

State Development and Regional Industries Committee

Report No. 40, 57th Parliament

Subordinate legislation tabled between 26 October and 29 November 2022

Subordinate legislation examined

| No. | Subordinate legislation | Date tabled | Disallowance date |
|-----|--|------------------|-------------------|
| 150 | Fisheries (Effort Caps and Other Matters) Amendment Declaration 2022 | 8 November 2022 | 29 March 2023 |
| 165 | State Penalties Enforcement (Dam Safety) Amendment Regulation 2022 | 29 November 2022 | 19 April 2023 |

*Disallowance dates are based on proposed sitting dates as advised by the Leader of the House. These dates are subject to change.

Summary of committee comments

The Fisheries (Effort Caps and Other Matters) Amendment Declaration 2022 (Amendment Declaration) introduces and amends a range of measures to support the sustainable management of the East Coast Trawl Fishery (ECT Fishery). The committee did not identify any issues regarding the policy to be given effect by the Amendment Declaration or its lawfulness.

In examining issues of fundamental legislative principle, the committee considered a potential breach to the right to conduct business without interference. The committee was satisfied that the breach is justified on the basis that the additional measures are necessary to protect the sustainability of certain species and economic viability of the ECT Fishery.

The committee also considered a potential human rights limitation to the right to property as the Amendment Declaration impacts how a person conducts fishing activities under their licence arrangements. The committee was satisfied that the limitation is reasonable and demonstrably justified given the overarching objective of the Amendment Declaration.

The State Penalties Enforcement (Dam Safety) Amendment Regulation 2022 (Regulation) introduces 10 penalty infringement notice (PIN) offences for existing offences in the *Water Supply (Safety and Reliability) Act 2008*. The PINs relate to the preparation and provision of emergency management plans and reports by dam owners to the regulator. The committee did not identify any issues regarding the policy to be given effect by the Amendment Regulation or its lawfulness.

The committee is satisfied that the new PINs introduced by the Regulation are relevant and proportionate, and necessary to provide the department with a better range of tools to support compliance with Water Supply Act requirements.

The committee is satisfied that the Regulation is compatible with human rights noting the importance of helping to minimise the serious risks associated with a possible dam failure. The committee is satisfied that potential limitations to the human rights to property, a fair hearing, and fair rights in a criminal proceeding are reasonable and demonstrably justified.

Further information on each item of subordinate legislation is provided below.

1 Fisheries (Effort Caps and Other Matters) Amendment Declaration 2022 – SL No. 150

1.1 Policy overview

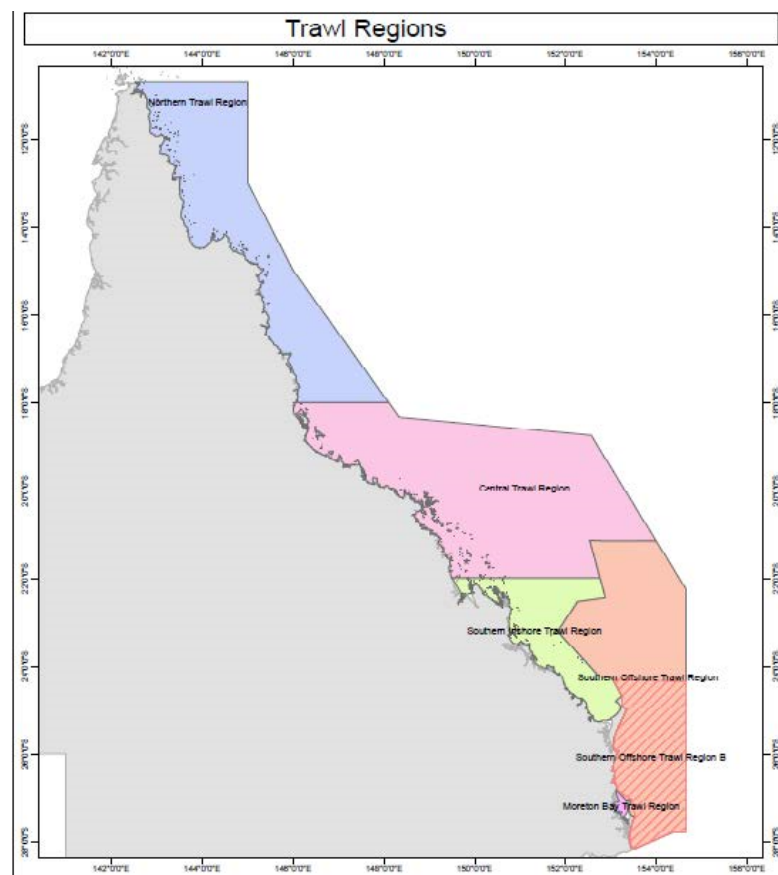
The Fisheries (Effort Caps and Other Matters) Amendment Declaration 2022 (Amendment Declaration) has 4 objectives relating to the sustainable management of the east coast trawl fishery (ECT Fishery), the state’s largest commercial fishery with target species including prawns, scallops and bugs.

