



Preliminary Impact Assessment

Template

A Preliminary Impact Assessment (PIA) explains the need for a regulatory proposal, and as well as its likely effects. The information presented in a PIA is intended to inform decision makers, including ministers and the Cabinet, about:

- (a) the expected costs and benefits of a regulatory proposal
- (b) how the proposal compares to other potential options
- (c) whether the proposal would benefit from additional analysis and community consultation.

Where a PIA demonstrates that the regulatory proposal is likely to result in significant adverse impacts on a section or sections of the community, a Regulatory Impact Statement (RIS) should be prepared in consultation with the Office of Best Practice Regulation (OBPR).

Please refer to Section 2.5 of the [Queensland Government Guide to Better Regulation](#) for further guidance on completing a PIA.

Details of the proposal

Name of the Proposal:	Modernising the Fisheries Act 1994	
Regulation(s) proposed to be introduced or amended:	<i>Act, Regulation, Quasi-regulation</i>	Fisheries Act 1994 Fisheries Regulation 2008
Department:	Department of Agriculture and Fisheries	
Contact officer:	<i>Name and title</i>	██████████
	<i>Phone Number</i>	██████████
	<i>Email</i>	████████████████████

Summary of the proposal *(complete this section after completing the rest of the PIA)*

Briefly describe the proposal in a clear and concise statement:
<p>In 2017, the Queensland Government released the <i>Queensland Sustainable Fisheries Strategy 2017-2027</i> (the Strategy) outlining its vision for the future management of the State's fisheries by setting out a reform agenda for the next ten years. The Strategy has committed to:</p> <p>Action 7.2 – Amend fisheries legislation to minimise regulation and ensure rule are clear and practical.</p> <p>Action 8.1 - Amend the fisheries legislation (<i>Fisheries Act 1994</i> and <i>Fisheries Regulation 2008</i>) in 2018 to clarify the roles of the responsible minister and Fisheries Queensland, to ensure decision-making is at the appropriate level and is timely and evidence-based, and that rules can be changed via declaration as far as possible to ensure sufficient flexibility.</p> <p>Action 9.3 – Strengthen enforcement powers, particularly in relation to serious offences and black-</p>

market sales of seafood.

In order to deliver upon the commitments in the Strategy, amendments to the *Fisheries Act 1994* (the Fisheries Act) and the *Fisheries Regulation 2008* (the Fisheries Regulation) are required. These amendments will embed the principles and commitments of the Strategy in Queensland's fisheries legislation. The proposed changes are intended to:

1. Modernise the objectives of the Fisheries Act and recognise the interests of key stakeholder groups;
2. Clarify the roles of the Minister responsible for fisheries and the Chief Executive in the management of the State's fisheries to allow for more responsive decision-making through the use of harvest strategies;
3. Strengthen the enforcement powers and penalties to address serious fisheries offences such as black-marketing; and
4. Apply contemporary drafting practices to review the structure of the Fisheries Act 1994 to reduce complexity and remove redundant provisions.

The proposed amendments will bring the Fisheries Act in line with best practice legislative and fisheries management standards and ensure Queensland is more consistent with other jurisdictions (particularly the compliance powers and penalties).

The Sustainable Fisheries Strategy 2017-2027 (the Strategy) is at **Attachment A**.

Section 1 – Identification of the problem

Briefly identify the problem:

An independent review of fisheries was commissioned (the MRAG Asia Pacific Pty Ltd review) in 2014. The previous government did not release the outcomes of the review or act on any of the recommendations. During the 2015, Queensland state election the Government made a commitment to release the MRAG review and implement those recommendations that were suitable for Queensland.

In July 2016, the Queensland Government released the *Green Paper on Fisheries Management Reform in Queensland* (the Green Paper) for a 12-week period to encourage discussion about the future for sustainable fisheries management in Queensland. The purpose of the Green Paper consultation was to seek feedback from fishers and the community on the reform proposals and the future direction for Queensland's fisheries. The overwhelming message was that all stakeholders wanted reform in the way we manage fisheries.

Many of the areas of reform identified in the MRAG review and Green Paper have gone on to be reflected in the Strategy. These are informing the 4 key areas of the Fisheries Act that require amendment.

Modernise the objectives of the Fisheries Act to recognise the interests of key stakeholder groups

The Fisheries Act was drafted in the early 1990s and its objectives reflect the approach used to manage the State's fisheries at that time. While many of these objectives remain relevant today, the proposed changes will align the Fisheries Act with the more modern objectives outlined in the Strategy and current best practice fisheries management principles. This will involve; recognising the key sectors which access fisheries resources in Queensland, ensuring there is regard to maximising the potential economic, social and cultural benefits that fisheries resources may provide to the Queensland community and committing the Government to a modern, responsive and consultative approach to administering the Fisheries Act.

