

Committee Secretary  
State Development, Natural Resources and Agricultural Industry Development Committee  
Parliament House  
George Street  
Brisbane Qld 4000

21 September 2018

Dear Sir/Madam,

I write with regards to the *Fisheries Act 1994* (the 'Act') and *Fisheries (Sustainable Fisheries Strategy) Amendment Bill 2018* (the 'Bill') and among other matters, the fundamental right to fair compensation upon the compulsory acquisition of property.

Section 4 of the *Legislative Standards Act 1992* provides for the rights and liberties of individuals with regards to legislation. I do not believe the Act or Bill have sufficient regard to these rights or liberties - authority holders do not have the right to fair compensation in the event that property is compulsory acquired, whether in full or part. I also disagree with Explanatory Notes to the Bill that state,-

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

Section 42B of the Act appears to define the limits to compensation payable in one instance. Section 44 of the new Act (as referenced in the Bill) appears the same. They state that the entitlement (for compensation) arises only if the cause, or one of the causes, of the loss or reduction was a—

*(a) reallocation, under the relevant amendment, of the entitlement to take fisheries resources to persons who do not hold an authority; or*

*(b) restriction or prohibition, under the relevant amendment, of the exercise of the entitlement in an area, if the purpose of the restriction or prohibition was to protect a thing that is not fish.*

In terms of reallocation, reference (in the context of a transfer) is made to persons who do not hold an authority. Who or what is a person - this is not defined within the section? Section 27(G) of the new Act does define reallocation in relation to access to fisheries resources as,

*...a reallocation of the entitlement to take the fisheries resources—*

*(a) from a fishing sector to another fishing sector; or*

*(b) from a fishing sector to another purpose or group of persons; or*

*(c) from a purpose or group of persons to a fishing sector or another purpose or group of persons.*

Is correct to assume that a person could include either a;

1. Fishing sector, or
2. Another purpose, or
3. Group of persons?

Could it also be interpreted that a person includes those defined within Section 10 of the Act, that being;-

... all persons, including the State?

Section 42B (of the Act) and Section 44 of the new Act (as referenced in the Bill) appear to negate the potential for precedence with regards to cause. The cause may be either or both reallocation or restriction. Is it therefore correct to assume that if a loss or reduction results due to a restriction in taking of the fish and the reallocation of the fish to a person that does not hold an authority – then compensation to affected authority holders is still entitled? Could the restriction of taking of the fish be used as a common and non-cost veil of managing a fishery, particularly when subjective or overly ‘precautious’ environmental principles are used as a justification?

This also raises questions on the ability of the State to compulsory acquire (e.g. amendment, prohibition, regulation etc.) a fishing authority, fishery symbol or the associated quota. What provisions within the Act and Bill are made for acquisition? Are these different for permanent quota holdings (e.g. Commercial Harvest Fishery Licence with a D symbol pursuant to Section 309 of the *Fisheries Regulation 2008*) verse provisional quota holdings such as those defined in Section 206 of the *Fisheries Regulation 2008*?

Section 63 Amendment of authority of the Act appears to provide the ability to amend (therefore acquire) an authority. Importantly, subsection (4) states;

*Subsections (1) to (3) do not apply if the authority is amended only—*

*(a) by omitting a condition if the omission does not adversely affect the holder’s interests; or*

*(b) for a formal or clerical reason; or*

*(c) in another way that does not adversely affect the holder’s interests; or*

*(d) at the holder’s request; or*

*(e) by changing a quota for the authority.*

Subsection (4)e) therefore implies that the Chief Executive (i.e. Minister) does not need to give the holder of the authority , amongst other things written notice that;

*(a) states the proposed amendment; and*

*(b) states the reasons for the proposed amendment; and*

*(c) outlines the facts and circumstances forming the basis of the reasons; and*

*(d) invites the holder to show, within a stated time of at least 28 days, why the authority should not be amended.*

If Section 63 of the Act is used, how does the authority holder know what the cause of the loss of entitlement was ie restriction or reallocation? Furthermore, Subsection (4)j) states;

*Compensation is not payable if an authority is amended, or anything previously permitted under the authority is prohibited or regulated.*

In the event that a quota entitlement (a property right) is adjusted (by the Minister) in a compulsory manner – what compensation rights does the holder retain? Which section of the Act takes precedence, Section 63 or 42B? The authority holder (individual) appears to have no right or liberty in this general situation and does not have access or the entitlement to fair compensation under the provisions of the Act or the Bill. This directly conflicts with Section 4 of the *Legislative Standards Act 1992* – with regards to compulsory acquisition and compensation – the Act and Bill have insufficient regard to;

1. principles of natural justice
2. rights and liberties of individuals,
3. fair compensation in the event of compulsory acquisition of property, and
4. legislative drafting , so that the instruments are unambiguous, clear and precise.

Does the above also constitute an interference of the authority holders property rights (or tort?) and an extinguishment of common law rights? In terms of natural justice, is this unfair?

The above outcomes have (and will further exacerbate) detrimental implications for investment and jobs within Queensland, conflicting with The Honourable Curtis Pitt - Treasurer and Minister for Trade and Investment recent statement on the *Sustainable Fisheries Strategy*;

*“This investment paves the way for Queensland to have a world class fisheries management system with serious structural reforms that supports many thousands of regional jobs. We want Queensland fisheries to be sustainable, our commercial fishers to be productive and profitable and our recreational fishing experience to be second to none.”*

Industry needs transparency and long term certainty to invest in the Queensland fishery. Maritime vessels are costly to purchase, maintain and operate and fishermen (and ladies) require fair and equitable pay for their hard and often long hours at work. Work at sea is not always easy and involves time away from friends and family. Licences (authorities) are also costly to lease or buy, with many now being purchased and monopolised by foreign investors in New Zealand and China. Queensland sea food/product is often caught and processed immediately for overseas export. Some food and product is also processed overseas, reducing the ability to value add within Australia and produce jobs. The availability to consumers within Australia can also be limited and often supplemented with cheap, imported products of often unknown and untested quality. Larger, off-shore investors can be commercially driven and do not hold an affinity to the area or species fished. Without certainty on quota or the right to compensation, many local, Australian fishermen (and ladies) who run small to medium sized businesses cannot obtain finance or retain staff to work in their industry. Often the risks are seen as too high, particularly by financial institutions. This does not promote a resilient and efficient fishery within the private (and public) sectors.

I consent to the above being published on the basis that the name and contact details of the below be withheld for privacy reasons.

Regards

