions of a person's authority following repeated interactions. Rather than suspending or cancelling an authority the chief executive may instead impose reasonable conditions such as to develop an individual mitigation plan or complete further remedial actions to reduce the risk of future interactions.

Aquaculture Authority

Clauses 158 to 171 of the Bill create a new aquaculture authority under the Fisheries Act that will authorise the ongoing operational and management aspects of aquaculture operations, which generally relate to fisheries management and biosecurity.

Amendments of the Biosecurity Act 2014

Locally significant invasive plants and animals

The review of the Biosecurity Act noted that having to operate under two pieces of legislation (the Biosecurity Act and the *Model Local Law No. 3 (Community Health and Environmental Management) 2011*) poses problems for local government authorised officers and confusion for stakeholders.

To address this issue and simplify operations across state and local laws clause 117 of the Bill will authorise local governments to also deal with locally significant invasive plants and animals under the Biosecurity Act, that have been listed under a local law, but which are not classified as invasive biosecurity matter statewide.

This will allow council officers to act under the Biosecurity Act when they enter properties to carry out management of biosecurity matter that poses a significant risk, rather than having to act under local laws for some of them. This will also reduce confusion for members of the community where council officers have to otherwise exit and re-enter a property to exercise similar powers under local laws versus state laws.

Extending the duration of biosecurity emergency powers

The review of the Biosecurity Act identified that during biosecurity emergencies, like the 2016 White Spot Disease outbreak, 96 hours was found to be insufficient time for inspectors to undertake preliminary investigations, which may include sending biosecurity matter for testing. Similarly, the 21-day maximum duration of a biosecurity emergency order (BEO) was also found to be insufficient time to resolve all the uncertainty around the source of the disease and risk pathways to confidently transition to another tool.

The review of the Biosecurity Act concluded that achieving sufficient confidence in the evidence base to make important decisions takes significant time, especially where there are high levels of uncertainty, such as a new aquatic animal or non-livestock animal disease, and in particular for a new plant disease.

Additionally, where longer periods are required currently DAF is required to either prematurely implement a BEO or similar order when the period for emergency powers expire, or make back to back BEOs. This creates unnecessary administrative burden when managing emergency biosecurity risks, and uncertainty for members of the community about how long the requirements and obligations of a BEO may last. As such the review recommended the maximum duration an inspector can use their emergency powers for, and the maximum duration of a BEO be extended to 168 hours and 42 days respectively.

The Bill gives effect to these recommendations by increasing the maximum duration an inspector can use their emergency powers to 168 hours (clause 104) and the maximum duration of a BEO to 42 days (clause 89). To reduce the potential for negative impacts, appropriate safeguards have also been included ensuring that the chief executive must approve any extended duration of inspector emergency powers beyond the current 96 hours. The chief executive must then provide written reasons to the inspector and, upon request to any occupier or person directed or authorised to take steps by the inspector. The chief executive must also ensure a BEO is revoked when satisfied there is no longer a biosecurity risk.

Requirement to keep movement records

Under BEOs and Movement Control Orders (MCOs), permits may be issued to a person to allow them to do something that would otherwise be unlawful under the order. In some cases there is a need to regulate and document the movement of carriers (e.g. vehicles, people and equipment) onto and from infected premises and other classified premises e.g. trace premises, dangerous contact premises, and suspect premises.

Traceability of biosecurity risks, such as movements of people or biosecurity matter, on and off affected properties during a biosecurity emergency supports effective and efficient responses. This process is currently managed through the issuance of permits or with supervised movements. However, the Biosecurity Act Review identified that the process of issuing permits is very resource intensive and in the event of a large-scale biosecurity response there may be insufficient human resources to regulate or provide permits for all affected premises.

To allow for more effective management and response to biosecurity emergencies, clause 88 of the Bill makes clear that the conditions that can be imposed under MCOs and BEOs may include requirements for relevant people to keep traceability records where required for the implementation of disease control measures.

Requirement to notify before entry

Under section 270 of the Biosecurity Act, an authorised officer is not permitted entry to a place for the purposes of a biosecurity program without first attempting to seek consent. The Biosecurity Act Review identified that the requirement to attempt to seek consent prior to entry in an emergency response environment can be challenging and confusing for an occupier given the potentially high emotional turmoil experienced in a response event.

For example, when an officer is refused entry, the nature of a biosecurity response typically requires the officer to move straight to exercising the power to enter despite the owner not giving consent as authorised by section 270(3)(b) of the Act. This confusion can create animosity and inhibit subsequent communication between occupiers and authorised officers about actions required to address the biosecurity risk.

The Biosecurity Act Review recommended the Act be amended to remove the requirement to seek consent prior to entry, addressing the issues of confusion and frustration caused to impacted members of the community. Reducing confusion and frustration is also anticipated to improve the safety of authorised officer during high pressure biosecurity responses.

Clause 102 of the Bill implements the recommendation by removing the requirement that an authorised officer, using biosecurity program powers of entry under the Biosecurity Act, attempt to seek consent prior to entry, instead requiring notification prior to entry. Maintaining a requirement to attempt to notify the owner prior to entry still ensures officers must take appropriate steps to make owners aware before entering without consent but reduces the confusion that occurs currently.

Aligning entry powers under orders

The Biosecurity Act Review also identified, despite both being used as emergency response tools, entry without consent was not permitted under a movement control order (MCO) as it is under a BEO. Seeking consent under an MCO in an emergency response environment can be challenging and confusing for an occupier given the potentially high emotional turmoil experienced in a response event. Any delay in entry can lead to important, time sensitive and significant risk mitigation actions being delayed which compromises the timeliness and efficacy of the response.

Currently, an MCO can include prohibitions or restrictions, impose obligations, or give directions to person, including that a person must do various things under the direction of an authorised officer. The Biosecurity Act also makes it an offence for a person to fail to comply with the MCO. However unlike under a BEO, there are currently no powers, without consent, for authorised persons to enter a place subject to an MCO to ensure that compliance.

Clause 91 of the Bill aligns the powers of entry under a MCO with those available under a BEO, allowing authorised officers under the Biosecurity Act to enter or re-enter a place that is not a dwelling with or without consent to ensure compliance during an MCO. This supports responsivity to biosecurity risks under an MCO, better aligns with the emergency-type situations in which an MCO may be implemented, and is consistent with other emergency response tools like BEOs.

Ability for the chief executive to deregister registered biosecurity entities

Currently, section 156(1) of the Biosecurity Act requires the chief executive to renew a registered biosecurity entity's (RBE) registration unless the chief executive has been otherwise advised by the entity that they no longer need to be registered. However, it has been identified that up to 15 per cent of RBEs do not respond to departmental communications. In these cases, the chief executive is required to keep renewing the registration, despite no registration fee having been paid as no advice has been received that they no longer meet the registrable entity requirements.

There are a number of reasons an entity may not, and may never, respond to departmental communication, including the entity is a company that has gone into liquidation or otherwise become defunct, or the entity is a person who has passed away or left the jurisdiction. The requirement to keep outdated entities registered is administratively burdensome and inaccurate registration details compromises the purpose of keeping a register.

Clause 94 of the Bill addresses this by authorising the chief executive to issue a notice to an RBE that the person must, within a stated period, advise whether the person is still a registerable biosecurity entity. If the person does not respond within the stated period the chief executive may deregister the RBE.

Ability for the chief executive to waive a permit fee in exceptional circumstances

During a biosecurity emergency response there is sometimes the need to move prohibited matter from an infected site to another place under strict controls. For example, prohibited matter may be attached to a carrier that has economic value if processed, or because the risk pathway is controlled in some way. Under the Biosecurity Act a prohibited matter permit is required to move the prohibited matter in the above circumstances, and obtaining a permit requires the payment of the prescribed fee.

The only exemption to payment of the prescribed permit fee is where the chief executive is satisfied of the criteria under section 214(6) of the Biosecurity Act, one of which is that the applicant will derive no financial benefit from the dealings. The review of the Biosecurity Act identified examples of biosecurity responses where the existing criteria could not be met due to unusual circumstances, but a fee waiver was considered justified regardless. For example, during a biosecurity emergency requiring applicants to pay a permit fee who are simply trying to offset an otherwise considerable loss may be unreasonable in the circumstances and exacerbate financial hardship.

Clause 95 of the Bill addresses this issue by providing the chief executive additional discretion to waive a prohibited or restricted matter permit fee if satisfied there are exceptional circumstances for waiving the fee. For example if payment of the fee would cause, or would be likely to cause, the applicant financial hardship.

Simplifying process for listing prohibited and restricted matter

The Biosecurity Act is a risk-based Act as opposed to a list-based Act. In other words, biosecurity matter does not need to be listed in legislation as prohibited or restricted for a person to be obligated to deal with biosecurity risks associated with it under the Act. However, the majority of pests and diseases that were listed as notifiable pests or diseases, declared pests or noxious fish under previous legislation are still prescribed under the legislation as prohibited matter or restricted matter. A small number of additional pests and diseases were also listed as prohibited matter or restricted matter, based on National Committee decisions at the time.

A modern and consistent approach for listing prohibited and restricted matter was recommended by the Biosecurity Act Review, including transferring the lists of prohibited and restricted matter into the Biosecurity Regulation. Clauses 107 and 108 of the Bill implements this recommendation transferring the lists into the Biosecurity Regulation. This amendment also simplifies the process for amending the lists going forward, reducing the reliance on temporary amendments through legislative instruments.

Amendments to the Drugs Misuse Act

Information sharing

In achieving the purposes of the DM Act, the Queensland Police Service (QPS) has an enforcement role that sits across the entire Act, with regards to illicit dangerous drugs. However, DAF maintains responsibility for regulating the industrial cannabis industry under Part 5B of the DM Act. Despite this overlap in responsibility, there is limited provision in the DM Act for sharing of information. DAF is therefore reliant on the Information Privacy Principles under the *Information Privacy Act 2009* to regulate the sharing of information, which are limited and not designed for proactive sharing of information without consent.

Clause 126 of the Bill addresses this by inserting a clear power into the DM Act to authorise information-sharing arrangements with other departments or relevant bodies, including interstate jurisdictions. The amendment will ensure DAF can enter into proactive information-sharing arrangements with relevant entities such as QPS. The proactive sharing of information will support DAF in administering the Part 5B provisions relating to industrial cannabis in Queensland, such as licensing, and QPS to undertake effective enforcement action across the whole DM Act.

Industrial cannabis testing

The DM Act and *Drugs Misuse Regulation 1987* currently includes restrictions on the supply of industrial cannabis plants and seeds for analysis. Different restrictions apply to each category of licence holder. Analysts, as authorised persons, are only permitted to receive industrial

cannabis plants from researcher licence holders for the purpose of testing Tetrahydrocannabinol (THC) concentration.

To support the continued growth of the industrial cannabis industry in Queensland clauses 124 and 125 of the Bill makes minor amendments to the authorisations for each license holder category to support the development of an industrial cannabis testing framework under the existing Part 5B regulation making power.

Amendments to the Farm Business Debt Mediation Act

Feedback from stakeholders during the review of the FBDM Act identified that the largest deterrent to mediation is the perceived emphasis on enforcement rather than mediation, even though this is not the intent.

Clause 131 of the Bill addresses this concern by replacing references to an 'enforcement action notice' with a 'notice inviting a request for mediation'. This amendment would shift the emphasis from enforcement to mediation and would likely be less confronting when received by a person unfamiliar with the process.

Clause 132 of the Bill also makes a minor amendment to implement a further requirement that the FBDM Act be reviewed again 10 years after 20 June 2022.

Amendment to the Animal Care and Protection Act

Clause 6 of the Bill amends section 181 to be consistent with similar provisions in other Acts, for example section 359 of the Biosecurity Act. This appropriately reflects that responsibility for the actions of a person's representatives are not restricted to only offences where it is relevant to prove a person's state of mind, bringing the ACP Act in line with similar provisions across the statute book.

Alternative ways of achieving policy objectives

There are no alternative ways of achieving the policy objectives other than by legislative amendment.

Estimated cost for government intervention

Reform of dangerous dog laws

The Queensland Government is investing $5.304 million over five years for more coordinated, consistent and effective action in response to dog attacks as part of the *Strong dog laws: Safer communities* Implementation Package. This will include establishing specialised investigators and a prosecutor in DAF and supporting local government implementation.

The requirement for effective control of dogs in public areas and the deterrent effect of higher penalties related to dog attacks may reduce hospital presentations admissions for treatment of injuries caused by dogs.

The introduction of new penalties of imprisonment has the potential to impact Queensland Corrective Services through increased prisoner numbers. The potential impact is anticipated to be minimal as under the *Penalties and Sentencing Act 1992*, imprisonment is a last resort and courts will retain discretion to impose alternative penalties where appropriate. The option of imprisonment under the AMCD Act will be limited to the most serious dog attacks where bodily harm occurred to a person, and courts will retain discretion to impose alternative penalties causing death or grievous bodily harm; Criminal Code offences may also be an option in these circumstances.

The proposed amendments have the potential to affect the workload of the Queensland Civil and Administrative Tribunal (QCAT), but the net impact is difficult to predict. They would reduce the scope of appeals to its appeals jurisdiction to questions of law only. Clarifying when a destruction order can be made would assist decision makers in local governments and QCAT which may reduce the workload of QCAT. However, this proposal also holds the potential to increase the number of orders made, potentially resulting in additional applications to QCAT, including potentially increasing the number of stay applications being heard by QCAT pending the determination of the destruction order decisions.

Independent onboard monitoring

A total of $45.496 million has been invested by the Queensland Government to support implementation of the Strategy to date, with a further $13.175 million already committed for 2022-23 and $7.5 million in 2023-24 to support continued implementation. The total government commitment over eight years is $66.171 million.

The 2023-24 Queensland budget papers included $22 million over four years for implementing IOM. This funding is contingent on equivalent co-funding from the Commonwealth. However, the Department of Climate Change, Energy, the Environment and Water have confirmed that they have allocated $22 million towards the implementation of IOM as part of a broader $60 million package to support the reef policy area. Plans for an agreement to have this funding package delivered in the first quarter of 2024 are currently being developed. Following implementation, the costs of an ongoing IOM program will be shared between government and industry.

Consistency with fundamental legislative principles

Some of the proposed legislative amendments depart from the fundamental legislative principles set out in section 4 of the *Legislative Standards Act 1992* (LS Act). This departure allows important policy objectives in the community's interest to be achieved. Proposals engaging fundamental legislative principles are as follows:

Amendments to the Animal Management Cats and Dogs Act

Banning restricted dog breeds in Queensland

The amendment to the AMCD Act will remove the ability for new permits to be issued for restricted dog breeds, and ban restricted dog breeds, listed in the *Commonwealth Customs (Prohibited Imports) Regulations 1956* (Cwlth), in Queensland. The amendment includes a transitional provision to grandfather dogs of a restricted breed registered and permitted in Queensland at the time of commencement.

This may infringe upon fundamental legislative principles not listed in the LS Act, that legislation should not abrogate common law rights without sufficient justification (property rights and freedom of movement), and legislation should not, without sufficient justification, unduly restrict ordinary activities.

The amendments ensure no new dogs of a restricted breed can be introduced into or permitted in Queensland following commencement. While the importation of these dogs into Australia is prohibited, not all States and Territories have controls on the desexing and breeding of restricted breeds. The amendments ensure no new restricted breed dogs are brought in from interstate.

The purpose of the amendment is to address community safety concerns about dog attacks generally and the risk of serious attacks posed by restricted breeds. Any departure from fundamental legislative principles is justified for the reasons identified above.

Statewide requirement for effective control

The amendment to the AMCD Act introduces a new statewide requirement for a person responsible for a dog to keep that dog under effective control while in public, including a new offence for failing to keep a dog under effective control.

This may infringe upon the fundamental legislative principle provided for in section 4(3)(j) of the LS Act, that legislation should have sufficient regard to Aboriginal tradition and Island custom. The amendment may also infringe upon the fundamental legislative principle not listed in the LS Act that legislation should not, without sufficient justification, unduly restrict ordinary activities.

The amendment ensures that dogs are appropriately restrained in public places and under the full control of the owner or responsible person for the dog. The amendment also ensures statewide consistency removing any ambiguity about whether a person is in an area where effective control applies, as not all councils have implemented a requirement for effective control.

The amendment may infringe on some cultural practices or beliefs in some aspects of shared dog ownership, such as in First Nations communities. When a dog in these communities is in public, the dog will need to be under the effective control of a suitable person and not be free to roam around the community. This will limit the traditional cultural expression but, in doing so, will support the community's safety.

A necessary balance must be struck between potential negative engagement with fundamental legislative principles and the rights of those impacted by uncontrolled dogs to lawfully and freely use the same public spaces. Any departure from fundamental legislative principles is justified for the reasons identified above.

Imprisonment as a maximum penalty for the most serious dog attacks

The amendments increasing penalties for offences relating to dog attacks, up to and including imprisonment as a maximum penalty, may infringe upon the fundamental legislative principle not listed in the LS Act, that the consequences imposed by legislation should be proportionate and relevant to the actions to which the consequences are applied by the legislation.

The purpose of the amendment is to protect community safety by incentivising dog owners and responsible persons to ensure the dog under their control does not threaten or attack another human.

The amendment particularly considers the issue of repeat offences where either the dog has already had a malicious or dangerous dog declaration made, making it a regulated dog or a person has previously failed to control their dog, and harm has resulted. The latter circumstance aims to deter owners from simply surrendering a dog after an incident and repeating a problematic cycle with a new animal.