Clarify the decision making processes and establish harvest strategies in Queensland's fisheries legislation

The Strategy has committed to clarifying the roles between the Minister and the Chief Executive to

improve fisheries decision-making processes. To this end, the Strategy defines the future role of the Minister as providing “Strategic direction for fisheries management on behalf of the community”. It is proposed as part of the legislative amendments that more of the day to day decisions (e.g. quota changes, size and bag limits, closures etc.) be expressly the responsibility of the Chief Executive where it is consistent with a harvest strategy for the fishery.

The Strategy commits to employing a harvest strategy approach to the future management of Queensland’s fisheries. The harvest strategy approach to fisheries management is contemporary best practice and is employed by all Australian jurisdictions to varying degrees. In adopting a harvest strategy approach to management in Queensland, it is proposed that the Minister responsible for fisheries provide strategic oversight of the management through the endorsement of a harvest strategy on behalf of the Government and community. Once approved, the Chief Executive would be required to manage a fishery in accordance with the provisions of the harvest strategy that has been approved by the responsible Minister. The implementation of this approach will require the roles and responsibilities of the Minister and the Chief Executive to be clarified and for some responsibilities new provisions established in the Fisheries Act.

The harvest strategy approach to management relies heavily upon decisions being made in a timely manner. To allow for greater expediency in fisheries management decisions it is proposed that decisions be implemented by the Chief Executive through declarations rather than amendments to statutory management plans or the Fisheries Regulation. This approach has been used successfully to implement changes to commercial catch limits in Queensland’s commercial Spanner Crab and Coral Reef Fin Fish Fisheries in recent years.

Delegating responsibility for applying harvest strategies to the Chief Executive should result in more timely decision making, contribute to greater certainty for stakeholders to allow investment to occur and prevent more drastic or urgent actions having to be taken. The Minister will still have the option to direct the Chief Executive should there be a need to step in.

The Minister would also retain responsibility for decisions around re-allocating access from one sector to another (e.g. establishing net free zones). Noting that any process that re-allocates access from the commercial sector to another sector would trigger compensation under the Fisheries Act and either government or an agreed funding source would need to payment compensation to affected commercial fishers. A resource re-allocation policy is being developed as an action in the Strategy to provide a more predictable process for these types of requests.

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

In Queensland, licensed commercial fishers are the only people who can legally sell their catch. Selling fish without a commercial authority is illegal and is often referred to as ‘black marketing’. Black marketing can be opportunistic however there is anecdotal evidence suggesting that it is becoming increasingly organised in Queensland, particularly for high-value species such as mud crab, shark fin, coral trout, Spanish mackerel and tropical rock lobster.

Feedback on the Green Paper identified ‘black marketing’ as an issue of particular concern among both commercial and recreational fishers. As a result, the Government through the Strategy committed to “undertake a thorough review to strengthen enforcement powers, particularly in relation to serious offences and black-market sales of seafood”.

The Australian Government recognised the potential for increased illegal fishing activity in 2004 commissioning the Australian Institute of Criminology (AIC) to report on organised crime in the fishing industry. This report was released in 2008 and contained a number of recommendations, which were supported at ministerial council level. In 2010, the National Fisheries Compliance Committee released a

nationally consistent compliance strategy committing to implementation of the recommendations.

An analysis of Queensland's fisheries legislation has identified that Queensland's capacity to effectively address black-marketing of fisheries products is significantly below other Australian jurisdictions. This is largely a result of other jurisdictions having implemented the recommendation of the AIC report and national compliance strategy.

To align Queensland with the national compliance strategy, amendments to the Fisheries Act will be required. These changes will provide inspectors appointed under the Fisheries Act with expanded powers to investigate seafood trafficking offences. The powers needed are largely consistent with those afforded to inspectors appointed under other Queensland legislation (e.g. land and vegetation from Department of Natural Resources, Mines and Energy).

List of proposed changes:

- Create an indictable offence for 'trafficking' in 'priority fisheries resources'.
- Provide the ability to charge for general deficiencies in information requirements provided to the chief executive e.g. where it has been proven a fisher sold more/less fish over a period of time than reported in logbooks.
- Increased penalties for failing to comply with vessel tracking requirements to support the roll out of vessel tracking across all commercial and charter fishing boats by 2020.
- Establish an exclusion zone around shark control program apparatus.
- Provide Magistrates alternatives to fines to deter repeat offenders.
- Providing additional powers of entry to commercial premises and vehicles.
- Provide for extra-territorial jurisdiction to allow inspectors to investigate fisheries offences in other states (subject to agreement with that state).
- Information sharing between Queensland Government agencies.
- Allow an inspector to require a person to recover or bring onto a boat or land, fishing apparatus in the course of an inspection.

