



**Submission to Fisheries
Queensland on the draft “Policy
for compliance-related
suspension or cancellation of a
licence by the Chief Executive”**

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1. Executive Summary

QSIA thanks Fisheries Queensland for the opportunity to make this submission.

QSIA's is supportive of any reforms that are derived from robust, broad consultation, and have a clear need and objective. ***In this instance however, we struggle to understand both the need and objective.***

The Policy as drafted raises more questions than it answers. It lacks clarity around the triggers for the policy (ie “exhibit behaviour of an unwillingness or a lack of the necessary skills, knowledge, or experience to comply with fisheries legislation), with no guidance to the Chief Executive on whether these subjective triggers have been met equitably or consistently. Many terms in the Policy require more definition or a clear framework for their determination.

As currently drafted, the consensus is that the Policy sets a potentially impossible high standard of commercial and charter fishers to meet, in an environment where micro analysis of activity is either already in place or planned to be implemented, via independent onboard monitoring. Significant concern exists that the Policy is deliberately drafted as such, to “set us up to fail”.

QSIA recommends that Fisheries Queensland adopt a “Guidance Note” system, as used in other industries, to inform Industry and QBFP officers, ensuring a more consistent interpretation and application of rules.

Protection for owners of a leased licence also appears to be lacking. The Act does provide some protection, but the lack of information flowing back to a licence owner (the lessor), does make them an innocent party to this Policy. The Primary Commercial Fishing Licence is described by Fisheries Queensland as having property type characteristics, and care must be exercised to ensure that these are maintained.

Fisheries Queensland does not appear to have a framework for Policy Implementation. QSIA has drawn upon the Australian Government Guide to Policy Impact Analysis for guidance on what a successful framework might entail. The major limitations identified are the short consultation period (60 days is considered more appropriate when small businesses are involved combined with school holidays) and a timeframe for a Policy post implementation review and beyond that, periodic reviews. QSIA would like a Policy post implementation review, 12 months from the Policy being published and then every second year thereafter.

QSIA is critical of the consultation process. It is of the opinion that input from the public who are responding from an ideological position rather than an informed one (an understanding of the complex legislative environment of commercial fishing licencing) is likely to provide a biased outcome. Furthermore, the leading nature of the questions in the online survey is very disappointing. No direct effort was made in the questions to seek guidance on what would be considered the “core workings” of the Policy.

Finally, QSIA urges Fisheries Queensland to re-engage with key stakeholders after all submissions are considered, but before the Policy is published, to ensure that the content of the submissions have been understood and considered. Additionally, at that point, the communication to, and education of, Licence Holders regarding the Policy will need to be agreed.



2. About Queensland Seafood Industry Association Inc

Queensland Seafood Industry Association Inc (QSIA) is Queensland’s peak membership based organisation representing businesses in the wild harvest commercial seafood industry in Queensland. Its history dates back over 100 years. Membership activity ranges from the NSW border to the NT border and encompasses all forms of commercial fishing namely line, pot, net and Trawl. QSIA also has members that provide pre and post harvest goods and services to the industry.

QSIA’s is proud to have Mr Keith Payne VC, AM as its patron.

3. Relevance of the Policy and background.

This Policy directly impact QSIA's membership base and the broader industry, including active fishers and investors. The need for and timing of the publication of this policy is questioned by many industry participants, and has, in QSIA’s view, unnecessarily inflamed a sense of insecurity.

This submission is focused on those impacts.

4. Our Submission

QSIA welcomes any Policy that provides guidance to the Chief Executive to carryout their significant powers and responsibilities under the Fisheries Act 1994 (the Act) and subordinate legislation. This is predicated on the fact that the Policy will provide a clearer understanding of the process for stakeholders.

QSIA also understands that fisheries legislation already contains powers for the suspension or cancellation of an Authority. This policy does not, nor can it, extend those powers.

a) The need for the Policy

While the Policy has a stated Purpose, the actual *need* for the Policy is unclear. Fisheries Queensland have verbally advised QSIA that it is rare that the Chief Executive cancels a licence for *compliance* related matters.

The question must be asked, why now publish a Policy as these powers have been enshrined in legislation for many years?



This *need* must be communicated to stakeholders and ideally included in the Purpose paragraph.

b) Is it really a small number?

