

Regulatory Impact Statement

Fisheries (Fishing Gear) Declaration 2020 **DI2020-113**

Prepared in accordance with the *Legislation Act 2001*, section 34

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Executive Summary

This regulatory impact statement relates to the *Fisheries (Fishing Gear) Declaration 2020*, made under section 17 of the *Fisheries Act 2000* (Fisheries Act).

The Fisheries Act is the primary legislation in the ACT for the management of the recreational fishery and the commercial trade of fish. The primary objectives of the Fisheries Act are to:

- conserve native fish species and their habitats
- manage fisheries sustainably to provide high quality and viable recreational fishing
- cooperate with other Australian jurisdictions in sustaining fisheries and protecting native fish species.

The *Fisheries (Fishing Gear) Declaration 2020* (the instrument) prescribes the use of fishing gear that may be used for taking fish.

The instrument includes changes to address matters identified in the 2018 Fisheries Act review process and brings into effect amendments to the Fisheries Act made through the *Fisheries Legislation Amendment Act 2019*:

- A definition for open-top pyramid nets is included so that these nets may be used as an alternative method for taking yabbies, in line with current practice in other jurisdictions, and to clarify and provide adequate information on their allowable uses.
- The existing fishing gear declaration instrument does not reflect recent changes to the Fisheries Act including the ability to declare prohibited gear.
- A definition for opera house nets is included and the use of opera house nets in all waters (both public and private) will be declared as prohibited in the instrument.

The instrument is within the parameters of the authorising law and is not inconsistent with the policy objectives of another territory law. The proposed declaration is appropriately placed in subordinate legislation to the Fisheries Act. The proposed declaration does not unduly trespass on existing rights or make rights unduly dependent upon non-reviewable decisions.

This regulatory impact statement complies with the requirements for a subordinate law as set out in part 5.2 of the Legislation Act. An explanatory statement for the proposed law has been prepared for tabling.

Purpose

This regulatory impact statement (RIS) establishes whether new and amended provisions are required for the declaration under section 17 of the Fisheries Act and assesses the impacts of the proposed provisions. The RIS provides:

- a) background on policy objectives for fisheries management in the ACT;
- b) identification of problems with existing management;
- c) policy objectives;
- d) options to achieve the policy objectives, including costs and benefits and a preferred policy option;
- e) background on consultation;
- f) mutual recognition issues; and
- a) a conclusion.

The purpose of this RIS is to assess the regulatory impacts to the community of new restrictions imposed on recreational fishing in the ACT through this instrument.

The instrument may impose a social and economic cost on the community through restrictions on the use of opera house nets in private waters, however, these restrictions are appropriate and justified in order to achieve the environmental protection and sustainability goals of the Fisheries Act.

Policy objectives for fisheries management

The Fisheries Act is the primary ACT legislation for the management of the recreational fishery and the commercial trade of fish in the ACT.

The primary objectives of the Fisheries Act are to:

- conserve native fish species and their habitats
- manage fisheries sustainably to provide high quality and viable recreational fishing
- co-operate with other Australian jurisdictions in sustaining fisheries and protecting native fish species.

Part 3 of the Fisheries Act enables the Minister and the Conservator of Flora and Fauna to set restrictions on recreational fishing by way of a disallowable instrument. Within part 3, section 17 permits the Minister to declare fishing gear that may be used for taking fish and gear that is prohibited for use in taking fish.

Policy Problems

Fishing regulation is necessary to ensure the ongoing sustainability of the river system and the environment, and to ensure that recreational fishing can continue into the future.

The gear restrictions set out in the instrument achieve this by restricting gear to what is appropriate for conditions/species and by reducing the likelihood of overfishing and unintended bycatch. These restrictions are proportionate to the environmental risk and justified in achieving sustainability goals.

This instrument seeks to find an appropriate balance between the protection of the environment and ensuring a viable recreational fishery.

Changes to the instrument

Definitions

Open-top pyramid net

A definition for an open-top pyramid net is required to allow this type of net to be legally used. The definition also prescribes the allowable dimensions of the net.

Opera house net

The definition of an opera house net is included in the instrument in order to clarify the declaration of this type of net as prohibited from use.

Fishing gear

The new instrument includes two changes relating to fishing gear.

- The current instrument does not specify that open top pyramid nets are allowed for use. This instrument includes open top pyramid nets as allowable gear for taking yabbies and freshwater shrimp prawns only. Open top pyramid nets have been added as allowable gear in order to promote the use of these nets as a more wildlife friendly alternative (than enclosed yabby nets) for catching yabbies and to align with Victoria and New South Wales in allowing the use of these nets.
- Amendments to the Fisheries Act allow the prohibition of certain types of fishing gear. This instrument includes prohibition on the use of opera house nets in both public and private waters in the ACT. The use of these nets is already illegal in public waters, but the addition of this provision prohibits their use in private waters, making ACT laws consistent with recent changes to Victorian fishing laws regarding opera house nets, and acting to further discourage the use and sale of these nets.

Objectives of government intervention

- To better align fishing regulations across jurisdictions (ACT, NSW and Victoria) in order to make compliance and enforcement less complicated (i.e. same rules apply on both sides of the border) and encourage consistency in fisheries management.
- To offer further protection to non-target species impacted by opera house traps through the prohibition of these traps in all waters in the ACT.

Options for achieving objectives

This declaration has been prepared in the context of the existing provisions. The options considered in relation to each identified problem were:

- retain the provisions in the existing declaration; or
- introduce new or amended provisions to this declaration.

