

# Environmental Protection (Great Barrier Reef Protection Measures) and Other Legislation Amendment Bill 2019

## Explanatory Notes

### Short title

The short title of the Bill is the Environmental Protection (Great Barrier Reef Protection Measures) and Other Legislation Amendment Bill 2019 (the Bill).

### Policy objectives and the reasons for them

The primary policy objective of the Bill is to amend the *Environmental Protection Act 1994* to strengthen Great Barrier Reef protection measures to improve the quality of the water entering the Great Barrier Reef.

Protecting the Great Barrier Reef is one of the Queensland Government's six priorities under *Our Future State: Advancing Queensland's Priorities*. Progress towards this priority will be measured against the following targets for water quality at the end of Great Barrier Reef catchment:

By 2025 contribute to a:

- 60% reduction in anthropogenic end-of-catchment dissolved inorganic nitrogen loads
- 25% reduction in anthropogenic end-of-catchment sediment loads.

These Reef-wide targets reflect Queensland's commitments under the Reef 2050 Water Quality Improvement Plan 2017-2022. The plan also includes end-of-catchment load reductions for each of the 35 river basins, ranging from zero to 70% of existing anthropogenic loads depending on location, for what is required to achieve ecological health for the Reef.

The "2017 Scientific Consensus Statement: Land use impacts on Great Barrier Reef water quality and ecosystem condition" confirms that poor water quality continues to be a significant issue for Reef health and the main source of nutrient and sediment pollution is cumulative run-off from agricultural land use, with local scale contributions from urban and industrial land uses.

Despite significant government and industry investment, particularly in agriculture, voluntary approaches have failed to facilitate sufficient uptake of improved practices and at the present trajectory, the Reef water quality targets will not be met.

In 2016, the Great Barrier Reef Water Science Taskforce (the Taskforce) recommended the implementation of staged regulation throughout the Reef regions to reduce nutrient and sediment pollution, and contribute to meeting the water quality targets for a healthy Reef. The Taskforce recommended a re-invigorated regulatory approach, as part of a mix of tools, to accelerate progress toward meeting the targets, to help preserve the high values held for the Reef and increase the resilience of the Reef to other pressures, such as the impacts of climate change.

The *Great Barrier Reef Protection Amendment Act 2009* introduced the first round of Reef protection regulations. In 2012, a policy change saw the redirection of funding and effort to voluntary industry-led best management practice (BMP) programs and incentives for the sugarcane and grazing sectors and the regulations were not enforced. Compliance activity was re-initiated in 2016, focusing on the sugarcane industry.

In response to the water quality challenge and the recommendations of the Taskforce, the existing legislation will be strengthened to address the cumulative impacts of multiple pollutant sources on Reef water quality. The Bill applies regulation to a broader range of agricultural activities, with amendments to be made to the Environmental Protection Regulation 2008 to support this and to apply additional requirements for other land uses (e.g. sewage treatment, waste disposal, mining activities and land-based aquaculture) that release nutrient and sediments in Reef catchments.

The Bill also contains amendments to give effect to the Common Assessment Method for Threatened Species, and amends wildlife classes to be consistent with the method through amendments to the *Biodiscovery Act 2004*, *Fisheries Act 1994*, *Nature Conservation Act 1992*, and the *Vegetation Management Act 1999*.

The policy objectives will be achieved by amending the relevant Acts as follows:

### **Achievement of policy objectives**

#### Amendment to the *Biodiscovery Act 2004*

In giving effect to the Common Assessment Method for Threatened Species, the Bill makes a minor change to the *Biodiscovery Act 2004* to recognise the new classes of wildlife under the *Nature Conservation Act 1992*. By amending the definition of ‘NCA material’ to remove ‘rare’, and include the classes of ‘extinct’ and ‘critically endangered’, this amendment will provide a consistent approach to wildlife listed under the *Nature Conservation Act 1992*.