The ECT Fishery is divided into 6 trawl regions which are primarily managed under harvest strategies through input controls such as regional effort caps, strip closures, fishing limits and regulated periods.¹

The regional effort caps are reviewed on a periodic basis and are based on stock assessment reports for the target species to achieve a target biomass of 60 per cent of unfished levels, as set under the Queensland Harvest Strategy Policy.

The target biomass levels are based on research conducted by the Fisheries Research and Development Corporation and the Commonwealth Scientific and Industrial Research Organisation.²

The Department of Agriculture and Fisheries (the department) has conducted regional harvest strategy workshops to review the performance of the ECT Fishery and receive input from key stakeholders in relation to the harvest strategies. These workshops have reported that while existing measures have been largely favourable, further measures are required to support the sustainability and economic viability of certain parts of the ECT Fishery.³ The Amendment Declaration introduced these additional measures which are explained in more detail below.



1.1.1 Eastern king prawn stocks in southern offshore trawl regions A and B

The Amendment Declaration seeks to support the sustainable management of eastern king prawn stocks in the southern offshore trawl region (SOT Region) by expanding the regulated waters to protect juvenile or adolescent prawn stocks.

The SOT Region is currently subject to a closure from 20 September to 1 November each year which prohibits the use of trawl nets in shallow waters of the area to allow for the recovery of small prawn and spawning stocks in shallow waters, while fishing can continue all year in deeper waters.

¹ Explanatory notes, p 1.

² Explanatory notes, p 2.

³ Explanatory notes, p 2.

The explanatory notes state that while the existing closure has been successful in maintaining a sustainable stock of eastern king prawns, industry stakeholders have expressed concerns about the effects of closing the shallow waters.⁴

Greater commercial fishing has threatened an early closure of the SOT Region season by exhausting the effort cap limit set by the Fisheries Declaration 2019. Fishers have raised concerns that this increased fishing pressure may create an undesirable ‘race to fish’, resulting in negative impacts on the economic viability of the fishing industry and related industries. Fishers also suggested that the existing closure impacts stock sustainability as there is more commercial fishing in the deep waters during the closure.⁵

The Amendment Declaration extends the current shallow water closure to all depths of water during the closure period.⁶

1.1.2 Small and soft prawn strip closures in the southern offshore trawl region

The Amendment Declaration seeks to support the sustainable management of small and soft prawns through amendment to strip closures in the southern offshore trawl region (SOT Region).

Annual closures of specified inshore areas (strip closures) in the SOT Region have been in place since 2021 to protect small prawns in the period from 20 September to 1 March. These closures occurred in response to industry concerns about the sustainability of prawns in their nursery grounds during their rapid-growth phase.⁷

Participants at the harvest strategy workshop discussed options for additional protections for small prawns and how the South Stradbroke Island closure period unduly restricts fishing activity during a key fishing period for the area. The strategy workshop made the following recommendations, which are supported by a majority of industry stakeholders, and are introduced by the Amendment Declaration:

- Modification of the Caloundra–Moreton Island strip closure to include the area of Caloundra and near the Jumpinpin Bar
- Extension of the closure of South Stradbroke Island to Point Lookout
- Introduction of an additional closure near North Reef around Swain Reefs.⁸

Workshop participants also supported moving the beginning of the closure period for the South Stradbroke Island strip closure from 1 November to 1 January, with the end date to remain 1 March, to reflect key fishing and market periods for trawl fishers based on the Gold Coast.⁹

1.1.3 Seasonal effort limits

The Amendment Declaration seeks to maintain sustainable, research-based management practice for the ECT Fishery through the setting of seasonal effort limits.

In the 2020-21 fishing season, the regional effort cap for the southern inshore trawl region (SIT Region) was reduced from 246,000 to 167,626 effort units. This was because the target species changed from scallops to Moreton Bay bugs.¹⁰

⁴ Explanatory notes, p 2.

⁵ Explanatory notes, p 2.

⁶ Explanatory notes, p 3.

⁷ Explanatory notes, p 3.

⁸ Explanatory notes, p 3.

⁹ Explanatory notes, p 3.

¹⁰ Explanatory notes, p 3.