Combatting the illegal trade of seafood in Queensland will also be supported by changes to the penalties which can be imposed under the Fisheries Act. The changes proposed will provide magistrates options other than just fines to deter repeat offenders, including prohibiting an individual from fishing recreationally or from being on the water without a lawful excuse for a period of time. Of note is the proposal to create an indictable offence for trafficking in priority species. If instituted this would mean that an individual convicted of a trafficking offence in Queensland could face a penalty of up to 3000 penalty units (currently \$378,450) and up to three years in prison. Such penalties are consistent with Tasmania and the Northern Territory but less than those imposed in New South Wales and Victoria, where prison terms of up to ten years can be imposed for fisheries trafficking offences.

Additional changes to the Fisheries Act are required to streamline the compliance powers and functions of the Fisheries Act. These changes recognise the increased availability and use of electronic technologies and address the lessons learnt through the application of the Fisheries Act since its inception. Materially, these changes do not provide fisheries inspectors powers beyond those granted to inspectors under other Queensland legislation.

The proposed changes will not affect the average commercial or recreational fisher. The stronger compliance powers and penalties are primarily focused around black-marketing and the changes are expected to be welcomed by stakeholders. The powers are consistent with modern approaches and

trends across other Queensland legislation (e.g. land and vegetation management, biosecurity etc.). The powers will not extend to being able to enter people's residence, this will still require a warrant.

One of the other amendments includes implementing an exclusion zone around Shark Control Program apparatus. The proposed exclusion zone is intended to achieve two outcomes, firstly the exclusion zone will prevent persons interfering with the equipment and potentially rendering it ineffective. Secondly the exclusion zone will help prevent persons injuring themselves on the equipment. Recently a diver in New South Wales drowned after becoming entangled in a shark control net in that state. There have also been instances where individuals have injured themselves on Shark Control Program apparatus in Queensland.

Apply contemporary drafting practices to review the structure of the Fisheries Act to reduce complexity and remove redundant provisions

The management of Queensland's fisheries has evolved over the last two decades and certain parts of the Fisheries Act have become redundant in this time. Consequently, changes to the Fisheries Act are proposed to provide clarity where needed, remove redundant provisions and generally reduce the regulatory burden associated with Queensland's fisheries legislation.

Minor changes are proposed to clarify the compensation provisions of the Fisheries Act and ensure that those provisions relating to the non-indigenous fisheries resources are consistent with current policy relating to these species. These changes will help the Fisheries Act align with Queensland's biosecurity legislation. Further changes will help clarify existing requirements relating to the obligations and rights of authority holders under the Fisheries Act.

Section 2 – Objectives of government action

Briefly identify clear and specific objectives of government action:

The Strategy sets out the Government's fisheries reform agenda for the next 10 years. It is the biggest fisheries reform in Queensland's history and paves the way for Queensland to have a world-class fisheries management system.

The reform of Queensland's fisheries legislation in line with Action 8.1 of the Strategy is to be completed by the end of 2019. A key objective is to ensure the rules relating to fishing in Queensland are clear and practical (Action 7.2) and that the volume and complexity of Queensland's fisheries legislation is on the whole reduced.

[REDACTED]

Section 3 – Consideration of options

Briefly identify feasible options to address the problem by outlining:

Consideration was given to progressing the development of a new Fisheries Act and Regulation to embed the Strategy in the regulatory framework. On review, the Fisheries Act provides was found to have many of the powers and functions needed to support the implementation of the Strategy. It was also found that a number of changes are needed to properly establish the responsive decision making processes that underpin a modern harvest strategy based approach to fisheries management. This being the case, it was

determined that a process to amend the Fisheries Act should be undertaken as a priority with complimentary changes made to the Fisheries Regulation once this process had been completed.

Section 4 – Impact analysis of the options

Provide an analysis of the impacts of options identified. These impacts should be quantified where possible. If the impacts are not able to be quantified in terms of dollars, then they need to be assessed and discussed qualitatively:

The proposed amendments to the Fisheries Act are not expected to result in material impacts upon external stakeholders or limit access to Queensland’s fisheries resources. The proposed changes are largely intended to streamline Government processes associated with the administration of Queensland’s fisheries.