The Department of Agriculture and Fisheries engagement page for this policy states

“despite efforts to educate fishers and encourage compliance, there are a small number of licence holders who are unwilling, or lack the necessary skills, knowledge or experience, to comply with these laws.”¹

At the same time data publicly available on Fishnet shows the following numbers of licences suspended:

LICENCE TYPE	# SUSPENDED
PRIMARY COMMERCIAL	55
COMMERCIAL FISHER	289
CHARTER	31
TOTAL	375

While this data² does not provide any details for the reason for the suspension, it does tend to indicate that the number of licences caught by this compliance related policy could be more than a “small number”.



Given the Policy sets a minimum 3 month suspension period, unjust or inequitable use of this policy will have significant financial implications for licence holders.

c) An unobtainable standard?

QSIA is concerned that this Policy sets an unobtainable standard for licence holders, particularly with the ever increasing micro scrutiny being placed on them through forensic analysis of Independent Onboard Monitoring data (particularly cameras). Recent experience shows that infringement notices have been issued in quick succession following the review of footage. Given that this policy sets a limit of 3 infringement notices in a 12 month period (section 6.2 (c)), it is quite possible that a Licence meets the criteria for cancellation or suspension before the licence holder is aware of their wrongdoing.

As the Department accepts, most fishers comply with the law. Often when fishers do fall foul of the law, it is due to lack of understanding or interpretation (particularly between different QBFP branches). The Queensland fisheries compliance strategy clearly puts education as one pillar of the strategy.



QSIA encourages Fisheries Queensland to extend its education program.

¹<https://daf.engagementhub.com.au/fisheries-licence-consultation> (accessed 25 Sept 24)

²<https://fishnet.fisheries.qld.gov.au/Content/Public/LicenceAndPermitAuthorities.aspx> (accessed 25 Sept 24)

The fisheries legislation is complex. There is no exhaustive list of *Serious Fishing Offences* that QSIA was able to locate. The Act has a definition with a list of Sections within the Act, but there are several others in Regulations.



QSIA enlisted the help of AI to try to compile such a list without success.

Fishers are humans and are susceptible to making mistakes. While carrying out a fishing operation, they have several issues to deal with, in addition to the actual fishing. This is a complex situation where issues can easily be missed. By way of example, one undersized whiting in a catch of hundreds of kilos, when you are struggling to process the catch quickly to maintain their wholesomeness.



This Policy – specifically Section 6.2, does not provide any guidance to the Chief Executive to consider the positive behaviour of a fisher or extenuating circumstances surrounding the infringement. This gives a perception of an unbalanced and biased approach.

It is QSIA’s view that, in any industry or workplace, if similar hurdles were placed in licence holders or employees, with the same level of scrutiny that fishing licence holders experience, few would survive. Think about a police officer reviewing the footage of cameras in a car – a lot of drivers would be innocently breaking traffic rules and would quickly lose their driver’s licence.

d) The process before the Chief Executive’s consideration

This Policy is an internal document specifically for the Chief Executive.



To assist licence holders, QSIA urges Fisheries Queensland to publish a guide on the steps taken by it, including communication with the licence holder (both the owner and lessee if different), before the Chief Executive is asked to consider suspension or cancellation.

This guide would seek to provide all stakeholders with a clear understanding of the process, their rights and responsibilities and education opportunities to correct misunderstandings. Of particular interest would be an understanding of the de-escalation brought about by behavioural change (akin to good behaviour). Likewise, to ensure that any case put before the Chief Executive for consideration is warranted, what checks and balances are in place in the application process by the Department.

e) The unintended consequence for licence owners



While the Act provides some safeguards³ for an owner of a licence to be a victim of this Policy, there is concern that the property characteristics⁴ of a fishing licence may be eroded by this Policy. The Chief Executive must take into consideration the situation of a licence that is being operated by a commercial fisher and protect the interests of the owner. Furthermore, QSIA believes that it would be a breach of the licence owners Human Rights to disregard them

³ S219 (4) of the Act

⁴ A Guide to Queensland’s new fisheries licensing and fees system, Department of Primary Industries, 2006



It is unclear to QSIA who is considered a “Third Party”.

f) Policy development principles.

Establishing clear principles through policy development will go a long way with transparency and improve interactions in general. A short (30day) consultation period is unfair on industry and not sufficient timeframes for advocacy groups like QSIA to source members feedback to respond effectively.

Policy development has its own clear guidelines. Fisheries Queensland are not just dealing with fishers, they are dealing with small businesses, impacts of a financial nature need to be consulted, practical implementation needs to be considered, and education to ensure best practice.

QSIA was unable to find any Policy Framework guidelines from Fisheries Queensland. The Australian Government has a “Guide for Policy Impact Analysis”⁵.