In April 2022, over 75 per cent of the maximum effort cap had been reached. However, due to the impact of COVID-19 on commercial fishing in 2020 and 2021, this may not be an accurate reflection of 'realistic' effort usage by the industry for that period.¹¹

Harvest strategy workshops discussed the increase in current effort use and the risks associated with excess effort in the SIT Region. Stock assessments are underway for target species in the ECT Fishery to inform effort caps for the 2024-25 fishing season. However, they will not be available to determine effort caps for the 2023-24 fishing season.¹²

As an interim measure, industry stakeholders supported an increased effort cap for the SIT Region. The interim cap will be based on a 3 year average of effort caps. The explanatory notes state this is considered a reasonable representation of normal fishing effort until stock assessments are available in 2023. It is also consistent with the approach used in other regions.¹³

1.1.4 Sustainable management of fishery resources in the southern inshore trawl region

The amendment declaration seeks to maintain the ongoing economic viability of the industry and sustainable management of fishery resources in the southern inshore trawl region by introducing a trigger to slow down effort, once 70 per cent of the effort cap has been reached in the SIT Region.

The Fisheries Declaration currently provides that a 24-day-per-month restriction may be triggered in the SOT Region for May, June and July if 309,014 or more effort units are used within the period from 1 November to 31 March.¹⁴ The purpose of the restriction, which applies to boats identified in T1 or T2 licences, is to reduce fishing effort during spawning months following high levels of effort earlier in the fishing season.¹⁵

While the restriction limits the amount of effort for individual boats, it does not fully address the effort in the ECT Fishery. Advice from the Southern Inshore Harvest Strategy Workshop was that if the regional effort cap is reached too early, there are negative implications for the market supply of seafood from the region and the viability of fishing and seafood-related businesses.¹⁶

As a means of reducing effort in the latter part of a season, to allow for stock recovery, industry stakeholders support putting a trigger in place to slow down effort usage for the remainder of the season. Most industry stakeholders support a 24-day-per-month fishing limit to trigger in the SIT Region to commence once the 70% effort cap has been used. The limit of 24 days per-month will apply to the remainder of the trawl season.¹⁷

1.2 Consistency with fundamental legislative principles

The reasonableness and fairness of treatment of individuals is relevant in considering whether legislation has sufficient regard to the rights and liberties of individuals.¹⁸ The concept of liberty requires that an activity (including a business activity) should be lawful unless there is a sufficient reason to declare it unlawful by an appropriate authority.¹⁹

¹¹ Explanatory notes, p 4.

¹² Explanatory notes, p 4.

¹³ Explanatory notes, p 4.

¹⁴ Explanatory notes, p 4.

¹⁵ Explanatory notes, p 4.

¹⁶ Explanatory notes, p 4.

¹⁷ Explanatory notes, p 4.

¹⁸ Legislative Standards Act 1992, s 4(2)(a).

¹⁹ OQPC, *Fundamental Legislative Principles: the OQPC Notebook*, p 118.

The explanatory notes acknowledge that the Amendment Declaration potentially breaches this fundamental legislative principle because it restricts trawling activities in the ECT Fishery by expanding and introducing regulated areas and regulated periods within the ECT Fishery.²⁰

The potential breach is justified within the explanatory notes on the basis that the measures are necessary to allow east king prawns and other species to mature and recover from trawling in the early parts of the fishing season and the measures will protect the long-term financial viability of the trawl fishery and sustain fishery resources for future generations. The explanatory notes also make clear that the measures do not interfere with a commercial fisher's authority to take fish outside the regulated periods and areas.²¹

Committee comment

The committee is satisfied that the potential breach to the right to conduct business without interference is sufficiently justified on the basis that the measures to be implemented are necessary to protect the sustainability and the economic viability of the ECT Fishery.

1.2.1 Explanatory notes

The explanatory notes comply with part 4 of the *Legislative Standards Act 1992* (Legislative Standards Act).

1.3 Compatibility with human rights

Legislation must be compatible with human rights.²² The Amendment Declaration potentially limits the human right to property as it sets limits on how and when fishers may use their fishing licences.²³

In short, the human rights certificate provides that on balance, the need to support the sustainable management and economic viability of certain parts of the ECT Fishery outweigh the limited impact on licence holders.²⁴

Committee comment

The committee is satisfied that the potential limitation of the human right to property is reasonable and demonstrably justified, noting the objectives of the Amendment Declaration.

1.3.1 Human rights certificate

The human rights certificate tabled with the subordinate legislation provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

2 State Penalties Enforcement (Dam Safety) Amendment Regulation 2022 – SL No. 165

2.1 Policy overview

The objective of the State Penalties Enforcement (Dam Safety) Amendment Regulation 2022 (Regulation) is to introduce 10 additional penalty infringement notice (PIN) offences for existing offences in the Water Supply (Safety and Reliability) Act 2008 (Water Supply Act).