Higher penalties, up to and including imprisonment, are needed to support community safety and emphasise the importance of keeping dogs under control to prevent attacks. Specific deterrence is also required in cases where a person was aware a dog might be dangerous due to its status as a regulated dog or the person has previously committed similar offences previously yet they failed to keep their dog under control.

A maximum penalty is the most severe sentence that a court can give for an offence and is assessed as the worst category of cases of that type. For these reasons penalty is considered appropriate and any impact on fundamental legislative principles is justified.

Clarifying when to make a destruction order for a regulated dog

The amendment to section 127 of the AMCD Act removes the discretion not to make a destruction order where the dog is a regulated dog and attacks, causing grievous bodily harm or death to a person, or maims or kills an animal. This may infringe upon the fundamental legislative principle not listed in the LS Act, that legislation should not abrogate common law rights without sufficient justification (property rights).

The amendment is intended to reflect community expectations about the treatment of dogs involved in attacks that cause physical harm and ensure a destruction order is made in response to incidents where the dog is a regulated dog and has gone on to attack, causing further harm. A regulated dog that goes on to attack and causes actual harm has already demonstrated risk factors on at least two occasions and may pose a future serious risk if a destruction order is not made.

The current provisions are not considered to be meeting community expectations about how regulated dogs are dealt with following an attack. While it is expected that an authorised officer would likely make a destruction order in the identified circumstances, there is a need to ensure a destruction order is always made. Any departure from fundamental legislative principles is justified for the reasons identified above.

Limitations on appeals about a destruction order

The amendment inserting a new section 190 into the AMCD Act, limits appeals of external review decisions by QCAT on destruction orders to only questions of law, removing the ability to appeal a QCAT external review decision on a question of fact. This may infringe upon the fundamental legislative principle provided for in section 4(3)(b) of the LS Act, that legislation should be consistent with the principles of natural justice.

The restriction of appeals to QCATA on questions of law is necessary to prevent owners of dangerous dogs from trying to have their case re-tried on the facts, delaying destruction. The amendment is also intended to reduce the financial and administrative burden on local governments that are required to fund the maintenance and care of the relevant dog during the appeal process, as well as the costs associated with the appeal itself.

By the time a destruction order decision reaches QCATA, the decision will have been through the original decision maker, an internal review process, and a QCAT external review process. This process typically takes a significant period, sometimes exceeding 12 months, during which time the relevant dog remains under the care of the local government.

The emotional attachment an owner justifiably has towards a dog may result in a person appealing to QCATA to see if that tribunal viewed the facts differently, despite the matter having been through three decision makers, including an internal and an external review. It is for a similar reason that the restriction of appeals to questions of law is the preferred approach within Queensland's court system. Any departure from fundamental legislative principles is justified for the reasons identified above.

Amendments to the Fisheries Act

Power to appeal

The amendment to section 165 of the Fisheries Act will provide that a person may not appeal if a fisheries resource which is seized from them is returned to the wild or the place from which they were taken under section 159(2) or disposed of under section 159(3). This may infringe upon the fundamental legislative principle provided for in section 4(3)(b) of the LS Act, that legislation should be consistent with principles of natural justice.

Removing a person's right to appeal the seizure of fisheries resources, where such resources are immediately returned to the wild or otherwise disposed of, limits their access to review of the seizure. However, as the relevant fisheries resources will have already been disposed of, any successful appeal of the seizure would be ineffective as there would be no ability to return the fisheries resource.

The purpose of the amendment is to eliminate the potential for ineffective appeals to be brought in circumstances where the fisheries resource could not be returned upon a successful appeal. Additionally, an alternative option exists for compensation to be sought whereby a person may seek compensation under section 179 of the Fisheries Act where a person incurs a loss or expense because of the exercise of a power under Part 8. Any departure from fundamental legislative principles is justified for the reasons identified above.

Repeated interactions with protected animals

The amendment to insert a new section 61A creates a power for the chief executive to amend an authority to impose conditions to reduce the risk of future interactions with protected animals. The amendment does not require a notice to be given to the authority holder advising of the intended action of amending the authority prior to the condition being imposed as immediate action is required to be taken to address interactions with protected animals without having to first undertake a "show cause" process because of the serious consequences any delay to act might create for the fishery or industry generally.

This may infringe upon the fundamental legislative principles provided for in section 4(3)(a) and (b) of the LS Act, that legislation should make rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review, and legislation should be consistent with principles of natural justice.

Repeated interactions with protected marine animals may result in significant consequences for entire fisheries as they can jeopardise the continuation of Wildlife Trade Operation export approvals. The conditions which the chief executive may impose have to be reasonable in the context of the circumstances in which protected animals have been previously interacted and thereby designed to reduce future risk. The section makes it apparent to an authority holder the types of conditions which may be imposed should interactions occur.

The section also mitigates the impact on fundamental legislative principles by requiring the chief executive to include a reasonable end date for the condition on the authority and imposes an obligation on the chief executive to review the condition within the period by which the condition ends. This ensures that the chief executive can assess whether imposing the condition is still relevant and necessary to address interactions with protected animals and provides assurance to the authority holder that the condition will not remain on the authority indefinitely. Any departure from fundamental legislative principles is justified for the reasons identified above.

Proof of appointments

The amendment which inserts a new section 184A provides that in a proceeding for an offence against the Fisheries Act, the appointment of the chief executive, an inspector or a delegate of the chief executive must be presumed unless the contrary is proved. This may infringe upon the fundamental legislative principle provided for in section 4(3)(d) of the LS Act, that legislation should not reverse the onus of proof in criminal proceedings without adequate justification.

Currently, during some fisheries prosecutions, a small number of defendants create a significant administrative burden for the department by frustrating the prosecution process. For example, by claiming that they are sovereign and the state has no lawful jurisdiction or challenging the validity of the appointments or authority of members of the department to prosecute them. This can result in the department needing to hold trials often involving a significant number of witnesses for offences that would otherwise often be dealt with by way of fine.

The purpose of this amendment is to eliminate unnecessary attendance by inspectors, delegates and departmental human resource officers at court proceedings to establish that appointments are valid by placing the onus on a person before the court, to provide evidence that an appointment is not valid or correct.

The breach of fundamental legislative principles is mitigated by the fact that the presumption of appointment with regard to delegates of the chief executive, does not extend to all delegates, only to those delegates who give written notices or who approve forms, as these are the powers which are the subject of the majority of prosecutions. Any departure from fundamental legislative principles is justified for the reasons identified above.

Immunity from prosecution

The amendment to section 216A provides that persons appointed as official observers are not liable to be prosecuted for an offence against the Fisheries Act for any act or omission under the direction of the Minister or chief executive or in the exercise of a power or a function under the Fisheries Act. This may infringe upon the fundamental legislative principle provided for in section 4(3)(h) of the LS Act, that legislation should not confer immunity from proceeding or prosecution without adequate justification.

In properly fulfilling their functions, an official observer may at times be required undertake activities which could be seen to interfere with a commercial fishing operation (e.g. checking fishing apparatus) thereby constituting an offence. This amendment is justified as it is reasonable for official observers to be conferred the same immunity as inspectors given the nature of their role which is critical for the implementation of the independent onboard monitoring program.

Independent onboard monitoring

The introduction of a new IOM framework will support requirements for IOM in select high-risk fisheries prescribed by regulation. This amendment requires fishers to install cameras, and to accommodate fisheries observers on commercial fishing vessels, which may be seen to impact their rights to privacy and to conduct their business without interference.

This may infringe upon fundamental legislative principles not listed in the LS Act, that legislation should not abrogate common law rights without sufficient justification (property rights and privacy rights), and legislation should not, without sufficient justification, unduly restrict ordinary activities.

The imposition upon fishers' privacy is mitigated, to some extent, by the fact that observers and cameras will only be placed, or conduct their observation functions, in areas of fishing vessels where catch is landed, sorted and discarded.

IOM equipment will not be placed in areas of the vessels (for example, living quarters) in which persons on board would have a reasonable expectation of privacy. Further, DAF is engaging in ongoing consultation with fisheries stakeholders (including through a voluntary trial) to determine how e-monitoring (camera) and independent observers may be accommodated on vessels with the least-possible impact to fishing operations.

Requiring fishers to accommodate fisheries observers on their vessels also constitutes an interference with fishers' personal property. Fisheries observers will have to be given access to sleeping quarters and food on the vessels to which they have been assigned. Consultation is ongoing as to where the responsibility for these arrangements should lie and the potential for the financial impacts upon a fishing operator for providing for an observer.

Where possible, IOM will be done through e-monitoring. However, some fisheries will require physical observers either because the Commonwealth has conditioned that in its export approvals or a video would not be able to identify the species that are sought to be observed (for example, certain species of coral, which appear similar to rocks on camera).

IOM is necessary (and is the only possible method) for validating information on retained catch and determining levels of non-target species catch, including interactions with protected animals. Further, significant fisheries trade arrangements are (and will continue to be) contingent upon meeting federal and international fisheries standards, one of which is IOM.

The benefits gained by better and more accurate fisheries management through IOM (specifically, improved protection of Queensland's fisheries and marine ecosystems, and ensuring the State's continued compliance with, and eligibility for, international trade of fisheries stock) are considered to justify the impact of the IOM program on fishers' rights, liberties and property. Any departure from fundamental legislative principles is justified for the reasons identified above.

<u>Prescribing section 87 of the Fisheries Act as a serious fisheries offence</u>

Prescribing the existing offence under section 87 (interfering with an aquaculture activity or fishing apparatus) as an SFO will mean that offenders will be liable not just to a fine for their behaviour but may also have their authorities cancelled or be banned from certain fishing activities.

Authorities under the Fisheries Act can be considered to have property like characteristics, this may infringe upon fundamental legislative principles not listed in the LS Act, that legislation should not abrogate common law rights without sufficient justification (property rights), and legislation should not, without sufficient justification, unduly restrict ordinary activities.

Any departure from fundamental legislative principles is justified due to the serious risks posed to the sustainability of fisheries resources by interference with fishing apparatus. The current

system of fining offenders is considered not to have an adequate deterrent effect, particularly where the monetary gains of the offending behaviour are often greater than the money lost to a fine. Ultimately, the appropriate penalty for an offender will be a matter for the court at the time of sentencing, and the amendment does not mandate any particular penalty.

Obstruction of inspectors

The amendment to replace section 182 will broaden the offence to capture abusive and intimidating behaviour that does not meet the threshold of, and is not currently captured by, assault. This may infringe upon the fundamental legislative principle not listed in the LS Act, that the consequences imposed by legislation should be proportionate and relevant to the actions to which the consequences are applied by the legislation.

New section 182 makes it clear that even though the meaning of "obstruct" is broadened, a person is only subject to an offence under the section if the person, without a reasonable excuse, obstructs an inspector in a way that prevents the inspector from exercising a power. For example, a person who merely abuses an inspector does not commit an offence if the abuse does not prevent the inspector from exercising a power. The provision also requires an inspector to issue a warning to a person giving them the opportunity to desist their actions prior to committing an offence.

In addition, the maximum penalty for an offence under new section 182 has been reduced from 1000 penalty units to 100 penalty units, to appropriately reflect the broader scope. The new maximum penalty is a better reflection of Parliament's treatment of conduct that prevents an authorised person from exercising their functions or powers and is consistent with other offences in the statute book. New section 182 strikes a balance between providing inspectors with an offence to ensure the safe exercise of powers and protections for persons conducting this behaviour. For these reasons penalty is considered appropriate and any impact on fundamental legislative principles is justified.

Non-payment suspension

The amendment to section 68AB provides for the automatic suspension of an authority if an authority holder was as issued a fee notice and failed to pay their fee by the due date. Authorities under the Fisheries Act can be considered to have property like characteristics, this may infringe upon fundamental legislative principles not listed in the LS Act, that legislation should not abrogate common law rights without sufficient justification (property rights), and legislation should not, without sufficient justification, unduly restrict ordinary activities.

The purpose of the amendment is to reduce the administrative and financial burden in relation to following up on non-payment of fees when authority holders already receive notice prior to the fee becoming due and the fee is a predictable annual payment. The current process takes considerable resources and comes at a substantial cost to the department to administer the current fee collection process over a 6-month period.

Similar to other fees such as vehicle registration, these fees are due annually, are predictable by the authority holder, and a notice is issued in advance of the due date. The requirement for the

department to wait for non-payment to occur, issue a notice regarding the non-payment, and then wait for a further period to lapse prior to the authority being suspended places an unnecessary burden on the department. Automatic suspension also creates an incentive to pay the relevant fee before the deadline so as not to have fishing activities interrupted, and ensures a fairer system for authority holders who do pay on time. Any departure from fundamental legislative principles is justified for the reasons identified above.

Repeated interactions with protected animals

The amendment inserting a new section 61A, creates a power for the chief executive to amend a fisheries authority to impose conditions where an authority holder has had repeated interactions with protected animals in a 12-month period.

Authorities under the Fisheries Act can be considered to have property like characteristics, this may infringe upon fundamental legislative principles not listed in the LS Act, that legislation should not abrogate common law rights without sufficient justification (property rights), and legislation should not, without sufficient justification, unduly restrict ordinary activities.

The amendment is limited circumstances in which the actions of a fisher have resulted in repeated interactions with protected animals, which may jeopardise WTO approvals for the entire fishery. Repeated interactions with protected animals have the potential to harm vulnerable populations, the amendment is intended to reduce this risk by allowing the chief executive to impose conditions that reduce future interactions. The conditions may include requiring an authority holder to develop an individual mitigation plan, or place temporary restrictions on factors such as how long nets may be placed in the water or the type of fishing apparatus that may be used.

Affected authority holders will retain appropriate review rights, including the ability to seek a review of decision under Part 10 of the Fisheries Act. That part provides that people affected by a decision may appeal it: first, through internal review, and then through external review via QCAT. Any departure from fundamental legislative principles is justified for the reasons identified above.

Contravening a condition of an authority

The amendment to section 79A introduces an additional offence for contravening a condition of an authority which may be imposed by the chief executive under new section 61A for repeated interactions with protected animals. The maximum penalty for a breach of a condition imposed under section 61A is 1000 penalty units.

This may infringe upon the fundamental legislative principle not listed in the LS Act, that the consequences imposed by legislation should be proportionate and relevant to the actions to which the consequences are applied by the legislation.

Breaches of conditions which have been imposed by the chief executive for interactions with protected animals are serious in nature. The consequences extend beyond the individual person and individual protected animal, and may jeopardise WTO approvals for the entire fishery. A

breach of this nature is therefore considered comparable to a contravention of a fisheries declaration (e.g. for regulated waters) or for a prohibited act about regulated fish, both of which carry the same maximum penalty of 1000 penalty units. Based on the above, the penalty is considered appropriate and any impact on fundamental legislative principles is justified.

Amendments to the Biosecurity Act

Extend the maximum duration of emergency powers

The amendments to sections 115 and 283 of the Biosecurity Act will extend the maximum period a BEO may be in effect under the Biosecurity Act from 21 days to up to 6 weeks (42 days), and authorise the chief executive to approve extending the maximum duration within which an inspector may exercise their emergency powers from 96 hours up to 7 days (168 hours).

This may infringe upon fundamental legislative principles provided for in section 4(3)(a), (b), and (e) of the LS Act, that legislation should makes rights and liberties, or obligations dependent on administrative power only if power is sufficiently defined, be consistent with the principles of natural justice, and confer power to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer.

This may also infringe upon fundamental legislative principles not listed in the LS Act, that the abrogation of rights and liberties from any source must be justified, and that ordinary activities should not be unduly restricted.

The amendments are intended to ensure that during a biosecurity emergency inspectors have adequate time to undertake preliminary investigations and that any subsequent BEO can be of an appropriate length to respond to a biosecurity emergency while not having to re-make the emergency order. While there is no proposed increase to the emergency powers available to an inspector or under a BEO, an increase in the maximum periods still has an impact on the fundamental legislative principles affected by the possible extended use of those powers.

During biosecurity emergencies, like the 2016 White Spot Disease outbreak, 96 hours was found to be insufficient time for inspectors to undertake preliminary investigations, which may include sending biosecurity matter for testing. Similarly, the 21-day maximum duration of a BEO was also found to be insufficient time to resolve all the uncertainty around the source of the disease and risk pathways in order to confidently transition to another tool.

It is not possible to appropriately manage biosecurity emergencies without the emergency powers available to inspectors, and BEOs. Being unable to extend the period of time an inspector can use their emergency powers currently results in needing to prematurely implement another tool, such as a BEO, to provide the necessary controls. This presents operational challenges where insufficient information is available to properly inform the need for and conditions of a BEO.

Further, being unable to make a BEO for longer than 21 days simply requires the making of consecutive BEOs, which can create uncertainty for those impacted by the BEO during a fast-paced emergency response. Where an emergency is unlikely to be resolved in 21 days, those

impacted are required to wait for the subsequent order to see what the next proposed length or conditions are which inhibits the ability of individuals to forward plan for the impacts. For the reasons stated above, any departure from fundamental legislative principles is justified.

Locally significant pests

The amendment to section 48 of the Biosecurity Act provides local governments with the authority to address locally invasive matters within a biosecurity program, rather than through separate legislation. This may infringe upon the fundamental legislative principle provided for in section 4(3)(c) of the LS Act, that legislation should allow the delegation of administrative power only in appropriate cases and to appropriate persons.

The purpose of the amendment is to support effective and proportionate application of the law by providing one authorising legislation for dealing with invasive matter at a local level. This is consistent with the purpose of the Biosecurity Act to provide a framework for an effective biosecurity system in Queensland that helps to minimise biosecurity risks and facilitate responses to biosecurity events by providing a framework that improves the capacity of local governments, industry, and the community to respond to biosecurity risks.