I particularly point out Principles 4,5 and 6 (Figure 1).

Depending on the significance of the proposal, between 30 to 60 days is usually appropriate for effective consultation, with 30 days considered the minimum. Longer consultation periods may be necessary when they fall around holiday period (as was the case for this policy)

Small businesses are different to larger businesses. Small businesses: ♣ can be disproportionately affected by the costs of regulatory decisions and unnecessary red tape; ♣ have fewer resources – be it time, information, money or staff – at their disposal to cope with their regulation obligations; and ♣ are very diverse and cut across all sectors of the economy, up and down the supply chain

Simply uploading a document outlining a proposed policy to Fisheries Queensland’s website will have limited reach within the small business community. When consulting with small business there are four areas that should be looking to tick off. Consultation should involve: ♣ sharing relevant information with small business; ♣ giving small business a reasonable opportunity to express their views, raise relevant issues and contribute to the decision making process; ♣ taking their views into account; and ♣ providing information on the results of the consultation.⁶

g) Better enforcement of existing legislation

Sometimes better staff training, enforcement or a different management focus to address cultural, behavioural or systems issues can be an effective means of achieving your outcome. Always assess the potential for improving policy outcomes with better enforcement of the rules already in place. People can have poor awareness of their obligations. Better targeted education can be a useful tool in achieving Fisheries Queensland objectives.

If there is existing legislation, an Impact Analysis must include a description of how it is being enforced and outline why a refined approach to enforcement would not achieve the objectives.

⁵ https://oia.pmc.gov.au/sites/default/files/2023-05/oia-impact-analysis-guide-march-2023_0.pdf

⁶ <https://treasury.gov.au/sites/default/files/2019-03/Achieving-Best-Practice-Consultation.pdf>



Figure 1: Principles for Policy Makers

QSIA recommends Fisheries Queensland publish a guide to policy making,



QSIA also recommends that in the existing policy a timeframe be set for a “Post Implementation Review” of 12 months from the policy being published and then every 2 years thereafter.



While QSIA accepts that Fisheries Queensland may need to consult with the broad community, it is deeply concerned that in this very specialised instance, most of the non-commercial / charter fishers who may complete a submission, have no understanding of the nuances of the regulatory framework that this policy applies to.



5. Critique of the Policy as drafted.

a) Section 1- Purpose for the Policy

The following observations are made in relation to the stated Purpose for the Policy -

- A. As the Fisheries Act 1994 (the Act) and subordinate legislation already contain the powers outlined in this policy, it is unclear from this “Purpose” statement what the need or motivation for this policy is.
- B. S67 of the Act refers to cancellation of authority. An Authority has a much broader meaning than merely licences. In this policy there appears to be differing definitions of the term “licence”. This needs to be rectified.
- C. Simply put – is this policy only relating to the licences mentioned in clause 2.2 OR all the authorities issued under S49 of the Act (as outlined in the definitions contained in clause 4 of the Policy)? If it is only licences as per s49(1)(a) of the Act and s24 of the Fisheries (General) Regulations 2019 – then this needs to be made clearer (see next section for more detail).
- D. As worded, in QSIA’s opinion, this policy sets a very low criteria for the Chief Executive to consider suspension or cancellation of a licence. If that is the intent, safeguards, checks and balances must be put in place to protect the Licence holder ensuring that due process is followed.
- E. Section 67(2) of the Act provides the Chief Executive with the authority to “disregard any third party interests”. Neither the Act nor the Policy, provide any indication of who may be a third party, particularly in the scenario when an authority is leased. QSIA argues that the owner of the authority is NOT a third party and the owner’s rights and interests must be considered and protected.
- F. In 2006 the Queensland Government issued a document titled “ A guide to Queensland’s new fisheries licencing and fees system”. In this document it is stated

b) Section 2.1 Non-compliant licence holders

- G. The policy states “*In instances where licences holders exhibit behaviour indicative of an unwillingness or a lack of the necessary skills, knowledge, or experience to comply with fisheries legislation*”. QSIA is concerned at the lack of definitions of these vague and subjective criteria. Who decides the licence holder lacks the necessary skills and on what basis, similar with knowledge, and experience to comply. It appears that the Chief Executive does this, however on what basis are these words determined? Will they have to sit a knowledge based test, or is that just him deciding that the fisher does not maintain the knowledge?
- H. QSIA believes that the Policy must provide the Chief Executive with more prescriptive guidance in the meanings of these terms, particularly as they are different to the terms outlined in S59 (1) of the Act.