#### Amendment to the *Chemical Usage (Agricultural and Veterinary) Control Act 1988*

The *Chemical Usage (Agricultural and Veterinary) Control Act 1988* regulates the way a person carrying out an agricultural environmentally relevant activity (ERA) prepares, uses and stores an agricultural chemical product. The *Chemical Usage (Agricultural and Veterinary) Control Act 1988* currently only applies to a person carrying out an agricultural ERA involving sugarcane cultivation and cattle grazing in the Wet Tropics, Burdekin and Mackay Whitsunday regions. Amendments in the Bill will broaden the regulatory net of the *Chemical Usage*

*(Agricultural and Veterinary) Control Act 1988* to align with the new definition of an agricultural ERA. To allow sufficient time for newly regulated producers to comply with the requirement to obtain the prescribed qualifications, a transitional provision will be inserted into the *Chemical Usage (Agricultural and Veterinary) Control Act 1988* that allows a period of one year for newly regulated producers to become compliant (e.g. obtain prescribed qualifications).

#### Amendments to the *Environmental Protection Act 1994*

The Bill will achieve its objectives through a regulatory framework that ensures:

- The Reef water quality targets for nutrients and sediments are taken into account in regulatory decision-making.
- The broad application of minimum regulated standards to eliminate high risk practices that contribute to excess nutrient and sediment run-off.
- Producers move to standards that align with recognised benchmarks for agricultural industries, under the Paddock to Reef Water Quality Risk Framework, while maintaining productivity and profitability.
- New development can occur without compromising the water quality gains made to date, while also minimising the regulatory burden on existing activities.
- Good performers that utilise practices with low water quality risks are recognised and rewarded.
- Existing industry-led best management practice (BMP) programs or the development of new programs can provide participants with an alternative pathway for meeting regulatory requirements.

The Bill will:

#### ***Enable objectives for reduced nutrient and sediment contaminant loads to be set for catchments flowing into the Great Barrier Reef***

The Bill requires the Minister to set objectives for reduced nutrient and sediment contaminant loads in an environmental protection policy to improve the quality of water entering the Great Barrier Reef. This responds to the Great Barrier Reef Water Science Taskforce recommendation to set catchment load limits for nutrients and sediment in legislation to support meeting Reef water quality targets. Prescribing the load limits in legislation will ensure they are considered in decision-making for environmentally relevant activities (ERAs) that may affect Reef water quality.

The objectives for contaminant load reduction will be prescribed within the Environmental Protection (Water) Policy 2009. This policy informs regulatory decision-making in relation to water quality outcomes for Queensland waters, supporting the objective of ecologically sustainable development under the *Environmental Protection Act 1994*.

The objectives will be derived from the 2025 water quality targets (at the river basin scale) in the Reef 2050 Water Quality Improvement Plan 2017-2022. This plan sets end-of-catchment water quality targets for the catchments that drain into the Great Barrier Reef. They are reduction goals for nutrients and sediments represented as both a percentage and in tonnes or

kilotonnes. The targets are based on the Great Barrier Reef Marine Park Authority's Water Quality Guidelines for the Great Barrier Reef Marine Park to meet ecological health needs. The river basin scale targets form the basis of the regional and whole-of-Reef scale targets, and reflect progress already made since earlier targets were set.

The Bill also requires the Minister to review the objectives within five years after the objectives are set and then within each subsequent five year period. This review period aligns with updates to the water quality targets in the Reef 2050 Water Quality Improvement Plan 2017-2022.

***Enable minimum practice standards to be improved and set, targeting nutrient and sediment pollution from key agricultural industries that may affect Reef water quality***

The Bill amends the provisions for agricultural ERAs under Chapter 4A of the *Environmental Protection Act 1994*. The Bill provides the ability to create agricultural ERA standards for commercial cattle grazing; banana and other horticulture cultivation; and the cultivation of other crops, including sugarcane and grains. These standards can specify commodity specific minimum practice standards and farm design standards.

Agricultural ERA standards will take effect when prescribed by regulation. The reach of the regulation will expand from the catchments within the Wet Tropics, Burdekin and Mackay Whitsunday regions to include all Reef catchments, including those within the Cape York, Fitzroy and the Burnett Mary regions. The previous Environmental Risk Management Plan provisions will be replaced by the agricultural ERA standards. This reduces regulatory burden, particularly for farmers already operating at best practice.