The amendment also contains safeguards to ensure the appropriateness of the delegation. The local pests must be declared under a local law, which requires the local government to undertake their local law making process and comply with guidelines issued by the Parliamentary Counsel.

The amendment also requires the chief executive to be of the opinion the biosecurity matter satisfies the local invasive biosecurity matter criteria. These criteria are in line with the existing criteria under the Biosecurity Act for biosecurity matter to be restricted matter. Additionally, nothing in the proposal precludes the existing power of the Minister responsible for the *Local Government Act 2009* to suspend or revoke a local law (section 38AB). For the reasons stated above, the delegation is considered appropriate and any departure from fundamental legislative principles is justified.

Requirement to notify before entry

The amendment to section 270 of the Biosecurity Act removes the requirement that an authorised officer, using biosecurity program powers of entry under the Biosecurity Act, attempt to seek consent prior to entry, instead requiring notification prior to entry.

This may infringe upon the fundamental legislative principle provided for in section 4(3)(e) of the LS Act, that legislation should confer power to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer.

The requirement to attempt to seek consent prior to entry in an emergency response environment can be challenging and confusing for an occupier given the potential high emotional turmoil experienced in a response event. This particularly occurs when an officer is refused entry, but then goes on to advise the occupier that they have the power to enter regardless of consent.

This confusion can create animosity and inhibit subsequent communication between occupiers and authorised officers about actions required to address the biosecurity risk. Any delay in entry can also lead to important, time-sensitive and significant risk mitigation actions being delayed which ultimately compromises the timeliness and efficacy of the response. Importantly, due to the nature of biosecurity responses even where consent is not given currently, entry powers still allow officers to enter without consent, thereby still limiting the right to privacy.
It is also consistent with the purpose of the Biosecurity Act that an authorised officer gains entry to a place to implement biosecurity risk management, assessment, and monitoring to protect community interests. For the reasons stated above, any departure from fundamental legislative principles is justified.

Aligning entry powers under orders

The amendment to insert a new section 127A into the Biosecurity Act will align the powers of entry under an MCO with those available under a BEO, allowing authorised officers under the Biosecurity Act to enter or re-enter a place that is not a dwelling with or without consent to ensure compliance during an MCO.

This may infringe upon the fundamental legislative principle provided for in section 4(3)(e) of the LS Act, that legislation should confer power to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer.

Currently, an MCO can include a number of prohibitions or restrictions, impose obligations, or give directions to persons. This includes that a person must do various things under the direction of an authorised officer. The Biosecurity Act also makes it an offence for a person to fail to comply with the MCO. However unlike under a BEO, there are currently no powers for authorised persons to enter a place subject to an MCO to ensure that compliance.

The amendment is intended to support responsivity to biosecurity risks under an MCO, by aligning with the emergency-type situations in which an MCO may be implemented, and ensuring consistency with other emergency response tools like BEOs. Importantly the amendment only relates to enforcing compliance with the MCO itself, meaning affected individuals will have already been limited by the conditions of the MCO itself before an authorised person is required to take actions to enforce compliance.

It is not possible to appropriately manage biosecurity emergencies without emergency response tools like MCOs, BEOs, and inspector emergency powers. Currently, there are no specific entry powers for authorised persons concerning an MCO, this lack of consistency with the entry powers available under a BEO inhibits the effective use of MCOs as an emergency response tool. The only alternative to efficiently respond during a biosecurity emergency, particularly where there may be difficulties locating owners to gain consent, is to use another emergency tool such as a BEO in tandem with an MCO.

Aligning the entry powers under an MCO is expected to limit the need to use multiple emergency response tools to obtain the intended outcome. The entry powers under an MCO have been specifically limited to only the extent reasonably necessary for enforcing compliance with the MCO, this is intended to be less intrusive than using powers under a BEO or inspector

emergency powers, which may have a much broader scope than compliance with the MCO. For the reasons stated above, any departure from fundamental legislative principles is justified.

Requirement to maintain movement records

The amendments to sections 114 and 125 of the Biosecurity Act make clear that the conditions that can be imposed under MCOs and BEOs may include requirements for relevant people to keep traceability records where required for the implementation of disease control measures.

This may infringe upon fundamental legislative principles not listed in the LS Act, that the abrogation of rights and liberties from any source must be justified (privacy), and that ordinary activities should not be unduly restricted.

The purpose of the amendment is to ensure that an MCO or BEO can include appropriate conditions to maintain movement records of biosecurity risks during an emergency response. Traceability of biosecurity risks, such as movements of people or biosecurity matter, onto and off affected properties during a biosecurity emergency supports effective and efficient responses. The movements tracked would be those onto and off a person's property, these movements are also already publicly available to the extent that any passer-by could lawfully observe many of them.

This process is currently managed through the issuance of permits or with supervised movements. However, in many instances, it is not practicable for Biosecurity Queensland to monitor all movements from properties affected by an MCO or BEO. For the reasons stated above, any departure from fundamental legislative principles is justified.

Amendment to the Drugs Misuse Act

Authorise information sharing

The amendment to insert a new Division 12B into the DM Act inserts a clear power to authorise information-sharing arrangements with other departments or relevant bodies, including interstate jurisdictions. This may infringe upon the fundamental legislative principle not listed in the LS Act, that the abrogation of rights and liberties from any source must be justified (privacy).

The purpose of the amendment is to ensure DAF can enter into proactive information-sharing arrangements with relevant entities such as the QPS. The proactive sharing of information will support DAF in administering the Part 5B provisions relating to industrial cannabis in Queensland, such as licensing, and the QPS to undertake effective enforcement action across the whole DM Act.

For example, proactive information sharing will reduce the risks that police enforcement activity could mistakenly target a legal industrial cannabis grower by providing for the exchange of up-to-date information about industry participants. This would serve to protect the right to privacy of industrial cannabis growers to the extent that mistaken enforcement action could result in unnecessary searches of a licensed grower's property.

Effective and efficient information-sharing is expected to benefit DAF, relevant entities, and the industrial cannabis industry, including participants whose information may be shared. For the reasons stated above, any departure from fundamental legislative principles is justified.

Amendment to the Animal Care and Protection Act

The amendment to section 181 of the ACP Act to provide that a person is liable for the conduct of their representatives in relation to offences under the ACP Act, will reverse the onus of proof for applicable offences. The amendment places the burden on the employer, or other relevant person, to prove they were not in a position to influence their representative's behaviour, or took reasonable steps to prevent the conduct.

This may infringe upon the fundamental legislative principle provided for in section 4(3)(d) of the LS Act, that legislation should not reverse the onus of proof in criminal proceedings without adequate justification. The amendment may also infringe upon legislative principles not listed in the LS Act, that the imposition of presumed responsibility must be justified, and that legislation should not, without sufficient justification, unduly restrict ordinary activities.

The purposes of the ACP Act include providing standards for the care and use of animals, and protecting animals from unjustifiable, unnecessary or unreasonable pain. It is important that animal welfare standards are upheld by not only employees in direct contact with animals but also by employers. Employers have an obligation to ensure a work environment and procedures to support their employees' adherence to the standards of welfare of animals under their care.

Any departure from fundamental legislative principles is justified on the basis that a reversal of the onus of proof is necessary to ensure employers take those relevant steps. The locus of control employers have over certain employee conduct makes them best placed to not only take reasonable steps to prevent the conduct of their representatives. Employers are also in a more advantageous position than a prosecuting authority to take and keep records of those reasonable steps.

Other amendments

<u>Amend power to require record production</u>

The amendment to section 33C of the VS Act will extend the Veterinary Surgeons Board of Queensland’s (Board) power to direct the production of veterinary practice records to include the ability to direct a veterinary premises approval holder to produce records about the practice of veterinary science at their premises.

This may infringe upon the fundamental legislative principle not listed in the LS Act, that the abrogation of rights and liberties from any source must be justified (privacy).

The purpose of the amendment is to ensure that when a veterinary surgeon is no longer employed at a particular veterinary practice, the Board is able to direct the veterinary premises approval holder to produce records, without having to exercise more invasive entry and search powers.

While the Board could currently exercise other powers to obtain the records where the relevant veterinary surgeon has left. Those powers are more invasive and would involve the Board exercising entry and search powers, which is excessive if there is no strong opposition to cooperating with the Board.

Additionally, as the records would be obtained regardless of the particular power used to obtain them, there is not expected to be an expansion on the current abrogation of a person's right to privacy that may otherwise be engaged when the records are handed over. For the reasons stated above, any departure from fundamental legislative principles is justified.

Consultation

Reforms of the Animal Management (Cats and Dogs) Act 2008 for dangerous dog management

Stakeholder consultation on the *Strong dog laws: Safer communities* discussion paper, which proposed amendments to the AMCD Act, occurred from 25 June to 24 August 2023. Respondents could complete a survey or provide a written response through the DAF online engagement hub or by email or post. Targeted promotion of participation was provided to First Nations Communities, informed by advice from the Department of Treaty, Aboriginal and Torres Strait Islander Partnerships, Communities and the Arts

A total of 3,969 submissions had been received as of midnight 31 August. Of these submissions, 318 were written submissions. A total of 3,651 stakeholders submitted responses online to the consultation survey. Thirty-four of the written submissions were on behalf of organisations, including some submissions made on behalf of a group of organisations.

Strong community support was recorded for the proposals outlined in the discussion paper. Approximately 90% of survey respondents supported the community and education campaign, 69% supported the ban on the restricted dog breeds, 84% supported a penalty review, 88% supported a new effective control in public places offence, 81% supported clarification of destruction and 71% supported streamlining external reviews. A more detailed summary of the feedback received will be made available online.

Fisheries amendments including Independent onboard monitoring

The Strategy, which underpins several proposed amendments in the Bill, was released in 2017 after extensive consultation. More than 11, 000 submissions were received in this consultation process, with the vast majority of respondents indicating support for reform. In particular, there was support for better data to underpin fisheries management decisions. IOM is the only way of collecting independent data on retained and non-retained commercial catch therefore providing accurate and reliable data needed for evidence-based fisheries management decisions.

Feedback on other fisheries management amendments has also been sought through the fishery-specific working groups and the Sustainable Fisheries Expert Panel that have been

established under the Strategy to provide operational advice to Fisheries Queensland and technical advice to government on fisheries management respectively.

OBPR was consulted on a Preliminary Impact Assessment for the other amendments (non-IOM) in the Bill. OBPR advised that no further regulatory impact analysis is required for the amendments as the amendments are unlikely to results in significant adverse impacts.

Reframing connections with First nations peoples

The amendments in the Bill to contemporise outdated and offensive language in relation to First Nations peoples were informed by the amendments proposed in the Path to Treaty Bill 2023, which undertook consultation with Aboriginal and Torres Strait Islander groups to determine the appropriate language to adopt under legislation. Due to the nature of these amendments, further consultation was not considered necessary.

Review of the Biosecurity Act 2014

The Biosecurity Legislation Reference Group (BLRG) was established at the commencement of the review to ensure that the Act review was open, transparent and inclusive of industry and the community. Membership of the BLRG consisted of over 40 representatives from a wide range of organisations including peak agricultural industry bodies, growers associations, veterinary associations, port corporations, fisheries, racing groups, conservation groups, government owned corporations, Local Government Association Queensland and various State agencies.

This group was formed to provide advice to Biosecurity Queensland on the review and disseminate information to the member's constituents. The BLRG met five times in person, as well as via email and teleconference to examine learnings from the initial operation of the Act, identify issues and suggest solutions.

As Local Governments also administer the Act in relation to invasive biosecurity matter, a local government specific BLRG was established. All 72 local governments were invited to participate, with 22 local governments accepting the invitation. The Local Government BLRG met four times to raise issues, consider solutions and provide recommendations for Biosecurity Queensland and BLRG consideration.

Internal consultation consisted of surveying authorised officers across the agency to gauge what was working well, what needed work and any suggestions. The Regulatory Change Committee (RCC) was also consulted to ensure any issues raised by each biosecurity program were considered. The proposed amendments were approved by the BLRG, local government BLRG, RCC and Biosecurity Leadership Board before being progressed to the Minister.

On 28 June 2019, DAF finalised the Review of the Queensland Biosecurity Act 2014 report. The report included 22 recommendations for legislative amendments for consideration.

Review of the Farm Business Debt Mediation Act 2017

In reviewing the FBDM Act, DAF consulted with mediators, banking organisations, industry organisations, the Queensland Law Society, Legal Aid Queensland and the organisations of rural financial counsellors. Stakeholder feedback during the FBDM Act Review was overwhelmingly supportive of the way the Act operated. Despite making recommendations to improve the effectiveness of the FBDM Act, the review concluded that the Act is meeting its objectives.

Drugs Misuse Act

The Consultation RIS was released for public consultation on the Queensland Government's "Get Involved" webpage for a total of 41 days from 23 May 2019 to 2 July 2019. A stakeholder meeting was held on 4 June 2019 to explain and discuss the consultation RIS with key industry stakeholders. In total, only 13 submissions were received from industry stakeholders and the general public. Of the 13 respondents, 7 were current licence holders; 3 members of the general public; 2 industry representatives and 1 was a consultant / agronomist to the Australian industrial cannabis industry.

All respondents surveyed were in support of the proposal to allow for greater analyses for growers and researchers.

In response to the Consultation RIS, 62% of all respondents supported the proposal to enable the QPS and DAF to use their resources more efficiently to enforce the law and regulate the industry. 23 % voted against the proposal and 15% were unsure.

Consistency with legislation of other jurisdictions

Reforms of the Animal Management (Cats and Dogs) Act 2008 for dangerous dog management

A review of penalties across Australian jurisdictions was presented in the discussion paper, with each state and territory having its own laws that generally enable local governments to enforce obligations and standards, with the exception of the Northern Territory where dog management is contained in local bylaws. Laws in each state and territory include offences relating to dog attacks, with penalties differing in each jurisdiction. In New South Wales, South Australia, the Australian Capital Territory, Western Australia, Victoria and Tasmania maximum penalties include various periods of imprisonment for the most serious types of dog attacks. Higher penalties generally apply for offences involving greater culpability or more serious conduct. The amended penalties in the Bill will bring Queensland into line with these other Australian jurisdictions.

The breeds proposed to be banned in Queensland are currently listed under the Commonwealth Customs (Prohibited Imports) Regulations 1956 (Cwlth), therefore the proposal to ban breeds is aligned with Commonwealth legislation.

Independent onboard monitoring

The Bill provides for the establishment of IOM in select Queensland fisheries, which helps to strengthen the Queensland Government's broader commitments under both federal and state nature conservation legislation.

The *Great Barrier Reef Marine Park Act 1975* (Cth) provides for the long-term protection, ecologically sustainable use, understanding and enjoyment of the GBR. The GBR Marine Park Authority, which administers this Act, is concerned that commercial net fishing poses a high risk to protected animals and considers this to be the most significant fisheries sustainability issue in the marine park. In the absence of IOM of higher risk commercial fishing activities, GBR Marine Park Authority may seek further restrictions on fishing activity in the GBR, which represents a large part of the fishing grounds used by Queensland's fishers.

All Australian fisheries that export product or have the potential to interact with protected animals in Commonwealth waters must be assessed and approved under the EPBC Act. The EPBC Act provides a legal framework to protect and manage nationally and internationally important flora, fauna and ecological communities, and gives effect to Australia's international treaty obligations in respect to environmental management.

Approvals are issued in the form of a WTO accreditation, subject to a series of conditions. If a fishery is not an accredited WTO under section 13A of the EPBC Act, export of product from the fishery will not be permitted at any stage along the marketing chain. The approval also provides fishers with a defence if they have an unintentional interaction with a protected animals (deliberate interactions, and interactions without a WTO approval, are subject to serious penalties: fines of up to $180 000 or two-years' imprisonment).

There are currently 16 active WTO export approvals for Queensland fisheries under these arrangements. Eight others have expired and four have been revoked. The East Coast Otter Trawl Fishery, which exports significant quantities of product, has an active WTO approval that is contingent upon independent onboard monitoring and validation of catch by 20 May 2024. Failure to implement IOM by the due date is likely to result in the loss of export approvals.

The proposed amendments to the Fisheries Act 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 Bill will give effect to the Strategy and deliver a more responsive, evidence-based approach to fisheries management.

Clarify the interactions of regulated fish between the Fisheries Act and Nature Conservation Act

The amendments in the Bill to amend the Fisheries Act and Nature Conservation Act to clarify the meaning of fish and update cultural language are specific to the State of Queensland are not uniform with or complementary to legislation of the Commonwealth or another state or territory.

Reframing connections with First nations peoples

The contemporising of cultural language under the Bill will align with some of the language used by the Commonwealth and other states or territories.

Notes on provisions

Chapter 1 Preliminary

1 Short title

Clause 1 provides that the Act may be cited as the *Agriculture and Fisheries and Other Legislation Amendment Act 2023*.

2 Commencement

Clause 2 provides that Chapter 4, Part 3, commences on 1 May 2024, Chapter 4, Part 4, and Schedule 1, Part 2, commence on 28 August 2024, and Part 3 of Chapter 5, Part 3 of Chapter 10, Chapter 12, and Part 3 of Schedule 1 commence on a day to be fixed by proclamation.

Chapter 2 Amendment of Agricultural Chemicals Distribution Control Act 1966

3 Act amended

Clause 3 provides that this chapter amends the *Agricultural Chemicals Distribution Control Act 1966*.

4 Amendment of sch (Dictionary)

Clause 4 omits and replaces the Schedule (Dictionary) definition of 'ground equipment' to make clear that the definition does not include aerial equipment.