Fishing rights and compensation

Enhanced fishing rights

The new fisheries licensing and fees scheme recognises that a package of commercial fishery access rights is proprietary in nature.

In response to concerns raised about the new scheme by the fishing industry during public consultation, the legislation now makes it clearer that Commercial Fishing Boat Licences, Harvest Fishery Licences and quota authorities are statutory (in law) fishing rights that share many property characteristics.

In particular:

- licences are ongoing provided fees are paid
- licences are fully transferable (including as part of a deceased estate)
- compensation is payable in certain circumstances where the fishing right is removed or diminished (see below).

Figure 2: Fishing Rights

Protections must be put in place to ensure that the fishing rights of the Authorities that share many property characteristics, are maintained.

c) Section 2.2- Administering legislation

- I. As mentioned previously, confusion abounds in this section of the Policy as on quick analysis it talks about 3 licence types but references S49 of the Act which refers to-

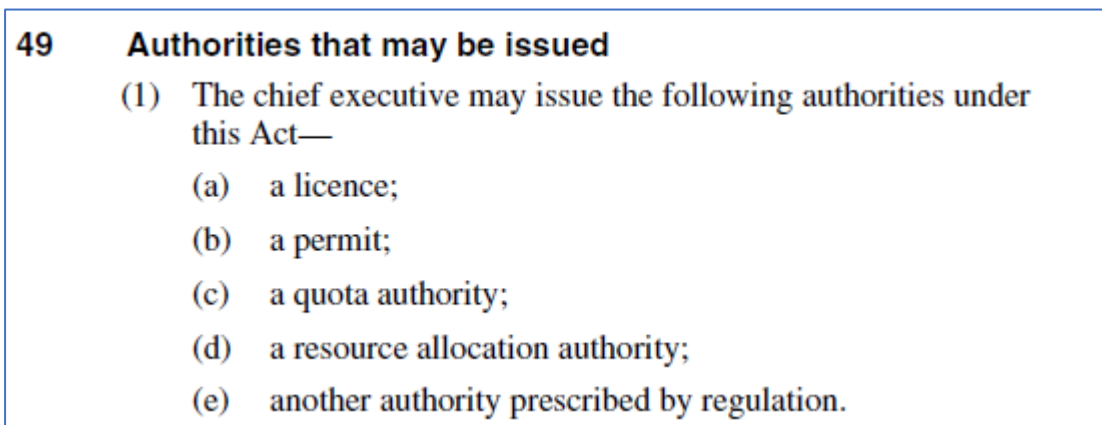


Figure 3: Authorities

Furthermore, reference is made to s25 Fisheries (General) Regulations 2019. QSIA believes that this reference is in error and should be to s24 which states-

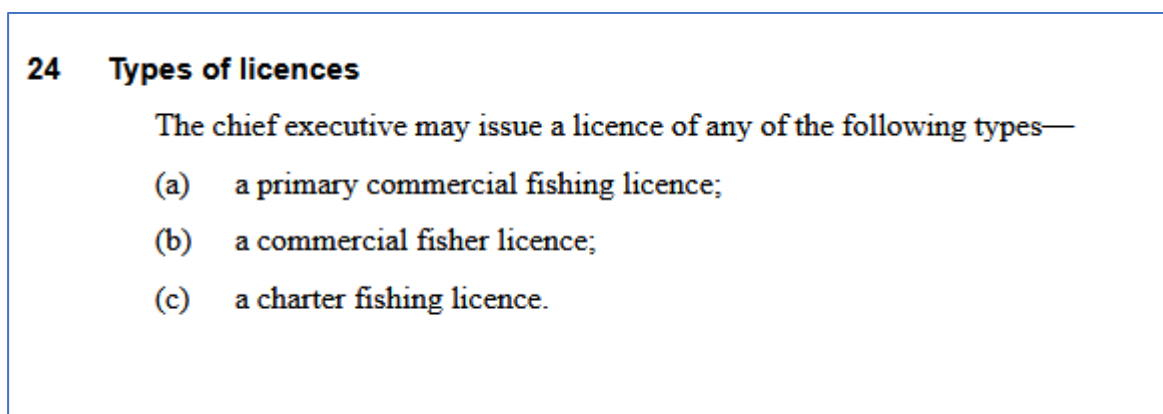


Figure 4: Types of Licences

d) Section 3- Scope

- J. In scope - As previously pointed out, the reference to s25 of the Fisheries (General) Regulations 2019 is an error and it should be s24.
- K. Out of scope - QSIA questions the reason why this policy has been open for public comment when it does not apply to the recreational fisher. QSIA is of the view that, given the complex regulatory requirements and on water practicalities, only submissions made by effected licence holders ought to be considered.