The Regulation follows a 2021 Queensland Audit Office (QAO) report *Regulating dam safety* which examined how the Department of Regional Development, Manufacturing and Water (the department) collects and uses information from dam owners to manage risks to dam safety.

²⁰ SL No. 150, explanatory notes, p 7.

²¹ Explanatory notes, p 7.

²² Human Rights Act, section 8.

²³ Human Rights Act, section 24 and 28.

²⁴ Human rights certificate, p 5.

In response to QAO recommendations, the department undertook a review of all existing offences in the Water Supply Act to determine which offences may be suitable for PINs in order to provide a mid-level compliance tool for dam safety offences.

The new PIN offences relate to the preparation and submission by dam owners of:

- Emergency Action Plans
- emergency event and flood event reports
- requests for information from the dam safety regulator.²⁵

The explanatory notes state that the Regulator consulted with Seqwater, Sunwater and all other referable dam owners. A Dam Safety Newsletter was also circulated to dam owners and interested parties detailing the amendments for the inclusion of PINs. No issues were raised in response.²⁶

2.2 Consistency with fundamental legislative principles

Penalties impact on the rights and liberties of individuals. A penalty should be proportionate to the offence.²⁷

As a general guide, infringement notice fines prescribed in regulation should not be more than a tenth of the penalty prescribed in the relevant Act.²⁸ All the infringement notice fines in the Regulation are considerably less than one-tenth of the maximum penalties in the Water Supply Act and range from 2 penalty units (\$287.50) to 20 penalty units (\$2875).²⁹

While the explanatory notes do not consider the new penalties in the context of fundamental legislative principles, the following justification for the new PINs is provided:

There are 17 offences under the Water Supply Act already prescribed in Schedule 1 of the SPE Regulation, but these are insufficient to adequately cover the recommendations in the QAO report.

Consequently, there is a need to increase the number of available compliance tools, including PINs, to allow the Regulator to act on non-compliance and use the full range of enforcement measures at its disposal to address serious or persistent noncompliance.³⁰

Committee comment

The committee is satisfied that the new PINs introduced by the Regulation are relevant and proportionate, and necessary to provide the department with a better range of tools to support compliance with Water Supply Act requirements.

2.2.1 Explanatory notes

The explanatory notes comply with part 4 of the Legislative Standards Act.

2.3 Compatibility with human rights

The human rights certificate outlines a potential limitation to the human right to property, as prescribing the offences as PIN offences under the Regulation will mean that if a person fails to pay

²⁵ Explanatory notes, p 3.

²⁶ Explanatory notes, p 4.

²⁷ Office of the Queensland Parliamentary Counsel, *Fundamental legislative principles: the OQPC notebook*, 2008, p 120.

²⁸ Queensland Government, *Queensland legislation handbook*, 6.10 Infringement notice offences, <https://www.premiers.qld.gov.au/publications/categories/policies-and-codes/handbooks/legislation-handbook/subord-legislation/infringement.aspx>

²⁹ The value of a penalty unit is currently \$143.75.

³⁰ SL No. 165, explanatory notes, p 2.

the amount specified in the PIN, they will be subject to the enforcement power under the State Penalties Enforcement Act. Such enforcement action may limit the right to property.³¹

The right to a fair hearing and rights in criminal proceedings are also engaged as prescribing the offences under the Regulation enables a fine of a fixed amount to be issued to a person by the department without a charge being decided by an independent court after a fair and public hearing, and without the person having the opportunity to exercise their rights in criminal proceedings.

In short, the Minister contends that the limitations are outweighed by the need to minimise the serious risks to the health and safety of persons at risk by a possible dam failure, by providing the department with an efficient enforcement mechanism to support compliance with statutory requirements.³²

Committee comment

The committee is satisfied that the Regulation is compatible with human rights noting the importance of helping to minimise the serious risks associated with a possible dam failure. We are also satisfied that potential limitations to the human rights to property, a fair hearing, and fair rights in a criminal proceeding are reasonable and demonstrably justified.

2.3.1 Human rights certificate

The human rights certificate tabled with the subordinate legislation provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

3 Recommendation

The committee recommends that the House notes this report.



Chris Whiting MP

Chair

March 2023

State Development and Regional Industries Committee

Chair

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Mr Tom Smith MP, Member for Bundaberg

³¹ Human rights certificate, p 3.

³² Statement of compatibility, p 5.