Chapter 3 Amendment of Animal Care and Protection Act 2001

5 Act amended

Clause 5 provides that this chapter amends the *Animal Care and Protection Act 2001*. It includes a note about the amendments in Schedule 1, Part 1 which also amend the *Animal Care and Protection Act 2001*.

6 Amendment of s 181 (Conduct of representatives)

Clause 6 amends section 181 to remove the current restriction on liability for the conduct of representatives to offences where it is relevant to prove a person's state of mind. The

amendment aligns the provisions with similar provisions under other Queensland legislation, for example section 359 of the *Biosecurity Act 2014*.

The amendment instead provides that if it is relevant to prove a person's state of mind in relation to particular conduct, it is enough to show the conduct was engaged in by a representative of the person within the scope of the representative's actual or apparent authority and the representative had the state of mind.

7 Omission of ss 209 and 209A

Clause 7 omits sections 209 and 209A relating to executive officer liability for particular offences. The amendment in clause 6 renders the executive officer liability provisions unnecessary, because the conduct can be captured under the amended section 181.

8 Replacement of ch 9, hdg, (Transitional provision for Primary Industries Legislation Amendment Act 2006)

Clause 8 omits and replaces the Chapter 9 headings to accommodate the transitional provisions in clause 9.

9 Insertion of new ch 9, pt 2

Clause 9 provides a new Chapter 9, Part 2, about transitional provisions for the amendments in clauses 6 and 7. The transitional arrangements provide that for a proceeding started before commencement where it is relevant to prove a person's state of mind in relation to particular conduct, former section 181 applies. The transitional provisions also provide that, in relation to an offence against former section 209, or an offence against a deemed executive liability provision, committed before commencement, a proceeding may be continued or started as if clause 7 had not commenced. A deemed executive liability provision has the same meaning given by former section 209A(3).

Chapter 4 Amendment of Animal Management (Cats and Dogs) Act 2008

Part 1 Preliminary

10 Act amended

Clause 10 provides that this chapter amends the *Animal Management (Cats and Dogs) Act 2008*. It includes a note about the amendments in Schedule 1, Parts 1 and 2 which also amend the *Animal Management (Cats and Dogs) Act 2008*.

Part 2 Amendments commencing on assent

11 Amendment of s 81 (Obligation to comply with permit conditions)

Clause 11 amends section 81 to increase the maximum penalties for failure to comply with permit conditions under subsections (1) and (2) from 75 penalty units to 150 penalty units.

12 Amendment of s 93 (Owner's obligation if proposed declaration notice in force)

Clause 12 amends section 93(1) to increase the maximum penalty for failing to comply with conditions of a declaration notice from 75 penalty units to 150 penalty units.

The clause also replaces the note, to see also sections 66 and 67 for the prohibition on supplying a restricted dog, a proposed restricted dog, a proposed declared dog, declared dangerous dog or declared menacing dog. This recognises that the restricted dog provisions will still be in place after assent, and to correct a missing reference to a proposed restricted dog which is also covered by section 66.

13 Amendment of s 97 (Declared dangerous dogs)

Clause 13 amends section 97 to increase the maximum penalty for failing to comply with permit conditions for declared dangerous dogs from 75 penalty units to 150 penalty units.

14 Amendment of s 98 (Declared menacing dogs)

Clause 14 amends section 98 to increase the maximum penalty for failing to comply with permit conditions for declared menacing dogs from 75 penalty units to 150 penalty units.

15 Amendment of s 134 (Failure to comply with notice)

Clause 15 amends section 134 to increase the maximum penalty for failure to comply with a notice from 75 penalty units to 150 penalty units. It also amends the heading of the section to reflect that the notice is a compliance notice.

16 Amendment of ch 8 heading (Reviews)

Clause 16 amends the Chapter 8 heading to reflect the chapter relates to both reviews and appeals.

17 Insertion of new ch 8, pt 3

Clause 17 inserts a new section 190, as new Part 3 of Chapter 8, which provides that, in relation to a decision made by QCAT in a proceeding for the external review of a decision to make a destruction order for a dog, an appeal against QCAT's decision may only be made on a question of law.

18 Insertion of new s 209B

Clause 18 inserts a new section 209B to allow for the chief executive of the department responsible for the *Animal Management (Cats and Dogs) Act 2008* to make guidelines about matters relating to compliance with the Act. In particular, they may make guidelines to help authorised persons to perform their functions under the Act. The provision also requires that guidelines must be published on the department's website.

19 Insertion of new ch 10, pt 6

Clause 19 inserts transitional provisions for Agriculture and Fisheries and Other Legislation Amendment Act 2023. It provides that new section 190 only applies to an appeal started after the commencement of clause 17.

20 Amendment of sch 2 (Dictionary)

Clause 20 makes a minor consequential amendment to the definition of *responsible person*, to omit the reference to 'regulated' dogs.

Part 3 Amendments commencing on 1 May 2024

21 Amendment of s 4 (How purposes are to be primarily achieved)

Clause 21 amends section 4 to insert a new part of subsection (l) to retain the intention but reduce overlap with subsection (m).

22 Omission of s 64 (When a regulated dog is under effective control)

Clause 22 omits section 64 describing when a regulated dog is under effective control. Effective control of dogs is now provided by the new sections 192, which has incorporated the previous requirements under section 64 for regulated dogs.

23 Amendment of s 89 (Power to make declaration)

Clause 23 omits and replaces section 89(7) to provide that *animal* has the meaning given in section 191, and *seriously attack* means attack a person in a way that causes death, grievous bodily harm, or bodily harm, or attack an animal in a way that causes death, maims, or wounds the animal.

24 Amendment of s 125 (Seizure powers for dogs)

Clause 24 makes a minor amendment to subsection (2) to rephrase the reference to effective control to reflect the wording in new sections 191-193.

25 Insertion of new ss 191–193

Clause 25 inserts new sections 191, 192 and 193 about effective control of a dog.

New section 191 inserts definitions for the following terms for this part:

- *animal* – does not include vermin that are not the property of anyone.
- *dog patrol category* – see the *Security Providers Act 1993*, Schedule 2.
- *effective control* – see section 192.
- *relevant person* – means the owner of the dog or a responsible person for the dog.

- *security officer* – has the meaning provided by the *Security Providers Act 1993*, section 7.
- *security patrol dog* – means a dog used in the dog patrol function of a security officer.
- *serious dog offence* – means an offence against sections 193(a), (b), (c), or (d), sections 194(a), (b), (c), or (d), or sections 195(1)(a), (b), (c), or (d).

New section 192 provides for the circumstances and requirements for a regulated dog or a non-regulated dog to be considered to be under effective control.

New Subsection (1) specifies the effective control requirements for a regulated dog. These include that the relevant person is physically able to control the dog, and is in control of only that dog. The person must also be holding the dog by an appropriate restraining device, or the dog must be securely tethered to a fixed object and under continuous supervision of the person, in a way that ensures the dog is not a risk to a person or other animal.

However, a regulated dog is also under effective control if kept in an enclosed part of a vehicle and enclosed or restrained in a way that prevents any part of the dog from moving outside the vehicle, or is participating in activities specified in subsection (1)(c), supervised by a recognised body.

New Subsection (2) specifies the effective control requirements for a non-regulated dog. If the dog is in an off-leash area the relevant person must supervise the dog and be able to control the dog using voice command. In a public place other than an off-leash area the person must be able to physically control the dog and be restraining the dog on a leash, or by securely tethering the dog to a fixed object and supervising it, or by keeping the dog in an appropriate temporary enclosure and supervising it.

However, a non-regulated dog is also under effective control if confined in or tethered on a vehicle in a way that prevents any part of the dog moving beyond the vehicle, or is participating in activities specified in subsection (2)(d), supervised by a recognised body.

The provision also specifies that a government entity dog or security patrol dog performing their relevant functions authorised under an Act are under effective control, and a working dog defined under the Act performing a working dog function is under effective control.

New section 193 provides that a relevant person for a dog must, unless the person has a reasonable excuse, exercise effective control of the dog in a public place. Failure to comply is an offence, and the following maximum penalties apply:

- if the dog attacks and causes the death of, or grievous bodily harm to, a person:
  - if the dog is a regulated dog or the relevant person has been convicted of a serious dog offence within the preceding 5 years – 600 penalty units or 2 years imprisonment.
  - otherwise – 600 penalty units or 1 year's imprisonment.
- if the dog attacks and causes the death of an animal or maims an animal:
  - if the dog is a regulated dog or the relevant person has been convicted of a serious dog offence within the preceding 5 years – 500 penalty units.
  - otherwise – 400 penalty units.
- if the dog attacks and causes bodily harm to a person:

  - if the dog is a regulated dog or the relevant person has been convicted of a serious dog offence within the preceding 5 years – 300 penalty units or 6 months imprisonment.
  - otherwise – 300 penalty units.
- if the dog attacks and wounds an animal:
  - if the dog is a regulated dog or the relevant person has been convicted of a serious dog offence within the preceding 5 years – 200 penalty units.
  - otherwise – 150 penalty units.
- Otherwise, where a person fails to comply:
  - if the dog is a regulated dog or the relevant person has been convicted of a serious dog offence within the preceding 5 years – 100 penalty units.
  - otherwise – 50 penalty units.

26 Replacement of ss 194 and 195

Clause 26 replaces the existing sections 194 and 195, which relate to the requirement to ensure a dog does not attack or cause fear, and the prohibition on allowing or encouraging a dog to attack or cause fear, respectively. The amendments implement increased penalties and amend the circumstances of aggravation, in line with new section 193 above.

New section 194 provides that a relevant person for a dog must take reasonable steps to ensure the dog does not attack, or act in a way that causes fear to, a person or animal. Failure to comply is an offence, and the following maximum penalties apply:

- if the dog attacks and causes the death of, or grievous bodily harm to, a person:
  - if the dog is a regulated dog or the relevant person has been convicted of a serious dog offence within the preceding 5 years – 600 penalty units or 2 years imprisonment.
  - otherwise – 600 penalty units or 1 year's imprisonment.
- if the dog attacks and causes the death of an animal or maims an animal:
  - if the dog is a regulated dog or the relevant person has been convicted of a serious dog offence within the preceding 5 years – 500 penalty units.
  - otherwise – 400 penalty units.
- if the dog attacks and causes bodily harm to a person:
  - if the dog is a regulated dog or the relevant person has been convicted of a serious dog offence within the preceding 5 years – 300 penalty units or 6 months imprisonment.
  - otherwise – 300 penalty units.
- if the dog attacks and wounds an animal:
  - if the dog is a regulated dog or the relevant person has been convicted of a serious dog offence within the preceding 5 years – 200 penalty units.
  - otherwise – 150 penalty units.
- Otherwise, where a person fails to comply:
  - if the dog is a regulated dog or the relevant person has been convicted of a serious dog offence within the preceding 5 years – 100 penalty units.
  - otherwise – 50 penalty units.

New section 195 provides that a person must not allow or encourage a dog to attack, or act in a way that causes fear to, a person or another animal. Allow or encourage, without limiting the Criminal Code, sections 7 and 8, includes cause to encourage. Failure to comply is an offence, and the following maximum penalties apply:

- if the dog attacks and causes the death of, or grievous bodily harm to, a person:
  - if the dog is a regulated dog or the person has been convicted of a serious dog offence within the preceding 5 years – 700 penalty units or 3 years imprisonment.
  - otherwise – 700 penalty units or 2 years imprisonment.
- if the dog attacks and causes the death of an animal or maims an animal:
  - if the dog is a regulated dog or the person has been convicted of a serious dog offence within the preceding 5 years – 600 penalty units.
  - otherwise – 500 penalty units.
- if the dog attacks and causes bodily harm to a person:
  - if the dog is a regulated dog or the person has been convicted of a serious dog offence within the preceding 5 years – 400 penalty units or 2 years imprisonment.
  - otherwise – 400 penalty units.
- if the dog attacks and wounds an animal:
  - if the dog is a regulated dog or the person has been convicted of a serious dog offence within the preceding 5 years – 300 penalty units.
  - otherwise – 200 penalty units.
- Otherwise, where a person fails to comply:
  - if the dog is a regulated dog or the person has been convicted of a serious dog offence within the preceding 5 years – 150 penalty units.
  - otherwise – 75 penalty units.

27 Amendment of s 196 (Defences for offence against s 194 or 195)

Clause 27 amends references to section numbers to reflect amendments in this Bill, by including that the defences under section 196 apply to the new effective control offence in section 193, and removing subsection (2) because those definitions are now in Schedule 2.

28 Amendment of s 207A (Chief executive (transport) must disclose information)

Clause 28 amends the list of *prescribed offences* under subsection (3) about which information must be disclosed, to incorporate the new section 193 effective control offence. The amendment also makes minor updates to phrasing for consistency with the new definition of seriously attacks.

29 Insertion of new ch 10, pt 6, div 3

Clause 29 inserts a new Chapter 10, Part 6 to provide transitional provisions for offences committed against former section 194 and 195 prior to commencement. Under the transitional arrangements a proceeding for an offence may be started or continued and the person may be convicted or punished as if the amendments in Chapter 3, Part 3 of this Bill had not commenced.

30 Amendment of sch 1 (Permit conditions and conditions applying to declared dangerous and menacing dogs)

Clause 30 amends the conditions applying to declared dangerous and menacing dogs in Schedule 1, section 3, to omit effective control, which is captured by new sections 192 and 193, and instead only refer to the requirement for muzzling.

31 Amendment of sch 2 (Dictionary)

Clause 31 amends the Dictionary in Schedule 2, to omit the existing definition of effective control and to refer to new sections 191 or 192 for the definitions of *dog patrol category*, *effective control*, *relevant person*, *security officer*, *security patrol dog*, and *serious dog offence*.

A new definition for *animal* is also inserted referring to section 191.

Part 4 Amendments commencing on 28 August 2024

32 Amendment of s 3 (Purposes of Act)

Clause 32 amends section 3 to insert an additional purpose of the Act to include prohibiting the ownership of and particular dealings with dogs of particular breeds.

33 Amendment of s 4 (How purposes are to be primarily achieved)

Clause 33 amends section 4, about how the purposes of the Act are to be primarily achieved, to include prohibiting ownership of dogs of particular breeds. The section is also renumbered.

34 Amendment of s 45 (Dog must bear identification in particular circumstances)

Clause 34 replaces the note in section 45(2) to update references to Chapter 4, Part 5 for permit conditions applying to regulated dogs.

35 Amendment of s 47 (What registration form must state)

Clause 35 amends section 47(1) to omit references to a restricted dog, in line with the change to prohibited dog breeds. The clause also updates the definition of *address*, for a dog, to omit references to a restricted dog.

36 Amendment of s 52 (Registration fee must be fixed to give desexing incentive)

Clause 36 amends the definition of *dog* in section 52(3) to mean a dog other than a declared dangerous dog and omit reference to a restricted dog. The clause also inserts a note to see section 70 in relation to the compulsory desexing of declared dangerous dogs.

37 Amendment of s 54 (Amendment of registration)

Clause 37 makes a consequential amendment to section 54 to replace references to section 8 in Schedule 1.

38 Amendment of s 59 (Purpose of ch 4 and its achievement)

Clause 38 makes consequential amendments to section 59 to omit references to restricted dogs.

39 Amendment of s 60 (What is a regulated dog)

Clause 39 makes a consequential amendment to omit section 60(c) relating to a restricted dog.

40 Omission of s 63 (What is a restricted dog)

Clause 40 removes section 63 about what is a restricted dog, as restricted dogs will be redefined to be prohibited dogs.

41 Amendment of s 65 (Application of pt 2)

Clause 41 omits section 65(2) because it is about section 66 which is being omitted.

42 Omission of s 66 (Prohibition on supply of restricted dog)

Clause 42 omits section 66 about the prohibition of supply of restricted dogs. The prohibition is relocated to the new Chapter 4A for prohibited dogs.

43 Amendment of s 67 (Prohibition on supply of declared dangerous dog or menacing dog)

Clause 43 amends section 67 to refer to a regulated dog or proposed declared dog instead of a declared dangerous dog or menacing dog.

44 Replacement of ch 4, pt 2, div 3 hdg (Restricted dogs and declared dangerous dog or menacing dog)

Clause 44 amends the heading of Chapter 4, Part 2, Division 3 to remove restricted dogs so the division is now solely about declared dangerous dogs.

45 Amendment of s 69 (Prohibition on breeding)

Clause 45 amends section 69 to remove provisions about prohibition on breeding of a ‘restricted dog’. Refer instead to the new Chapter 4A which includes a prohibition on breeding of prohibited dogs.

46 Replacement of s 70 (Compulsory desexing of declared dangerous dog or restricted dog)

Clause 46 amends section 70 to remove provisions about compulsory desexing for a restricted dog. There will no longer be a need to require desexing following commencement as any dog that is currently registered as a restricted dog is already required to be desexed as a condition of registration. When the new Chapter 4A takes effect, ownership of new dogs of a formerly restricted breed will be prohibited.

47 Omission of ch 4, pt 2, div 4 (Restricted dogs only)

Clause 47 removes Chapter 4, Part 2, Division 4 about permits for restricted dogs. Permits for restricted dogs will no longer be issued.

48 Omission of ch 4, pt 3 (Restricted dog permits)

Clause 48 removes Chapter 4, Part 3 about restricted dog permits. Permits for restricted dogs will no longer be issued.

49 Amendment of s 89 (Power to make declaration)

Clause 49 amends section 89(1) and 89(4) to remove provisions about a 'restricted dog' and to renumber the subsections.

50 Amendment of s 90 (Notice of proposed declaration)

Clause 50 amends section 90(1) to remove provisions about a restricted dog.