- L. The paragraph referencing S174 of the Act (Orders against persistent offenders) is unclear as to its purpose. Is it “Out of Scope”, because a person who does “not hold a licence or another authority issued under the Act”, would in layman’s terms be a “recreational fisher”?

e) Section 4 – Definitions and Terminology

- M. See previous comments on the definition of “Licence”
- N. See discussion in Paragraph X below relating to the definition of Licence Holder

f) Section 5 – Key guiding principles

- O. QSIA disagrees that access to fisheries resources is not a right. The issuing of a licence grants that right to Queensland Commercial Fisherman on behalf of the community, so that the community can enjoy their resource.
- P. While a higher standard of compliance may be “expected of persons taking publicly owned resources for trade or commerce”, the compliance gap between that group and other takers of the resources is ever widening (for example Vessel Tracking, Logbooks, Independent Onboard Monitoring etc). This policy is another example. Licence holders are under enormous scrutiny and at the end of the day are only human and as such, are susceptible to making mistakes. Everyone is. QSIA is concerned that this policy potentially sets a low hurdle for cancellation or suspension of a licence in a complex environment with extensive and increasing scrutiny. Is it a scenario that is unachievable at the outset and setting Licence holders up to fail?
- Q. On numerous occasions, QSIA has highlighted to Fisheries Queensland inconsistencies in the interpretation of the Act and Regulations across the State by QBFP Branches. QSIA has raised the concept of FQ publishing guidance notes (as used in numerous other industries) to ameliorate this issue.
- R. QSIA questions the reference to cost effectiveness when enforcement is involved. Surely to ensure that all the other just processes occur, cost ought not be a factor.

g) Section 6.2 – Factors relevant to suspending or cancelling a licence

- S. QSIA finds this section disjointed, and very poorly drafted and at least needs reformatting for easier interpretation.
- T. Sub paragraph (f) reads out of context – need more detail.
- U. QSIA is concerned that there is no requirement for the Chief Executive to determine any mitigating causes.
- V. Nor is there any requirement for the Chief Executive to consider any retribution the licence holder has undertaken.
- W. Nor is there any requirement for the Chief Executive to consider any past good performance by the licence holder.



- X. Section 219 (2) of the Act is listed as a Serious Offence and imposes an obligation on the Holder of an Authority to ensure that the Act is complied with when the Authority is being used by a person using the Authority. Subsection 4 outlines defences to this obligation. There is concern that under this Policy, an investor of a licence may have their licence suspended or cancelled through no fault of their own, heightened by the fact there is no reporting back to owners of any poor behaviour of a person who has leased the licence.
- Y. The rehabilitation period does not differentiate causes for prior suspension. This means, a suspension for an administrative reason (eg non-payment of fees Section 68A and 68AB of the Act), resets the rehabilitation period. QSIA believes that it is more appropriate that the rehabilitation period only considers suspensions imposed by the Chief Executive under this policy (or its predecessor)

h) Section 7 – Suspension and cancellation procedure

- Z. While it is incumbent on all Authority Holders to ensure that their contact details are correct, QSIA believes, Fisheries Queensland should review the processes in place to ensure licence holder contact details are current. Examples of this include during the login process for Fishnet, when fee notices are mailed to authority holders or through efisher app login.

6. Consultation.

a) Consultation Period

As outlined previously in the document, QSIA believes that a 30 day consultation period is too short and future consultation periods ought to be a minimum period of 60 days. QSIA believes that this is best practice

b) Stakeholders

QSIA is concerned that this Policy has been made available to the public for comment. While it may be Fisheries Queensland’s normal practice, QSIA urges extreme care and caution in consideration of submissions from parties outside the commercial and charter fishing industries who have a lack of understanding of the topic and the complex legislative environment.

c) Survey Questions

QSIA questions the robustness of the survey on The Department’s engagement hub. Questions 7 to 10 are somewhat simplified and leading. The survey did not take the opportunity to assist the policymakers to obtain more guidance around some of the key aspects of the Policy as drafted, namely the phrase “*exhibit behaviour indicative of an unwillingness or a lack of the necessary skills, knowledge, or experience to comply with fisheries legislation*”. Nor did it explore the any of the parameters in clause 6.2 of the draft Policy.