The proposed changes to compliance powers and penalties are intended to provide a strong deterrent to individuals involved in the illegal trafficking and black marketing of fisheries resources, and persons who have repeatedly convicted of offences against the Fisheries Act. Compliance with Queensland’s fisheries legislation is very high (currently a 93% compliance rate for all sectors) and as such, the proposed changes are unlikely to impact upon the majority of Queenslanders. The stronger compliance powers and penalties are expected to be strongly supported by the majority of the Queensland community.

The proposed remake of the Fisheries Regulation, that will commence once the necessary changes have been made to the Fisheries Act, will likely be of greater interest to stakeholders. This is due to the fact that the majority of management arrangements which govern the State’s fisheries are outlined in the Fisheries Regulation. Reforms such as the move to output controls (i.e. commercial fishing quotas) to manage Queensland’s commercial fisheries will be a change from current management approaches that will impact upon commercial fishing businesses in particular. Similarly, it is anticipated that some there will be some changes made to the current rules governing recreational fishing although not to the extent of the commercial aspects of fisheries. Further consultation will be undertaken on the specific regulation amendments required to implement the reforms and their impacts in early 2019.

It is important to note that a failure to implement the necessary reforms to how Queensland’s fisheries are managed could potentially jeopardise the long-term sustainability of these resources, would contradict community expectations and run contrary to the Government’s position on fisheries management outlined in the Strategy.

Section 5 – Consultation

Provide a list of key stakeholders and whether they have been consulted. This should include a summary of:

Key stakeholder groups relevant to the management of Queensland’s fisheries are; commercial, recreational, charter and indigenous fishers, conservation groups, seafood consumers, fishing related businesses (tackle suppliers etc.) and Government.

Queensland’s fisheries resources are important to all Queenslanders – culturally, socially, environmentally and economically. The commercial fishing industry comprises 2,368 licensed fishers operating from Karumba to the Gold Coast, with an annual gross value of production of about \$200 million. An estimated 642,000 Queenslanders regularly participate in recreational fishing throughout the State (although trends in participation are declining). The Government has previously estimated the economic contribution from recreational fishers to be at least \$400 million annually.

There was significant public consultation following the release of the Green Paper in 2016, with more than 11,000 submissions and 230 face to face meetings. There is an expectation that there will be changes to the system of managing Queensland’s fisheries. The consultation report associated with the

Green Paper is provided as **Attachment B**.

The Green Paper and the Strategy both flagged changes to the Fisheries Act, but did not provide significant details on the exact changes that would be made. As such, a draft discussion paper (**Attachment C**) has been developed to provide the community with detail on the nature of the changes proposed and provide a further opportunity to comment. This discussion paper will be attached to the Authority to Prepare submission for consideration by government, currently scheduled for March 2018. If approved, it is expected that this discussion paper will be released for public consultation in April/May 2018. The proposed changes to the Fisheries Act should not be contentious as none of the changes proposed will directly impact upon individual stakeholders economically or restrict access to fisheries resources.

Reform processes being undertaken in the Queensland crab, trawl and east coast inshore fisheries will require amendments to the Fisheries Regulation and these changes will likely impact upon stakeholders more significantly. As such, further consultation on these reforms will be undertaken in 2018 / 2019. It is proposed that the Department of Agriculture and Fisheries will consult the Office of Best Practice Regulation, other Government departments and stakeholders once the nature of the reforms has been determined.

Section 6 – Conclusion and recommended option

Clearly state the preferred option:

The proposed amendments to the Fisheries Act will deliver upon the commitment made by the Government through the Strategy to:

Action 7.2 – Amend fisheries legislation to minimise regulation and ensure rules are clear and practical.

Action 8.1 - Amend the fisheries legislation (*Fisheries Act 1994* and *Fisheries Regulation 2008*) in 2018 to clarify the roles of the responsible minister and Fisheries Queensland, to ensure decision-making is at the appropriate level and is timely and evidence-based, and that rules can be changed via declaration as far as possible to ensure sufficient flexibility.

Action 9.3 – Strengthen enforcement powers, particularly in relation to serious offences and black-market sales of seafood.

The implementation of the proposed reforms will also deliver on a number of the commitments made by the Government in the *Reef 2050 Long Term Sustainability Plan*.

The preferred option is to amend the existing Fisheries Act to embed the Strategy into the regulatory framework to better manage Queensland's fisheries over the next 10 years. The proposed amendments are necessary to improve decision making, implement harvest strategies and strengthen compliance to ensure healthy fish stocks to support thousands of jobs and meet community expectations for more modern fisheries management.

Once this PIA has been completed, please lodge it with the OBPR for assessment at: <http://www.qpc.qld.gov.au/regulatory-review/lodge-ria-assessment/>