51 Amendment of s 93 (Owner's obligation if proposed declaration notice in force)

Clause 51 revises the note in section 93(1) to omit reference to a restricted dog and section 66 which is being omitted, and to clarify that this section applies if the proposed declaration notice is for a dangerous dog declaration.

52 Amendment of s 95 (Notice and taking effect of declaration)

Clause 52 amends section 95 to remove provisions about a restricted dog, and to replace *notice* with *information notice*. Subsections are also renumbered. Subsection (6)(e) is also revised to clarify that the dog must only be kept at the place stated in the registration notice as the address for the dog.

53 Replacement of ch 4, pt 5, hdg (Application of particular permit conditions for declared dangerous or menacing dogs)

Clause 53 amends the heading of Chapter 4, Part 5 to simply refer to conditions for regulated dogs.

54 Amendment of s 96 (Operation of pt 5)

Clause 54 amends section 96 to refer to a regulated dog instead of a declared dangerous dog or declared menacing dog, and to revise the numbering.

55 Amendment of s 97 (Declared dangerous dogs)

Clause 55 makes a minor consequential amendment to omit a reference to permits.

56 Amendment of s 98 (Declared menacing dogs)

Clause 56 makes minor consequential amendments to omit a reference to permits, and Schedule 1 references.

57 Omission of s 99 (Failure to decide application taken to be refusal)

Clause 57 omits section 99 because it relates to Part 3 that is being omitted.

58 Amendment, relocation and renumbering of s 102 (Recovery of seizure or destruction costs)

Clause 58 inserts that costs of seizure or destruction may also be recovered for the destruction of a regulated or prohibited dog, or, where a regulated dog declaration is made at the same time as a destruction order.

59 Amendment of s 103 (Cost of regulated dog enclosure—dividing fence)

Clause 59 amends section 103(5) to remove reference to a restricted dog from the definition of a relevant place for a regulated dog.

60 Insertion of new ch 4A

Clause 60 inserts a new Chapter 4A about Prohibited dogs.

New section 103A provides that a prohibited dog is a dog of a breed prohibited from importation into Australia under the *Customs Act 1901* (Cwlth), but does not include a crossbreed.

New section 103B provides that a person must not own or be a responsible person for a prohibited dog without a reasonable excuse. A maximum penalty of 150 penalty units applies. Subsection (2) provides that it is a reasonable excuse if the dog is an assistance animal. Subsection (3) clarifies that *assistance animal* refers to the *Disability Discrimination Act 1992* (Cwlth).

New section 103C provides that a person must not supply a prohibited dog to another person. A maximum penalty of 150 penalty units applies.

New section 103D provides that a person must not give, or take, possession of a prohibited dog for the purpose of allowing it to breed with another dog. A maximum penalty of 150 penalty units applies.

New section 103E allows for a person to surrender a prohibited dog, for example if they mistakenly purchased it or brought into Queensland.

61 Amendment of s 111 (General power to enter places)

Clause 61 amends sections 111(e) to (h) to remove references to a restricted dog in relation to general entry powers. A new subsection (e) is inserted to permit entry during daytime to inspect whether a prohibited dog is at a place instead. Subsections are also renumbered.

62 Amendment of s 112 (Additional entry powers for particular dogs)

Clause 62 amends section 112 to remove provisions about a restricted dog in relation to additional entry powers and replace with provisions about prohibited dogs. Subsections are also renumbered.

63 Amendment of s 113 (Approval of inspection program authorising entry)

Clause 63 makes a minor amendment to section 113 to omit a reference to permits.

64 Amendment of s 125 (Seizure powers for dogs)

Clause 64 amends section 125 to replace provisions about a restricted dog with prohibited dog.

65 Insertion of new s 126A

Clause 65 inserts new section 126A to define a *destruction order* as an order made by an authorised person stating that the authorised person proposes to destroy the dog not earlier than 14 days after the notice is served under this part.

66 Replacement of s 127 (Power to destroy seized regulated dog)

Clause 66 replaces section 127 and inserts new section 127AA.

New section 127 incorporates a prohibited dog and identifies circumstances where a regulated or prohibited dog can be destroyed and a destruction order is not required from provisions relating to destruction under a destruction order which are provided in new section 127AA.

New section 127AA relates to the destruction of regulated dogs or prohibited dogs under a destruction order. It includes a requirement that an authorised person must make a destruction order if the dog has seriously attacked a person or an animal. New section 127AA retains the

existing requirements and timeframes for issuing a destruction order, and further clarifies when a destruction order may be carried out after the various stages of review or appeal.

New definitions are also inserted for the following terms:

- *animal* – has the meaning give by section 191; and.
- *seriously attack* – means attack a person in a way that causes death, grievous bodily harm, or bodily harm to the person, or attack an animal in a way that causes death, maims, or wounds the animal.

67 Amendment of s 127A (Concurrent regulated dog declaration and destruction order)

Clause 67 makes technical and consequential amendments to section 127A about a concurrent regulated dog declaration and destruction order.

68 Amendment of s 130 (Return of particular dog)

Clause 68 amends 130 to include where a dog that was reasonably suspected of being a prohibited dog must be returned.

69 Amendment of s 131 (Return of particular dog to registered owner)

Clause 69 amends section 131 to include a dog seized because it was reasonably suspected of being a prohibited dog, in provisions for the return of particular dogs to their registered owner. Minor technical amendments are also made throughout.

70 Amendment of s 172 (Chief executive must keep regulated dog register)

Clause 70 makes a minor consequential amendment to replace the references to declared dangerous, declared menacing, and restricted dogs, with regulated dogs.

71 Amendment of s 174 (Chief executive officer must give information)

Clause 71 replaces section 174(1) to remove provisions about a restricted dog and to clarify responsibilities. The section is also renumbered after additional subsections are added.

72 Replacement of s 175 (Chief executive officer must give information about owner)

Clause 72 makes consequential amendments to section 175 to omit references to Schedule 1.

73 Amendment of s 178 (General register)

Clause 73 simplifies section 178 to remove provisions about a restricted dog, and to refer to a regulated dog instead of a declared dangerous dog or declared menacing dog. The section is also renumbered.

74 Amendment of s 184 (Stay of operation of original decision)

Clause 74 replaces the note in section 184(5) to omit reference to a restricted dog and section 66 which is being omitted.

75 Amendment of s 185A (Internal review of concurrent regulated dog declaration and destruction order)

Clause 75 makes a consequential amendment to the reference to a combined information notice.

76 Amendment of s 189 (Condition on stay granted by QCAT for particular decisions)

Clause 76 replaces the note in section 189(2)(b) to omit reference to a restricted dog and section 66 which is being omitted.

77 Amendment of s 190 (Appeal against QCAT decision on external review relating to destruction order only on a question of law)

Clause 77 amends a reference to section 127A in section 190(1) to include a reference to new section 127AA.

78 Insertion of new s 196A

Clause 78 inserts new section 196A to provide that a reference to a regulated dog in this part includes a prohibited dog. This will ensure that the circumstances of aggravation for the offences in sections 193 to 195 include when the dog is a prohibited dog as well as when the dog is a declared menacing or dangerous dog.

79 Amendment of s 197 (Muzzling decommissioned greyhounds in public places)

Clause 79 amends section 197(3) to refer to a regulated dog instead of a declared dangerous dog or declared menacing dog.

80 Amendment of s 203 (Other evidentiary aids)

Clause 80 amends section 203 to remove provisions about a restricted dog, and to renumber the subsections.

81 Insertion of new ch 10, pt 6, div 4

Clause 81 inserts a new Part 6, Division 4 to provide transitional arrangements for a person who held a restricted dog permit for a restricted dog immediately before the commencement of the new provisions.

New section 234 provides for the continuation of an application made under former Chapter 4, Part 3, but not decided before commencement.

New section 235 and 236 provides for the continuation of former review mechanisms for decisions made about restricted dog permits immediately before commencement.

New section 237 provides transitional arrangements to allow a person with a restricted dog permit for a registered restricted dog, prior to commencement, or after commencement under section 232, to retain their dog under the Act as in force immediately before commencement.

New section 238 inserts transitional provisions to make clear that new section 127AA only applies to a dog seized under section 125 or a warrant, after the commencement.

82 Amendment of sch 1 (Permit conditions and conditions applying to declared dangerous and menacing dogs)

Clause 82 makes a number of minor and consequential amendments to Schedule 1 as a result of the removal of restricted dogs and the relocation of effective control requirements to new section 192.

83 Amendment of sch 2 (Dictionary)

Clause 83 makes a number of minor and consequential amendments to Schedule 2 as a result of the removal of restricted dogs, the addition of prohibited dogs, and updates to references to permits and declared dangerous or declared menacing dogs.

The clause also provides additional definitions. For *destruction order* in relation to a dog, see section 126A. For *prohibited dog* see section 103A.

Chapter 5 Amendment of Biosecurity Act 2014

Part 1 Preliminary

84 Act amended

Clause 84 provides that this chapter amends the *Biosecurity Act 2014*.

Part 2 Amendments commencing on assent

85 Amendment of s 42 (Reporting presence of category 1 or 2 restricted matter)

Clause 85 amends section 42 to refer to ‘category 1 or category 2 restricted matter’ instead of ‘relevant restricted matter’, and to remove the definition of ‘relevant restricted matter’.

86 Amendment of s 43 (Distributing or disposing of category 3 restricted matter)

Clause 86 amends section 43 (Distributing or disposing of category 3 restricted matter).

Subclause (1) inserts a new subsection (1A) to provide that the restrictions on the distribution or disposal of category 3 restricted matter do not apply if the matter is an invasive plant and an owner of the land on which the invasive plant is located disposes of the plant on the land by moving or disturbing it only to the extent reasonably necessary for the disposal.

Subclause (2) inserts a new subsection (2A) to provide that the restrictions on the distribution or disposal of a thing infested with a category 3 restricted matter similarly do not apply if the thing is infested with an invasive plant and an owner of the land on which the invasive plant is located disposes of the plant on the land by moving or disturbing it only to the extent reasonably necessary for the disposal.

Subclause (3) renumbers section 43(1A) to (3) to 43(2) to (5).

87 Amendment of s 48 (Main function of local government)

Clause 87 amends section 48 (Main function of local government).

Subclause (1) amends subsection (1) to insert (e) which provides that local government also have the function of managing an invasive animal or plant, other than an animal or plant that is prohibited matter under paragraph (a) or (b) or restricted matter under paragraph (c) or (d), that is provided for under a local law of the local government and in the opinion of the chief executive, satisfies the local invasive biosecurity matter criteria.

Subclause (2) inserts a new subsection (1A) to provide that the local invasive biosecurity matter criteria for an invasive animal or invasive plant are (a) the animal or plant is currently present in the local government's local government area; and (b) there are reasonable grounds to believe that if restrictions under this Act are not imposed on the invasive animal or invasive plant to reduce, control or contain it, the animal or plant may have an adverse effect on a biosecurity consideration.

The additional animals and plants captured under new subsection (1)(e) are also *invasive biosecurity matter* for the local government's area. This enlivens local government powers under other parts of the Act in relation to the animals and plants.

Subclause (3) then renumbers the subsections.

88 Amendment of s 114 (Matters for inclusion in biosecurity emergency order)

Clause 88 amends section 114(2)(g) to insert a new subsection (iii), stating that a biosecurity emergency order may include a requirement for a person to make a record about the movement of biosecurity matter or a carrier and keep the record for the period stated in the order.

89 Amendment of s 115 (Effect and duration of biosecurity emergency order)

Clause 89 amends section 115 (Effect and duration of biosecurity emergency order), increasing the maximum duration of a biosecurity emergency order to 42 days.

Subclause (1) inserts a new subsection (1A) to provide that the chief executive must revoke a biosecurity emergency order if satisfied the biosecurity event to which the order relates is no longer having, or will not have, a significant adverse effect on a biosecurity consideration.

Subclause (2) amends subsection (2) to reference the new subsection (1A).

Subclause (3) omits and replaces the 21 day limit for the duration of a biosecurity emergency order with 42 days.

Subclause (4) updates the reference in section 115(5) from subsection (5) to subsection (6).

Subclause (5) renumbers section 115(1A) to (5) to 115(2) to (6).

90 Amendment of s 125 (Matters for inclusion in movement control order)

Clause 90 amends section 125(3)(d) to insert a new subsection (vi), stating that a movement control order may also impose a requirement on a relevant person to make a record about the movement of biosecurity matter or a carrier to which the movement control order relates and keep the record for the period stated in the order.

91 Insertion of new s 127A

Clause 91 inserts a new section 127A to provide additional powers for inspectors in relation to a place within an area the subject of a movement control order for the purposes of ensuring compliance with a movement control order.

New subsection (1) provides that an inspector may do any of the following:

- enter and re-enter the place with consent, or without consent other than at night;
- give a direction restricting the movement of controlled biosecurity matter;
- direct a person to move controlled biosecurity matter to a stated area within the place;
- remove controlled biosecurity matter from the place;
- direct a person to inspect or test controlled biosecurity matter at the place;
- direct a person to clean or disinfect the place or any structure or thing at the place;
- direct a person to treat, destroy, dispose or, decontaminate, disinfect or vaccinate controlled biosecurity matter at the place;
- take any other action reasonably necessary for managing, reducing or eradicating the controlled biosecurity matter.

New subsection (2) provides that subsection (1) does not authorise entry of a residence.

New subsection (3) provides that an inspector or authorised person may only exercise a power under subsection (1) to the extent reasonably necessary for, and only for the purposes of, fulfilling the purposes and ensuring the effectiveness of the movement control order.

New subsection (4) provides that an inspector or authorised person may exercise a power under subsection (1) with the help, and using the force, that is necessary and reasonable in the circumstances.

New subsection (5) provides that a person to whom a direction is given under subsection (1) must comply with the direction unless the person has a reasonable excuse, with a maximum penalty of 1,000 penalty units or 1 year's imprisonment.

92 Amendment of s 145 (Registrable biosecurity entity must apply for registration)

Clause 92 inserts a minor technical amendment into section 145(2) by inserting 'after', after 'immediately'.

93 Amendment of s 156 (Renewal of registration)

Clause 93 amends section 156 to include appropriate references to new sections 156B and 156C, inserted by clause 94 below.

94 Insertion of new ss 156A-156C

Clause 94 inserts new sections 156A-156C to provide for circumstances in which the chief executive may deregister a registered biosecurity entity.

New section 156A applies in circumstances where, for a person who is a registered biosecurity entity for a biosecurity circumstance, the chief executive renews the person's registration under section 156(1) and makes a requirement of the person under section 156(2) and the person fails to comply with that requirement. The chief executive may give the person a notice requiring them, within the stated period not less than 90 days, to advise the chief executive whether they are a registrable biosecurity entity for the biosecurity circumstance.

New section 156B provides that where the person advises the chief executive within the notice period under new section 156A that they have ceased to be a registrable biosecurity entity, they are taken to have made an application for deregistration.

New section 156C provides that if the person does not comply with the notice under new section 156A, the chief executive may deregister the person as a registered biosecurity entity. The chief executive must give the person a notice confirming the deregistration. To remove any doubt new subsection (4) makes clear deregistration under new section 156C does not limit the application of section 141, which provides for who is a registrable biosecurity entity, or section 145, which provides that registrable biosecurity entity must apply for registration, to the person.

95 Amendment of s 214 (Applying for permit)

Clause 95 amends section 214 to omit existing subsection (6) and insert a new subsection (6) to provide that in addition to the existing criteria, under new subsection (6)(b) the chief executive may waive payment of the permit application fee if satisfied there are exceptional

circumstances for waiving payment of the fee. For example, payment of the fee would cause, or would be likely to cause, the applicant financial hardship.

96 Amendment of s 223 (Conditions of permit decided by the chief executive)

Clause 96 amends section 223 to make clear that a prohibited or restricted matter permit is subject to the conditions decided by the chief executive in deciding to grant the application for the permit '*or renew the permit*'.

97 Amendment of s 225 (Application for renewal)

Clause 97 amends section 225 making minor consequential amendments to include appropriate references to '*renew with conditions*' to reflect clause 96.

98 Amendment of s 230 (Transfer of permit)

Clause 98 amends section 230 to specify that if the chief executive decides to refuse an application to transfer a prohibited or restricted matter permit, the chief executive must as soon as practicable give the applicant an information notice for the decision.

99 Amendment of s 236 (What program authorisation must state)

Clause 99 amends section 236(1)(h) to provide that, in addition to or instead of an occupier, a biosecurity program authorisation may also impose obligations on a person who is the owner of a place to which the program applies.

100 Amendment of s 237 (Giving a direction for prevention and control program)

Clause 100 amends section 237 to provide that, in addition or instead of an occupier, an authorised officer may give directions to the owner of a place to which a prevention and control program applies.

101 Amendment of s 238 (Failure to comply with direction)

Clause 101 replaces section 238(1) in response to the amendments in clause 100, so that a person given a direction must comply, rather than just an occupier of the place, with the same penalty applying.

102 Amendment of s 270 (Entry of place under ss 261 and 262)

Clause 102 omits and replaces subsections (2) and (3) of section 270 to replace the requirement to attempt to seek an occupier's consent prior to entry under sections 261 and 262, with a requirement that an authorised officer attempt to notify an occupier of their intent to enter for the purposes of a biosecurity program or order.

103 Amendment of s 273 (Issue of warrant)

Clause 103 makes a minor technical amendment to section 273 by replacing the term 'inspector' with 'authorised officer'.

104 Replacement of s 283 (Duration of emergency powers)

Clause 104 replaces section 283 (Duration of emergency powers).