Cost benefit analysis

The table below outlines the costs and benefits associated with each of the provisions introduced in this instrument. The cost benefit analysis shows that, the prohibition on the use of opera house traps in private waters has the potential to impact on rural landholders and retailers. The impacts are minimised through allowing the use of other types of nets and outweighed by the positive effect this restriction is likely to have on native species such as platypus and rakali.

<p>Option 2b: Include the definition of an opera house net</p>	<p>Benefits</p> <p>The inclusion of a definition for opera house nets allows this type of net to be declared as prohibited gear under section 17(1) of the Fisheries Act. Prohibiting these nets in all waters across the ACT offers greater protection for native air breathing animals such as platypus, rakali and turtles, that may become trapped in the nets and drown, and may act as a further disincentive for the use and sale of these nets. Prohibiting their use in all ACT waters will also bring the ACT into line with Victorian regulations banning the use of opera house nets in all waters in that state.</p> <p>Constraints</p> <p>As opera house nets are already illegal for use in public waters, this change is not likely to affect the broader ACT community, however, it may impact rural land holders, as the nets are currently able to be used in private dams. The fact that there are other types of nets available for legal use that are effective for catching yabbies will reduce this impact. An ACT Government run ‘yabby net swap program’ allowing opera house nets to be swapped for legal nets free of charge, will further reduce the burden on any effected parties. Retailers who sell opera house nets may also be affected by this rule change, as it may lead to a reduction in sales of opera house nets. The impact on sales is likely to be low as opera house nets are currently illegal for use in public waters in the ACT and in Victoria and surrounding waters of NSW so are not a preferred net for purchase. Several retailers in the ACT have already stopped selling this type of net due to community concerns about impacts on wildlife.</p>
<p>3. Fishing gear</p> <p>3a. Open top pyramid nets</p> <p>Option A: Limit fishing gear to that already</p>	<p>The benefits and constraints related to the declaration of open top lift nets as allowable</p>

<p>declared.</p> <p>Option B: Amend the declaration to specify that open top lift nets may be used for taking yabbies and freshwater shrimp and prawns (families Atyidae and Palaemonidae) in open waters.</p> <p>3b. Opera house nets</p> <p>Option A: Do not declare opera house nets as prohibited gear</p> <p>Option B: Declare opera house nets as prohibited gear</p>	<p>gear is discussed under definitions at 1. <i>Open-top pyramid net.</i></p> <p>The benefits and constraints related to the declaration of opera house nets as prohibited gear is discussed under definitions at 2. <i>Opera House Nets.</i></p>
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Consultation

Public consultation was undertaken on the amendments to the Fisheries Act during the review of the Act. Additional consultation has been undertaken with recreational fishing groups and with retailers who sell fishing gear.

Mutual recognition

A range of legislation operates at local, State/Territory and national levels throughout Australia to regulate both recreational and commercial fishing and to protect native and threatened fish species. This instrument seeks to bring ACT regulations in line with those in New South Wales and Victoria in order to promote better compliance across jurisdictions and to promote consistent regulation across jurisdictions. The prohibition on use of opera house nets is consistent with recent rules changes in Victoria and with a recent outcome from the Meeting of Environment Ministers that jurisdictions will work together to address the impacts of these nets, including discussing a national approach to their use and sale.

Consistency of the proposed law with Scrutiny of Bills Committee principles

The Committee's terms of reference require it to consider whether (among other things):

- (a) any instrument of a legislative nature made under an Act which is subject to disallowance and/or disapproval by the Assembly (including a regulation, rule or by-law):
 - i. is in accord with the general objects of the Act under which it is made;
 - ii. unduly trespasses on rights previously established by law;
 - iii. makes rights, liberties and/or obligations unduly dependent upon non reviewable decisions; or
 - iv. contains matter which in the opinion of the Committee should properly be dealt with in an Act of the Legislative Assembly.

The regulations aim to achieve the objects of the Fisheries Act at section 3, in particular sustaining a recreational fishery while conserving native species and doing so in cooperation with other jurisdictions. The regulations also protect native fish and other native species

impacted by fishing activity and result in more sustainable fisheries management to provide high quality and viable recreational fishing.

The proposed law does not unduly trespass on rights previously established by law.

It is acknowledged that this instrument imposes further restrictions on the previously established right to engage in recreational fishing. However, the additional restrictions found in this instrument are necessary for the ongoing sustainable management of the recreational fishery. As discussed above, the additional restrictions contained in this instrument have been implemented as a response to updated scientific information, to ensure consistency with surrounding jurisdictions and to ensure that ACT fishing regulation continues to reflect best-practice fisheries management.

The proposed law does not make rights, liberties and/or obligations unduly dependent upon non-reviewable decisions.

The additional restrictions in this instrument relate back to the offences in Part 8 of the Act. A number of these offences are strict liability offences. However, the Act provides for defences to offences to ensure a fair and reasonable approach to enforcement and noting the unpredictable nature of fishing.

The additional restrictions are consistent with the current operation of the instrument and the offence provisions of the Act.

Conclusion and recommended option

This RIS complies with the requirements for a subordinate law as set out in part 5.2 of the Legislation Act. An explanatory statement for the proposed law has been prepared for tabling.

The introduction of the new and amended provisions proposed for the fisheries prohibition and declaration is the preferred policy option. The benefits of the new and amended provisions to the environment and to the sustainability of the recreational fishery outweigh the potential social costs of restrictions to recreational fishing activity.