New section 283 inserts a new subsection (1)(b) which authorises the chief executive to approve a longer period during which an inspector may exercise emergency powers under Part 3, of not more than 168 hours.

New subsection (2) provides that the chief executive may only approve the longer period if an inspector exercising the powers makes a written request, including reasons, and the chief executive is satisfied the longer period is necessary.

New subsection (3) provides that if the chief executive approves a longer period, the chief executive must give the inspector the approval in writing, including reasons, and if an entitled person asks for a copy, give the person a copy of the approval.

New subsection (4) defines '*entitled person*' to mean an occupier of the place or a person who is directed or authorised to take reasonable steps at the place under sections 280(1)(a) or (c).

105 Amendment of s 393 (Entering into compliance agreements)

Clause 105 omits and replaces section 393(6) to make clear that a compliance agreement is of no effect in relation to a person to the extent that is purports to authorise an act or omission that is contrary to any of the following applying to the person—

(a) a biosecurity emergency order;

(b) a biosecurity zone regulatory provision;

(c) a movement control order.

Part 3 Amendments commencing by proclamation

106 Amendment of s 15 (What is *biosecurity matter*)

Clause 106 omits a reference to schedule 1 or 2 in section 15(3) in response to the lists of prohibited and restricted matter being moved to the *Biosecurity Regulation 2016*.

107 Replacement of s 19 (What is *prohibited matter*)

Clause 107 omits and replaces section 19 to remove refences to schedule 1 and provide that biosecurity matter is prohibited matter if it is prescribed by regulation or declared to be prohibited matter under section 31(1), to reflect the transfer of the lists of prohibited and restricted matter into the *Biosecurity Regulation 2016*.

108 Replacement of s 21 (What is *restricted matter*)

Clause 108 omits and replaces section 21 to remove references to schedule 2 and provide that biosecurity matter is restricted matter if it is prescribed by regulation, to reflect the transfer of the lists of prohibited and restricted matter into the *Biosecurity Regulation 2016*.

109 Replacement of ch 2, pt 2, div 1, hdg (Establishing what is prohibited matter)

Clause 109 omits and replaces the heading of Division 1 from '*Establishing what is prohibited matter*' to '*Emergency prohibited matter declaration*'.

110 Omission of ss 29 and 30

Clause 110 removes section 29 (Basic prohibited matter declaration provision) and section 30 (Prohibited matter regulation) because prohibited matter declarations and prohibited matter regulations no longer apply.

111 Amendment of s 31 (Chief executive may make emergency prohibited matter declaration)

Clause 111 amends section 31 to remove references to schedule 1 and a prohibited matter regulation, in response to the transfer of the lists of prohibited and restricted matter into the *Biosecurity Regulation 2016*, and renumber subsections.

112 Amendment of s 33 (Effect and duration of emergency prohibited matter declaration)

Clause 112 amends section 33(2). The words "to happen" in this subsection are redundant and do not conform with current grammar convention.

113 Omission of ss 34 and 35

Clause 113 removes section 34 requiring both prohibited matter regulation and emergency prohibited matter declaration to classify new prohibited matter, because the section links to schedule 1 that no longer applies.

The clause also removes section 35 requiring the Minister to keep on the department's website an up-to-date list of all biosecurity matter that is for the time being prohibited matter. The information does not need to be on the website because it is now in the regulation.

114 Replacement of ch 2, pt 3 hdg (Restricted matter)

Clause 114 amends the heading for Part 3 so that this part is solely about 'Obligations relating to restricted matter', because the division relating to 'establishing what is restricted matter' is being removed.

115 Omission of ch 2, pt 3, div 1 (Establishing what is restricted matter)

Clause 115 removes Division 1 (sections 38-41) because it is linked to instruments to be removed from the legislation, namely schedule 2, a restricted matter regulation, and a prohibited matter regulation.

116 Omission of ch 2, pt 3, div 2, hdg (Obligations relating to restricted matter)

Clause 116 removes the heading for Division 2, because there is now only one division in Part 3.

117 Amendment of s 48 (Main function of local government)

Clause 117 amends section 48 to replace subsection (1) that is linked to schedule 1 and schedule 2. A new section 48(1) is inserted, which amends some clauses previously amended by this Bill. The revised section is also renumbered.

Subsection (1) is amended to state that the main function under this Act of each local government is to ensure that the following biosecurity matter (invasive biosecurity matter for the local government's area) are managed within the local government's area in compliance with this Act—

(a) prohibited matter prescribed by regulation as invasive biosecurity matter;

(b) prohibited matter declared as invasive biosecurity matter under an emergency prohibited matter declaration;

(c) restricted matter prescribed by regulation as invasive biosecurity matter;

(d) an invasive animal or invasive plant, other than an animal or plant that is prohibited matter under paragraph (a) or (b) or restricted matter under paragraph (c), that (i) is provided for under a local law of the local government under subsection (4), and (ii) in the opinion of the chief executive, satisfies the local invasive biosecurity matter criteria.

The clause also amends the new section 2, amended and renumbered by this Act, to refer to subsection (1)(d)(ii) instead of subsection (1)(e)(ii), because subsection (e) no longer applies.

118 Omission of schs 1 and 2

Clause 118 removes schedule 1 (lists of prohibited matter) and schedule 2 (lists of restricted matter). These lists in these schedules are to be transferred into the Biosecurity Regulation, to support the efficient and timely management of these lists, while maintaining an appropriate level of oversight through the regulation process.

119 Amendment and renumbering of sch 4 (Dictionary)

Clause 119 makes minor amendments to the dictionary in schedule 4 to remove the definitions of 'prohibited matter regulation' and 'restricted matter regulation', remove references to the former prohibited and restricted matter schedules, and renumber the remaining schedules.

Chapter 6 Amendment of Chemical Usage (Agricultural and Veterinary) Control Act 1988

120 Act amended

Clause 120 states that this chapter amends the *Chemical Usage (Agricultural and Veterinary) Control Act 1988*.

121 Replacement of s 32 (Forfeiture to Crown)

Clause 121 replaces section 32 about returning a seized thing, and adds a new section 32A about forfeiture of a seized thing to the State, a new section 32B about dealing with things forfeited or transferred to the State, and a new section 32C about right of appeal to Magistrates Court for decision to forfeit. Replacing automatic forfeiture with a power for the chief executive to order anything seized be forfeited after the time limit to appeal has passed, or after an appeal is dismissed or withdrawn.

122 Amendment of schedule (Dictionary)

Clause 122 amends the definition of 'owner' in the schedule.
Owner, of a thing that has been seized under this Act, includes a person who would be entitled to possession of the thing had it not been seized.

Chapter 7 Amendment of Drugs Misuse Act 1986

123 Act amended

Clause 123 states that this chapter amends the *Amendment of the Drugs Misuse Act 1986*.

124 Amendment of s 50 (What researcher licences authorise)

Clause 124 removes section 50(d)(iii), providing that a researcher licence authorises the licensee, in accordance with the licence, to supply industrial cannabis plants or seed to a seed handler.

Instead, a new subsection 50(h) is added, providing that a researcher licence authorises the licensee, in accordance with the licence, to supply industrial cannabis seed to a seed handler. The subsections are also renumbered.

125 Amendment of s 51 (What grower licences authorise)

Clause 125 expands the current authorisation of a grower in section 51 to supply seed to a person authorised under a regulation to possess them. It provides that a grower licence authorises the licensee, in accordance with the licence, to also supply seed to a seed handler.

This clarification is required as a result of the *Hospital Foundations Act 2018* inserting the new licence category of 'seed handler' and allowing them to possess seed. The amendment also

authorises a grower to supply industrial cannabis plants to a person authorised under a regulation to possess them.

126 Insertion of new pt 5B, div 12B

Clause 126 inserts a new division 12B about information sharing to provide a clear head of power for the chief executive to enter into an agreement for information sharing with the commissioner of the police service; or the chief executive of a department; or an entity of, or representing, the Commonwealth or another State. The information that may be shared is limited to information that helps the chief executive of the entity perform their functions under legislation. Information obtained in a criminal history check cannot be shared. Information can only be used for the purpose for which it was shared.

Chapter 8 Amendment of Exhibited Animals Act 2015

127 Act amended

Clause 127 states that this chapter amends the *Exhibited Animals Act 2015*.

128 Amendment of s 33 (Meaning of *authorised animal (category A)*)

Clause 128 amends section 33 to reflect updated classifications for native animals in the *Nature Conservation (Animal) Regulation 2020*, Schedule 3, Parts 2 and 3.

Note that some former ‘controlled animals’ are now ‘exempt animals’ and therefore do not require an Exhibited Animal Authority to exhibit.

The following terms are removed:

- commercial animal
- controlled animal
- recreational animal
- restricted animal.

The following terms are added:

- class 1 animal
- class 2 animal
- dangerous animal.

The note in section 33 is also removed as it is outdated.

129 Amendment of s 64 (Content of each exhibited animal authority)

Clause 129 amends section 64(1)(c) by removing the example that refers to expired legislation.

Chapter 9 Amendment of Farm Business Debt Mediation Act 2017

130 Act amended

Clause 130 states that this chapter amends the *Farm Business Debt Mediation Act 2017*.

131 Amendment of s 14 (Notice of intention to take enforcement action)

Clause 131 amends section 14 to replace references to an 'enforcement action notice' with a 'notice inviting a request for mediation'. This shifts the emphasis from enforcement to mediation, and is likely to be less confronting when received by a person unfamiliar with the process.

132 Amendment of s 90A (Review of Act)

Clause 132 amends section 90A to provide for the next date of review of the Act as 10 years after 20 June 2022.

133 Amendment of sch 1 (Dictionary)

Clause 133 amends the dictionary in schedule 1 to replace 'enforcement action notice' with 'notice inviting a request for mediation – see section 14(2)'.

Chapter 10 Amendment of Fisheries Act 1994

Part 1 - Preliminary

134 Act amended

Clause 134 states that this chapter amends the *Fisheries Act 1994*.

Part 2 - Amendments commencing on assent

135 Amendment of s 3A (How particular purposes are to be primarily achieved)

Clause 135 amends section 3A by capitalising the word "Indigenous".

136 Amendment of s 5 (Meaning of fish)

Clause 136 amends section 5 to omit bêche-de-mer from subsection 5(2)(c) as it is redundant given it is included in other holothurians in the provision.

137 Amendment of s 14 (Defence for Aborigines and Torres Strait Islanders for particular offences)

Clause 137 amends section 14 to update the terms 'Aborigine', 'Torres Strait Islander' and 'Island Custom' with more contemporary and culturally sensitive language (i.e. 'Aboriginal person', 'Torres Strait Islander person' and 'Ailan Kastom', respectively).

138 Amendment of s 31 (Exclusion zone)

Clause 138 amends section 31 to provide a more explicit definition of shark control equipment to which the zone excluding persons from interfering with such equipment applies.

139 Amendment of s 61 (Conditions imposed on issue or renewal—general)

Clause 139 amends section 61 to change the requirement for an authority holder to pay a bond to ensure compliance with an authority condition, to the payment of a bank guarantee. Commercial practices have evolved since the provision of bonds was introduced and the preference now is that bank guarantees are provided in lieu of cash bonds.

140 Insertion of new s 61A

Clause 140 inserts new section 61A.

New section 61A (Conditions imposed for repeated interactions with protected animals) provides that if an authority holder has more than one interaction with a protected animal in a 12 month period, the chief executive may amend the authority to impose reasonable conditions to reduce the risk of future interactions.

The clause provides an inclusive list of examples of the types of conditions which may be imposed, such as requiring the holder to develop a mitigation plan, imposing additional requirements on the authority holder and imposing temporary restrictions. The clause also provides that a condition must state an end date the chief executive considers reasonable in the circumstances.

The clause further provides that the chief executive must review each condition within the time stated in the condition, this will ensure that conditions which are imposed, are not overlooked and do not remain on an authority for any longer than is necessary. The clause also provides a definition of 'interaction' with a protected animal for the purposes of the provision.

141 Amendment of s 63 (Amendment of authority)

Clause 141 amends subsection 63(4)(d) to insert the words 'under section 63A'. Section 63A is a new section which enables the holder of an authority to apply to the chief executive to have the authority amended.

142 Insertion of new ss 63A to 63D

Clause 142 inserts new sections 63A to 63D.

New section 63A (Application for amendment of authority) provides the ability for the authority holder to apply to the chief executive to amend their authority and requires the application to be made in the approved form and accompanied by the fees which are prescribed in Regulation. Subsection 63A(3) provides the authority holder must give further relevant information or evidence required to decide the application, if requested by the chief executive.

New section 63B (Consideration of application for amendment of authority) provides that if an application is made to amend an authority, the chief executive must consider the application and may either amend the authority or refuse to amend it. Subsection 63B(2) provides that the chief executive must comply with any relevant regulation or declaration in considering an application to amend an authority.

New section 63C (Refusal to amend) provides, that if the chief executive is satisfied the refusal of the amendment application is necessary or desirable for the best management, use, development or protection of fish habitats, then the chief executive may refuse the application. Subsection 63C(2) provides that if the chief executive refuses an amendment application, compensation is not payable, however subsection 63C(3) provides that the refusal does not prevent the payment of compensation under a regulation.

New section 63D (Notice of refusal of application for amendment) provides that if the chief executive refuses an amendment application, the chief executive must provide an information notice of the refusal to the applicant and refund the fees the applicant has paid, less the fees for assessing the application.

143 Replacement of s 68AB (Suspension or cancellation for non-payment of fee other than because of dishonoured cheque)

Clause 143 replaces section 68AB (Suspension or cancellation for non-payment of particular fees other than because of dishonoured cheque).

New section 68AB provides that it applies if a fee relating to an authority is not paid by the due date and if the fee is not for an application to transfer or amend an authority and if the authority is not suspended under section 68A.

The clause provides that if the authority holder was given a fee notice at least 30 days before the due date, the authority is suspended from the due date until either the fee is paid or a repayment agreement is made or if the authority holder was given a fee notice less than 30 days before the due date, the authority is suspended from 30 days after the notice is given until either the fee is paid or a repayment agreement is made.

The clause further provides that if the authority is a charter fishing licence or a commercial fisher licence and the fee is not paid or a repayment agreement is not made within 90 days after the fee notice is given, the authority is cancelled. The clause defines the terms ‘charter fishing

licence', 'commercial fisher licence', 'due date', 'fee notice' and 'repayment agreement' for the purposes of the provision.

144 Omission of pt 5, div 3A, sdiv 3 (Fish movement exemption notices)

Clause 144 omits Part 5, Division 3A, Subdivision 3 concerning fish movement exemption notices. The notices were identified as being redundant due to development approvals under the *Planning Act 2016* requiring consultation with DAF as part of the assessment process in relevant circumstances. As a result, no notices were ever issued.

145 Amendment of s 79A (Contravening a condition of an authority)

Clause 145 amends section 79A (Contravening a condition of an authority) as a consequence of inserting new section 61A. The clause inserts a maximum penalty of 100 penalty units for a breach of sections 61 or 62 and a maximum penalty of 1000 penalty units for a breach of section 61A.

146 Insertion of new s 139B

Clause 146 inserts new section 139B (References to thing and seized thing) which expands the definition of a 'thing' to include a wider variety of things which an inspector may seize. This provision aids in the interpretation of what may be seized where an inspector boards a boat or enters a vehicle or place and enacts seizure powers under new sections 151, 152 and 153.

Subsection (2) clarifies that references throughout Part 8 of the Act to a thing which is, or is liable to be seized, include references to the seizure of a boat or vehicle itself.

147 Insertion of pt 8, div 2A and sdiv 1 hdgs

Clause 147 inserts new division heading 2A (Seizure) and new subdivision heading 1 (Powers to seize) after section 150C.

148 Replacement of ss 151–153

Clause 148 replaces sections 151, 152 and 153 and inserts three new sections under new Division 2A, Subdivision 1 specifically concerning seizure powers.

New section 151 applies if an inspector is authorised to board a boat or enter a vehicle or place with the consent of the person in charge of the vehicle or boat or the occupier of the place and subsequently boards the boat or enters the vehicle or place once consent is obtained.

Subsection (2) provides that an inspector may seize the boat or vehicle or a thing in the boat, vehicle or place if the inspector believes, on reasonable grounds that the boat, vehicle or thing is evidence of an offence against the Act and the seizure is consistent with the purpose of entry when explained upon initially seeking consent.

New section 152 applies if an inspector is authorised to board a boat or enter a vehicle or place under a warrant and subsequently boards the boat or enters the vehicle or place. Subsection (2) provides that an inspector may seize evidence which is the subject of the warrant.

New section 153 applies if an inspector is authorised to board a boat or enter a vehicle or place under Part 8 of the Act whether by consent, warrant or any other circumstance and subsequently boards the boat or enters the vehicle or place.

Subsection (2) provides that an inspector may seize the boat, vehicle or a thing in the boat, vehicle or thing if the inspector believes on reasonable grounds that the boat, vehicle or thing is evidence of an offence against the Act and it is necessary to prevent them being hidden, lost or destroyed or used to continue or repeat an offence.

Subsection (3) provides that an inspector may seize the boat or vehicle or a thing in the boat, vehicle or place, if the inspector believes on reasonable grounds they have been used in committing an offence against the Act.

Subsection (4) provides that an inspector may seize a container in the boat, vehicle or place including anything in the container if the inspector believes on reasonable grounds the container contains one or more things and one or more those things is evidence of an offence against the Act. Subsection (4) will accommodate the practicalities in exercising enforcement powers where an inspector may need to make a quick decision about what is reasonably believed to be in a container without having to sort through the container first to identify the contents.

149 Insertion of new s 156A

Clause 149 inserts new section 156A (Seizure of thing subject to security) which clarifies a security holder's rights over seized things.

Subsection (1) provides that an inspector may seize a thing and exercise any powers in relation to it irrespective of any lien or other security over the thing claimed by a person other than the person from whom the thing was seized.

Subsection (2) clarifies that the seizure does not affect the other person's claim to the lien or other security against someone else other than an inspector or someone acting for the inspector.

150 Amendment of s 157 (Receipt to be given)

Clause 150 amends section 157 by inserting a new subsection. The new subsection clarifies that the requirements for a receipt to be given apply where an inspector seizes a thing under Part 8 (Enforcement), but do not apply when fisheries resources are returned to the wild or to the place from where they were taken under section 159(2) or disposed of under section 159(3). The remaining amendments to section 157 change subsection references and renumbers the section.

151 Amendment of s 159 (Inspector may dispose of fisheries resources taken unlawfully)

Clause 151 amends section 159 by inserting new subsections (4) and (5) which impose obligations on an inspector when fisheries resources which are taken unlawfully, are seized and disposed of.

Subsection (4) provides that before an inspector disposes of seized fisheries resources which are alive, the inspector must make a record to identify the fisheries resources, for example by photographing them. Although an inspector is relieved of the obligation to provide a receipt for unlawful fisheries resources which are seized and disposed of, subsection (4) still requires an inspector to make a record to identify the fisheries resources which were seized, in the event that there is a subsequent compensation claim made should the seizure be found to be unlawful.

Subsection (5) provides that if a person from whom the fisheries resources are seized requests a copy of the record which the inspector makes, the inspector must give the person a copy of the record.

152 Amendment of s 165 (Where and how to start appeal)

Clause 152 amends section 165, subclause (1) inserts a note to subsection (1) which references section 179 regarding the making of a claim for compensation for loss or expense incurred because of an inspector's exercise of power under Part 8.

Subclause (2) amends subsection (3) to provide that a person affected by an unlawful seizure of fisheries resources is denied an appeal right if the fisheries resources are returned to the wild or otherwise disposed of. The denial of appeal rights is mitigated as a person still has the ability to lodge a claim for compensation under section 179.

153 Amendment of s 173B (Additional power of police officer for executing warrant)

Clause 153 amends section 173B by inserting a new subsection. This new subsection clarifies that the powers of a police officer under subsection (2), to direct a person to remain at a place, boat or vehicle or accompany the officer whilst the officer exercises powers or leave a place, boat or vehicle, do not limit the powers and protection the police officer has under the *Police Powers and Responsibilities Act 2000*.

The clause also inserts a note to subsection 173B(5) which references the provisions of the *Police Powers and Responsibilities Act 2000* which a police officer may exercise when helping an inspector exercise powers under a warrant under the *Fisheries Act 1994*. The clause also renumbers the subsections.

154 Replacement of s 182 (Obstruction etc. of inspector)

Clause 154 replaces section 182 with a new section 182 to include the terms "abuse" and "intimidate" as further meanings for the term "obstruct".

This amendment is made to provide appropriate workplace protections for fisheries inspectors it is necessary to amend the meaning of 'obstruct' to capture abusive and intimidating behaviour that is not currently captured by 'assault'. The clause provides that a person must not obstruct an inspector in a manner which prevents the inspector from exercising a power under the Fisheries Act, unless the person has a reasonable excuse.

The clause provides that if the person has obstructed the inspector and the inspector decides to proceed with exercising the power, the inspector must warn the person of the offence of obstruction and that the inspector considers the person's conduct an obstruction.

155 Amendment of s 184 (Evidentiary provisions)

Clause 155 makes a minor consequential amendment section 184 replacing subsection (2) with a new subsection which omits references to the appointment of an inspector as a result of the insertion of new section 184A below.

156 Insertion of new s 184A

Clause 156 inserts new section 184A (Proof of appointment unnecessary) which provides that in a proceeding for an offence against the Act, the appointment of the chief executive, an inspector or a delegate of the chief executive must be presumed unless the contrary is proved.

The clause clarifies that with regard to delegates of the chief executive, it is only those delegates that give written notices or approve forms for which their appointment must be presumed. This is because the majority of offences against the Act which are prosecuted in court, involve delegates with these functions.

157 Amendment of sch 1 (Dictionary)

Clause 157 makes a number of amendments to the definitions in Schedule 1.

Subclause (1) omits the definitions of *fisheries offence, fish movement exemption notice, indigenous fishing, offence against this Act* and *waterway barrier works*.

Subclause (2) inserts new definitions for the following terms:

- *fisheries offence* – to include an offence against the *Biosecurity Act 2014* if it relates to fisheries resources or fish habitats and renumbers the remaining paragraphs for the definition.
- *in* – to provide that in reference to a boat or vehicle 'in' includes on the boat or vehicle, and in reference to a place on or at the place.
- *Indigenous fishing* – incorporating technical language updates.
- *offence against this Act* – to include an offence against the *Biosecurity Act 2014* and the Planning Act in relation to offences concerning fisheries development.
- *protected animal* – to provide that a protected animal includes a protected animal under the *Nature Conservation Act 1992* or an animal of a listed threatened, migratory, or

marine species under the *Environmental Protection and Biodiversity Conservation Act 1999* (Cwlth).

- *waterway barrier works* – to include a dam, weir, crossing, fill or other complete or partial barrier within a waterway if the barrier limits fish access to, or movement within, a waterway.

Subclause (3) amends the definition of *aquaculture fisheries resources* to remove the word 'live'.

Subclause (4) amends paragraph (d) of the definition of *fishing sector* to incorporate minor language updates.

Subclause (5) amends the definition of *serious fisheries offence* to include section 87(1).

Subclause (6) renumbers the paragraphs under the definition of *serious fisheries offence*.

Part 3 Amendments commencing by proclamation

Division 1 Amendments relating to aquaculture authority amendments

158 Amendment of s 49 (Authorities that may be issued)

Clause 158 amends section 49 by inserting new subsection (da) which provides that an aquaculture authority is a type of authority which the chief executive may issue under the Fisheries Act. The clause also renumbers the paragraphs under subsection (1).

159 Amendment of s 52 (Things authorised by authorities)

Clause 159 amends the heading of section 52 to insert the word 'generally' to indicate the provisions which apply to all authorities. The clause also omits subsection (4) relating to resource allocation authorities which will no longer be issued.

160 Insertion of new s 52A

Clause 160 inserts new section 52A.

New subsection 52A(1) provides that this section applies without limiting the things generally authorised by authorities under section 52 of the Fisheries Act.

New subsection 52A(2) provides that a resource allocation authority does not give the holder any right of ownership or tenure over the land, waters or resources mentioned in the authority or the right to carry out the development mentioned in the authority, unless the development is approved under the Planning Act.

New subsection 52A(3) provides that an aquaculture authority relating to aquaculture development does not give to the holder any right of ownership or tenure over the land, waters or resources related to the development or the right to carryout the development unless it is

approved under the *Economic Development Act 2012*, the Planning Act or the *State Development and Public Works Organisation Act 1971*.

The clause also inserts a note referring to section 76T(2)(a) and (b) of the Fisheries Act relating to offences for carrying out assessable development that is building work in a declared fish habitat area, operational work completely or partly in a declared fish habitat area or operational work that involves the removal, destruction or damage of marine plants without a permit under the Planning Act. The note also refers to the offence in section 163 of the Planning Act for carrying out assessable development on a Queensland heritage place or local heritage place without a permit.

161 Insertion of new s 55A

Clause 161 inserts new section 55A which provides the matters to which the chief executive must have regard for consideration and issue of a resource allocation authority or an aquaculture authority.

New subsection 55A(1) provides that the chief executive, when deciding an application for either authority, must have regard to the impact of the relevant development on coastal management under the *Coastal Protection and Management Act 1995* and the protection of Queensland waters under the *Environmental Protection Act 1994* and the management of marine parks under the *Marine Parks Act 2004*.

New subsection 55A(2) defines 'relevant development' to mean, either the development proposed to be mentioned in an authority for an application for a resource allocation authority or for an aquaculture authority to authorise interference with declared fish habitat relates.

162 Amendment of s 58 (Consideration of application for renewal of authority (other than permit))

Clause 162 inserts new subsection (2A) into section 58 which provides that when deciding an application for renewal of an aquaculture authority or a resource allocation authority, the chief executive must have regard to the impact of the relevant development on coastal management under the *Coastal Protection and Management Act6 1995* and the protection of Queensland waters under the *Environmental Protection Act 1994* and the management of marine parks under the *Marine Parks Act 2004,* as stated in section 55A(2). The clause also renumbers the remaining subsections as a consequence of new inserted subsection 2A.

163 Amendment of s 59 (Refusal to issue or renew)

Clause 163 amends section 59.

Subclause (1) replaces examples 3 and 4 under subsection (1). New example three omits development approval as by law, the chief executive cannot issue an aquaculture authority unless a development approval has been given. Similarly, the refusal of the chief executive to issue or renew an aquaculture authority should be by operation of law rather than the chief executive's discretion. New example four indicates that the chief executive may be satisfied the refusal of an application to issue or renew an aquaculture authority is necessary of the

applicant has not complied with a condition of either a fisheries authority or a fisheries development approval.

Subclause (2) inserts a new subsection (1A) to provide that the chief executive must refuse to issue an aquaculture authority relating to aquaculture development if a relevant development application for the development is refused because of a restriction on the issue prescribed by regulation.

Subclause (3) updates a refences from 'subsection (2)' to 'subsection (3)'.

Subclause (4) renumbers section 59(1A) to (3) to section 59(2) to (4).

164 Amendment of s 60 (Notice of refusal of application for issue or renewal etc.)

Clause 164 amends section 60 to distinguish between the notices required when the issue or renewal of a fisheries authority is refused under subsection 59(1) and when it is refused under subsection 59(2). The chief executive must give the applicant an information notice when a refusal is made under subsection 59(1) and when a refusal is made under subsection 59(2), the chief executive must give the applicant a written notice including the reasons.

The refusal of an application for the issue of an aquaculture authority under new subsection 59(2) is required by law, that is, the chief executive must refuse the application. As there is no decision involved in subsection 59(2), it is not appropriate to require the chief executive to give an information notice which refers to a right of review. A written notice is different to an information notice and although it includes the reasons for refusal, it does not involve any appeal rights. An applicant who has had an application refused under subsection 59(2) does not have a right of review.

165 Insertion of new s 62A

Clause 165 inserts new section 62A concerning requirements applicable to conditions which are imposed on an aquaculture authority.

New subsection 62A(1) provides that this section applies when a condition is imposed on an aquaculture authority when it is issued or renewed under section 61 or when a condition is imposed by regulation under section 62.

New subsection 62A(2) provides that the condition imposed on the aquaculture authority must not be inconsistent with a development condition of the aquaculture development approval to which the aquaculture authority refers.

New subsection 62A(3) provides that if a condition of the aquaculture authority is inconsistent with a development condition of an aquaculture development approval, the authority condition does not apply to the extent necessary to avoid the inconsistency.

New subsection 62A(4) defines 'development condition' to mean either a development condition for an aquaculture development approval that is a development approval under the Planning Act, or a priority development area (PDA) development condition for an aquaculture

development approval that is PDA development approval under the *Economic Development Act 2012* or a condition imposed on an aquaculture development approval that is a State Development Area (SDA) approval under the *State Development and Public Works Organisation Act 1971*.

166 Amendment of s 63 (Amendment of authority)

Clause 166 amends section 63 by replacing subsection (6) with a provision which clarifies that a condition which may be imposed on an authority under sections 61 or 62 when the authority is issued or renewed, may be imposed on the authority by amending it. The clause further provides that any requirements for imposing a condition on an authority under Subdivision 3 (i.e. general conditions imposed on issue or renewal or imposed by regulation) also apply when imposing the condition on the authority by amendment.

167 Amendment of s 73 (Registers of authorities and fisheries development approvals)

Clause 167 amends the heading and subsection (1) of section 73 to only refer to the register of authorities that are issued by the chief executive. There is no need for the chief executive to keep a register of fisheries development approvals as this information is publicly available.

168 Replacement of pt 5, div 3A, hdg and sdiv 1

Clause 168 replaces the heading of Part 5, Division 3A, heading and Subdivision 1 with the heading 'Authorities needed for particular development activities' and inserts new provisions.

New subsection 76A(1) provides that a person may carry out prescribed declared fish habitat area development, authorised under a fisheries development approval, only if they hold a resource allocation authority for interfering with the declared fish habitat area to which the development relates. The note to subsection 76A(1) directs the reader to the replaced section 88B which provides an exception to the obligation to hold a resource allocation authority to carry out prescribed declared fish habitat area development under certain circumstances.

New subsection 76A(2) states that, despite section 73 of the Planning Act, which provides that a development approval, whilst it is in effect, attaches to a premises, the fisheries approval attaches to the area in the resource allocation authority. This is irrespective of whether a later development is approved for the premises or the premises is reconfigured.

New section 76B provides that an aquaculture development approval for prescribed aquaculture development authorises a person to carry out the development only if the person holds an aquaculture authority for interfering with fish habitat in Queensland waters or on unallocated tidal land stated in the approval. The note to section 76B directs the reader to new section 88C of the Fisheries Act which provides an offence for carrying out prescribed aquaculture development without an aquaculture authority.

Section 76C provides that an aquaculture development approval for aquaculture development does not authorise a person to carry out associated aquaculture activities for the development. The note to section 76C directs the reader to new section 88D of the Fisheries Act which

provides an offence for carrying out associated aquaculture activity for aquaculture development without holding an aquaculture authority to authorise the activity.

169 Replacement of s 88B (Carrying out particular development without resource allocation authority)

Clause 169 omits section 88B and replaces it with new section 88B (Carrying out prescribed declared fish habitat area development without resource allocation authority).

New subsection 88B(1) creates an offence for carrying out prescribed declared fish habitat area development without holding a resource allocation authority for interfering with the declared fish habitat area mentioned in the fisheries development approval. The provision provides a maximum penalty for the offence of 3,000 penalty units.

New subsection 88B(2) provides an exception to the offence provision in section 88B(1) where a person carries out prescribed declared fish habitat area development if they start the development because of an emergency endangering either the life or health of a person or the structural safety of a building. Further, the provision requires the person to give written notice of the development to each relevant person for the development as soon as practicable after starting the development. The provision also provides that the person carrying out the development is not required to cease the development irrespective of an enforcement notice or order issued under the Planning Act. Enforcement notices are issued by an enforcement authority for development offences under section 168 of the Planning Act and enforcement orders are issued by the magistrates Court under section 176 of the Planning Act.

New subsection 88B(3) defines for the provision, the term ‘relevant person’ in relation to prescribed fish habitat area development, to mean either the chief executive or the person who would be the assessment manager if a development application were made for the development.

Undertaking accepted development, (i.e. development for which a development approval is not required under the Planning Act, section 44) for the removal, destruction or damage of a marine plant (if the removal, destruction or damage is of dead marine wood on unallocated State land for trade or commerce, without holding a resource allocation authority for the activity), will no longer be an offence under new section 88B.

New subsection 88C creates an offence for carrying out an associated aquaculture activity without holding an aquaculture authority which authorises the carrying out of the associated aquaculture activities and interfering with fish habitat in Queensland waters or on unallocated tidal land stated in the aquaculture development approval. The provision provides a maximum penalty for the offence of 1,665 penalty units.

New section 88D creates an offence for carrying out associated aquaculture activity for aquaculture development without holding an aquaculture authority. This provision provides a maximum penalty for the offence of 1,665 penalty units.

170 Insertion of new pt 12, div 12

Clause 170 inserts a new Division 12 in Part 12, which provides transitional provisions for this Act.

New section 279 defines, for Division 12, the terms *change application, entitled person, existing aquaculture development approval* and *former resource allocation authority*.

New section 280 provides for the continuation of former resource allocation authorities during the transitional period. A former authority will continue until cancelled or surrendered, and the holder cannot apply to renew the former authority.

New section 281 provides for transitional arrangements for undecided applications for former resource authorities. If a development approval for prescribed aquaculture development was in effect immediately before the commencement of the Amendment Act, then on commencement, the application for the issue of a former resource allocation authority for prescribed aquaculture lapse. Otherwise, the application is taken to be for the issue of an aquaculture authority.

New section 282 provides for transitional arrangements in relation to an existing aquaculture development approval if immediately before commencement of the Amendment Act, a former resource allocation authority for prescribed aquaculture development was in effect. These include when the chief executive is required to issue an aquaculture authority for the prescribed aquaculture development to the holder of the former resource allocation authority, and how change applications before commencement must be dealt with.

New section 283 provides for the transitional arrangements for the issuance of an aquaculture authority for an existing aquaculture development approval if section 282 does not apply.

New section 284 provides for where the chief executive is required to issue an aquaculture authority under section 282 or 283 and a development condition of the existing aquaculture development authority relates to associated aquaculture activities and is or will become inconsistent, obsolete, or redundant after the aquaculture authority is issued. The chief executive must consult with the relevant planning chief executive, and must ensure that in issuing the aquaculture authority the development condition is identified an explanation is provided of the application of section 284. From the issuance of the authority the development condition does not apply, despite anything in the Act under which the approval was given.

New section 285 provides transitional arrangements for the carrying out of associated aquaculture activity in relation to aquaculture development which has been approved under an existing aquaculture development approval in either section 282 or 283. The function of new section 285 is to enable a person to continue conducting an associated aquaculture activity relating to aquaculture development under an aquaculture development approval until such time as a new aquaculture authority is issued which will then allow the conduct of the associated aquaculture activity.

New section 286 provides that Subdivision 4 applies if immediately before the commencement, a development application under either the Planning Act, the *Economic Development Act 2012* or the *State Development and Public Works Organisation Act 1971* (i.e. a *relevant development*

application), for aquaculture development had been made, but not lapsed, decided or withdrawn and after commencement an aquaculture development approval is given for the development. New section 286 provides a definition for "relevant development application" which lists the relevant Acts a development application may be made.

New section 287 provides transitional arrangements for the issuance of an aquaculture authority if prescribed aquaculture development is authorised under an aquaculture development approval and a former resource allocation authority is in effect for the development at the time the approval is given.

New section 288 provides transitional arrangements for a deemed application for an aquaculture authority if section 287 does not apply.

171 Amendment of sch 1 (Dictionary)

Clause 171 Amends schedule 1 (Dictionary)

Subclause (1) omits the definitions of *fisheries development approval, prescribed aquaculture development* and *prescribed declared fish habitat area development* from schedule 1.

Subclause (2) inserts new definitions for:

- *aquaculture authority* – to mean an aquaculture authority issued and in force as an authority the chief executive may issue under Part 5, Division 3 of the Act.
- *aquaculture development* – to mean either, assessable development under the Planning Act that is making a material change of use of premises for aquaculture as defined under that Act, or a PDA assessable development under the *Economic Development Act 2012* that is making a material change of use of premises for aquaculture where, 'material change of use, of premises' is defined in the dictionary of the Planning Act, or an SDA assessable development under the *State Development and Public Works Organisation Act 1971* that is making a material change of use of premises under that Act for aquaculture.
- *aquaculture development approval* – to mean an approval given either before or after commencement as either, a development approval under the Planning Act for aquaculture development stated in paragraph (a) of the definition of 'aquaculture development', or a PDA development approval under the *Economic Development Act 2012* for aquaculture development stated in paragraph (b) of the definition of 'aquaculture development', or an SDA approval under the *State Development and Public Works Organisation Act 1971* for aquaculture development stated in paragraph (c) of the definition of 'aquaculture development'.
- *associated aquaculture activity* – to mean an activity relating to aquaculture that is associated with aquaculture development approved under an aquaculture development approval and an activity incidental to aquaculture that is carried out before aquaculture is started, as defined in section 52A(4). The definition also provides examples of activities that may be carried out before aquaculture starts such as installing aquaculture furniture or filling an excavation with water to create a pond.

- *fisheries development approval* – to mean either a development approval for fisheries development if the chief executive (i.e. of the Department of Agriculture and Fisheries) or the chief executive of the department which administers the Planning Act, if that chief executive was the assessment manager or a referral agency under that Act for the application or in relation to aquaculture development, an aquaculture development approval.
- *prescribed aquaculture development* – to mean aquaculture development which is carried out in Queensland waters or on unallocated tidal land.
- *prescribed declared fish habitat area development* – as assessable development under the Planning Act which is either building work in a declared fish habitat area or operational work completely or partly within a declared fish habitat area and are carried out in Queensland waters or on land, other than freehold land.

Subclause (3) 'aquaculture authority"' in the definition of *authority* as a new type of authority which may be issued under the Fisheries Act.

Subclause (4) amends the definition of *resource allocation authority* by omitting reference to Subdivision 2A in Part 5, Division 3, relating to the matters which the chief executive must consider in issuing a resource allocation authority, as new resource allocation authorities will no longer be issued.

Division 2 Amendments relating to monitoring on boats

172 Amendment of s 61 (Conditions imposed on issue or renewal—general)

Clause 172 amends section 61 (Conditions imposed on issue or renewal – general)
Subsection 61(1) amends subsection 61(1) by inserting a note which refers to section 76Z (Imposition of video monitoring condition) and section 76ZJ (Imposition of observation condition) as specific conditions the chief executive may impose on an authority.

173 Insertion of new pt 5, divs 3B and 3C

Clause 173 inserts new Division 3B (Video monitoring condition) and Division 3C (Observation condition) into Part 5 (Fisheries management) of the Fisheries Act.

New Division 3B provides for video monitoring conditions under IOM arrangements.

New section 76W (Definitions for division) inserts definitions for:

- *approved video monitoring equipment* – to mean video monitoring equipment which is approved under section 76Y for either a specific boat (i.e. identified in an individual authority) or a type of boat (e.g. a Primary boat).
- *commercial fishing activity* – to mean taking, possessing or using fisheries resources for trade or commerce or possessing or using commercial fishing apparatus.
- *video monitoring condition* – to refer to section 76X.

- *video monitoring equipment* – to mean a camera or other equipment which is used as part of a monitoring and recording system which will record either moving or still images.

New section 76X defines a *video monitoring condition* as a condition which may be imposed by the chief executive on an authority which requires approved video monitoring equipment to be installed and used on the boat to which the condition is attached. The purpose of installing video monitoring equipment under the condition is to monitor and record commercial fishing activities which are carried out under the authority.

New section 76Y provides that the chief executive may approve a type of video monitoring equipment for use on a boat or a type of boat (e.g. a Primary boat) which is used under An authority upon which a video monitoring condition is attached. New section 76Y also provides that the chief executive must publish on the department's website, a description of the type of video monitoring equipment which is approved to be used on a boat or type of boat under the condition.

New section 76Z provides for the conditions and circumstances under which the chief executive or a regulation may impose a video monitoring condition on an authority or to boats of a type used under authorities. The chief executive must be satisfied the condition is reasonably necessary to monitor whether the purposes of the Act are being achieved or how commercial fishing activities are carried out.

New Subdivision 2 provides for the installation and use of approved video monitoring equipment.

New section 76ZA provides that Subdivision 2 applies in relation to an authority that has a video monitoring condition imposed on it for a boat used under the authority.

New section 76ZB provides definitions for the following terms in Subdivision 2:

- *monitoring period* – to mean either the period stated in the authority if imposed by the chief executive or the period prescribed by regulation for the authority if imposed by a regulation.
- *Relevant boat* – to refer to section 76ZA.

New section 76ZC makes clear that no video monitoring condition may require a recreational activity to be monitored or recorded. *Recreational activity* is defined as an activity that is not related to a commercial fishing activity including, for example, recreational fishing and activities of a personal or domestic nature.

New section 76ZD provides that the holder of an authority or a person acting under the authority, must ensure that approved video monitoring equipment is installed on the boat in the position and way that is prescribed in the regulation and the equipment is working properly during each monitoring period. The authority holder or the person acting under the authority must also ensure that the equipment records all commercial fishing activities carried out on the boat that are prescribed by regulation and that the equipment is capable of recording the activities having regard to the type of equipment, its position and way in which it is installed on the boat. The section includes a maximum penalty for an offence of 1000 penalty units.

New section 76ZE requires that the recording under a video monitoring condition and the information prescribed by regulation must be given to the chief executive in the time and by the way stated in the authority or prescribed by regulation. Failure to comply is an offence with a maximum penalty of 1000 penalty units.

New section 76ZF provides for that, for malfunctioning video monitoring equipment, the authority holder or another person must notify the chief executive in the way prescribed by regulation and comply with the procedures prescribed by regulation. Failure to comply is an offence with a maximum penalty of 1000 penalty units.

New section 76ZG makes it an offence to interfere with the operation of approved video monitoring equipment. The maximum penalty for an offence against this section is 1000 penalty units.

New Division 3C provides for the issuance of observation conditions.

New section 76ZH provides definitions for the following terms in Division 3C:

- *commercial fishing activity* – to mean the taking, possessing or using fisheries resources for trade or commerce or possessing or using commercial fishing apparatus.
- *observation condition* – to refer to section 76ZI.

New section 76ZI defines an *observation condition* as a condition which is imposed on an authority which requires an official observer to be placed either on a boat or a type of boat used under the authority to carry out a commercial fishing activity.

New section 76ZI provides for the conditions and circumstances under which the chief executive or a regulation may impose an observer condition on an authority or to boats of a type used under authorities. The chief executive must be satisfied the condition is reasonably necessary to monitor whether the purposes of the Act are being achieved or how commercial fishing activities are carried out.

New section 76ZK authorises the chief executive, by written instrument, to appoint an appropriately qualified person as an official observer, and provides the standard provisions for the conditions of office and powers for an appointed official observer.

New section ZL provides for the functions and powers of an official observer. An official observer is authorised to do anything necessary to perform the observers functions. The powers of an official observer may be limited under a regulation, condition of appointment, or by written notice of the chief executive.

New section 76ZM provides that Subdivision 3 – Placement of official observers applies in relation to an authority that is subject to an observation condition for a boat used under the authority.

New section 76ZN provides definitions for the following terms in Subdivision 3:

- *observation notice* – to refer to section 76ZO(1).

- *observation period* – to refer to section 76ZO(2)(a)(ii).
- *relevant boat* – to refer to section 76ZM.

New section 76ZO provides for the chief executive to issue an authority holder with a written observation notice where the chief executive intends to place an official observer on a boat. The notice must include a reasonable period during which the observer is required to be on the boat, and give reasonable notice before the period starts.

New section ZP requires an authority holder, or person acting under the authority, to allow the official observer to perform their functions on the boat. Failure to comply is an offence with a maximum penalty of 1000 penalty units. The authority holder may use the relevant boat during the observation period only if the official observer is allowed to perform their functions on the boat, maximum penalty 1000 penalty units.

New section ZQ requires a person to help an official observer where a requirement is made by the official observer, unless the person has a reasonable excuse. The official observer is required to warn the person failure to comply without a reasonable excuse is an offence, with a maximum penalty of 1000 penalty units.

New section 76ZR provides for circumstances where an official observer aboard a relevant boat is or becomes unable to perform their functions or exercise their powers. The official observer may ask the authority holder or another person to allow the observer to leave the boat. The authority holder, or another person, must take all reasonable steps to allow the official observer to leave, failure to comply is an offence with a maximum penalty of 1000 penalty units. The chief executive may also, by notice, replace the official observer and require the authority holder or another person to take all reasonable steps to help with the replacement, maximum penalty 1000 penalty units.

174 Amendment of s 216A (Immunity from prosecution)

Clause 174 amends section 216A(1) to provide that official observers in addition to inspectors are not liable to be prosecuted for an offence against the Fisheries Act for any acts or omissions done under the direction of the Minister or chief executive or in the exercise of a power or performance of a function under the Fisheries Act.

The clause amends section 216A(2) to also provide that a person acting under the direction of an official observer is not liable to be prosecuted for an offence against the Fisheries Act for any acts or omissions done under the direction.

175 Amendment of s 217 (Protection from liability)

Clause 175 amends the definition of "official" in this section to extend the protection from civil liability for acts or omissions done honestly and without negligence under the Fisheries Act, to both an official observer and a person helping an official observer at the observer's direction.

176 Amendment of s 217B (Confidentiality of information)

Clause 176 amends section 217B to include an "official observer" as a person who must not use or disclose confidential information unless 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 or as required or permitted by law.

177 Amendment of s 221 (Inspector not to have interest in authority)

Clause 177 amends section 221 to include official observers in addition to inspectors, as persons who must not hold or have an interest in an authority.

178 Amendment of sch 1 (Dictionary)

Clause 178 inserts placeholders into schedule 1 for definitions as follows:

- *approved video monitoring equipment* – for a boat or a type of a boat, refers to Part 5, Division 3B, section 76W.
- *commercial fishing activity* – for Part 5, Division 3B, refers to section 76W, or for Part 5, Division 3C, refers to section 76ZH.
- *monitoring period* – for Part 5, Division 3B, Subdivision 2 refers to section 76ZB.
- *observation condition* – for Part 5, Division 3C, refers to section 76ZI.
- *observation notice* – for Part 5, Division 3C, Subdivision 3, refers to section 76ZO(1).
- *observation period* – for Part 5, Division 3C, Subdivision 3, refers to section 76ZO(2)(a)(ii).
- *official observer* – means a person appointed as an official observer under section 76ZK.
- *relevant boat* – for Part 5, Division 3B, Subdivision 2, refers to section 76ZA or for Part 5, Division 3C, Subdivision 3, refers to section 76ZM.
- *video monitoring condition* – for Part 5, Division 3B, refers to section 76ZX.
- *video monitoring equipment* – for Part 5, Division 3B, refers to section 76W.

Division 3 Other amendment

179 Amendment of s 5 (Meaning of fish)

Clause 179 amends the definition of fish in section 5 to omit subsections (3)(a) and (b), which refer to crocodiles and protected animals under the *Nature Conservation Act 1992* for which an authority is required. This amendment will provide clarification on when an animal is considered a fish for the purposes of the *Fisheries Act 1994* and to reduce regulatory duplication. The clause also renumbers the remaining sections.

Chapter 11 Amendment of Forestry Act 1959

180 Act amended

Clause 180 states that this chapter amends the *Forestry Act 1959*.

181 Amendment of s 32B (Particular areas of conservation value to be removed from State plantation forest)

Clause 181 amends section 32B to omit prescribed areas of State plantation forest that have been voluntarily surrendered early prior to the prescribed date.

Chapter 12 Amendment of Nature Conservation Act 1992

182 Act amended

Clause 182 states that this chapter amends the *Nature Conservation Act 1992*.

183 Amendment of s 4 (Object of Act)

Clause 183 amends section 4 to omit 'indigenous people' and insert 'Aboriginal peoples and Torres Strait Islander peoples', and omit ' Island custom' and insert 'Ailan Kastom'.

184 Amendment of s 5 (How object is to be achieved)

Clause 184 amends section 35A to insert a new note for subsection (3) to refer to the relevant section of the Act for an Indigenous joint management area to achieve consistency with similar sections.

185 Amendment of s 6 (Community participation in administration of Act)

Clause 185 amends section 6 to omit 'Aborigines and Torres Strait Islanders' and insert 'Aboriginal peoples and Torres Strait Islander peoples'.

186 Amendment of schedule (Dictionary)

Clause 186 amends Schedule (Dictionary) 187 to capitalise the reference to 'indigenous' in the definitions '*indigenous joint management area'*, '*indigenous landholder'*, '*indigenous land use agreement*', and '*indigenous management agreement*'.

Chapter 13 Amendment of Sugar Industry Act 1999

187 Act amended

Clause 187 states that this chapter amends the *Sugar Industry Act 1999*.

188 Amendment of s 255A (Allegations of false or misleading matters)

Clause 188 amends section 255A to remove subsection (3) because it is inconsistent with fundamental legislative principles. The subsection to be removed states that, in a proceeding for an offence against the Sugar Industry Act, evidence that a document, information or statement was given or made recklessly, is evidence that it was given or made so as to be false or misleading. This has the effect of limiting the rights in criminal proceedings by reversing the onus of proof.

A separate offence provision in the Sugar Industry Act makes it an offence for a person to make any false or misleading statement without reasonable excuse in an application or submission made to an entity under the Sugar Industry Act. This provision is sufficient to achieve the policy intent.

Chapter 14 Amendment of Veterinary Surgeons Act 1936

189 Act amended

Clause 189 states that this chapter amends the *Veterinary Surgeons Act 1936*.

190 Amendment of s 25F (Criteria for decision)

Clause 190 amends the note in section 25F to state that a copy of the standards is available on the board's website.

191 Replacement of s 33C (Veterinary surgeon to produce records)

Clause 191 replaces section 33C to include the ability for the Veterinary Surgeons Board of Queensland (the Board) to direct a veterinary premises approval holder to produce records about the practice of veterinary science at their premises, in the same way the Board can otherwise direct a veterinary surgeon. The amendment addresses circumstances where a veterinary surgeon has left a veterinary practice, and therefore cannot be directed to produce the records, and the Board would otherwise be reliant on invasive entry and search powers to obtain records.

Chapter 15 Other amendments

192 Legislation amended

Clause 192 provides that Schedule 1 amends the legislation it mentions.

Schedule 1 Other amendments

Part 1 Amendments commencing on assent

Schedule 1, Part 1 provides for minor and consequential amendments to commence on assent to the *Animal Care and Protection Act 2001*, *Animal Management (Cats and Dogs) Act 2008*, *Biosecurity Act 2014*, *Exhibited Animals Act 2015*, *Farm Business Debt Mediation Act 2017*, *Fisheries Act 1994*, *Forestry Regulation 2015*, and *State Penalties Enforcement Regulation 2014*.

Part 2 Amendments commencing on 28 August 2024

Schedule 1, Part 2 provides for minor and consequential amendments to commence on 28 August 2024 to the *Animal Management (Cats and Dogs) Act 2008*, and *Guide, Hearing and Assistance Dogs Act 2009*.

Part 3 Amendments commencing by proclamation

Schedule 1, Part 3 provides for minor and consequential amendments to commence on proclamation to the *Animal Care and Protection Act 2001*, *Biosecurity Act 2014*, *Chemical Usage (Agricultural and Veterinary) Control Regulation 2017*, *Exhibited Animals Act 2015*, *Fisheries Act 1994*, *Land Act 1994*, *Mineral and Energy Resources (Common Provisions) Regulation 2016*, *Mineral Resources Regulation 2013*, *Nature Conservation Act 1992*, *Nature Conservation (Macropod) Conservation Plan 2017*, *Planning Regulation 2017*, *Public Health Act 2005*, *Stock Route Management Act 2002*, *Vegetation Management Act 1999*, and *Veterinary Surgeons Act 1936*.

These amendments include updating references to prohibited and restricted matter schedules 1 and 2 in a number of Acts and Regulations as a consequence transferring the lists to the *Biosecurity Regulation 2016*.

These amendments also include technical amendments throughout the *Nature Conservation Act 1992* to replace outdated cultural language.