Implementing regulated minimum practice standards and farm design standards for agriculture are important mechanisms to help achieve the catchment load limits. The limits will be reviewed every five years in line with updates to the Reef water quality targets in the Reef 2050 Water Quality Improvement Plan 2017-2022. Where limits are revised in response to updated targets, this may drive updated standards.

***Provide producers with an alternative pathway for meeting regulatory requirements through accreditation against a recognised BMP (or like) program***

The Bill establishes a co-regulatory framework providing producers with an alternative industry-managed pathway to comply with agricultural ERA standards. This includes a registration (and de-registration) process for BMP (or like) programs that assist producers to implement the standards, which are independently verified by a third party (accredited). Where a program has been recognised under the legislation, producers accredited as meeting the requirements of the program will be deemed as meeting the agricultural ERA standard. This will reward those producers that have taken voluntary action to meet minimum practice standards or higher as evidenced by BMP accreditation.

The Queensland Government has been working with the sugarcane and grazing sectors since 2012 to implement BMP programs that assist producers to enhance productivity, profitability and stewardship outcomes, while meeting the existing regulated minimum practice standards. The government has also more recently been working with the banana, horticultural and grains

sectors on the development and implementation of BMP programs to improve the adoption of improved practices.

There are numerous examples of government recognition of third party requirements and processes that achieve mutual objectives. This includes recognition of the Smartcane BMP program under the *Liquid Fuels Supply Act 2016* as meeting the sustainability criteria for the supply of biofuels, and the framework under the *Biosecurity Act 2014* to accredit a person to issue biosecurity certificates.

***Require advisers to provide advice that is not false or misleading related to an agricultural ERA standard, and keep and produce records of the advice provided***

The Bill requires advisers (e.g. agronomists and fertiliser sellers), when providing ‘tailored advice’ about agricultural ERAs, to provide advice that is not false or misleading, and keep and produce (upon request) records of the advice provided. An adviser includes any person who provides advice about carrying out an agricultural ERA as a service for reward (e.g. agronomist), or in association with another service (e.g. fertiliser distributor or agent).

This recognises that agricultural advisers play an influential role in the land management decisions made by producers, such as fertiliser application rates that are the primary source of nutrient run-off from farms. There is currently no relevant industry body to monitor the professional conduct of advisers.

***Regulation-making power for data collection***

The Bill includes a regulation-making power to mandate the provision of data to assist in determining where over application of fertiliser, and therefore high rates of nutrient run-off, may be occurring. The 2018 Queensland Audit Report, “Follow-up of Managing water quality in Great Barrier Reef catchments” highlighted the need for more industry information to support the Queensland Government to fully understand the effectiveness of the programs it funds. The Great Barrier Reef Water Science Taskforce also recommended that in order for both industry and government to make good decisions about regulation, extension and investment programs for improved Reef water quality outcomes and to support improved on-farm nutrient management, data is needed.

***Measures to achieve a ‘no net decline’ to Reef water quality from new development***

The Great Barrier Reef Water Science Taskforce recommended the introduction of regulation to ensure no net decline in water quality from new development. Achieving ‘no net decline’ in water quality from new development is necessary to maintain downward pressure on pollutant loads to achieve the Reef water quality targets. It is also necessary to minimise burden on existing activities to meet the targets.

Mechanisms to achieve ‘no net decline’ in water quality will be introduced through the legislative framework under the *Environmental Protection Act 1994*. These mechanisms will address additional nutrient and sediment releases from new cropping development and new

industrial development to allow for future development in regional Queensland that is compatible with the protection of the Reef.

New cropping development will be required to apply for an environmental authority, with the activity conditioned to meet higher standards through farm design standards. New cropping will also be required to meet minimum practice standards. As with all applications for an environmental authority for ERAs under the *Environmental Protection Act 1994*, the administering authority has the power to refuse an application.

New prescribed ERAs and resource activities (e.g. sewage treatment, waste disposal, certain mining activities, and land-based aquaculture) will be required to meet a ‘no net decline’ standard regarding nutrient and sediment releases. Where these ERAs cannot avoid or mitigate their water quality impacts, they will be able to meet this standard requirement through a voluntary offset condition informed by the Point Source Water Quality Offsets Policy under the *Environmental Protection Act 1994*.

Sufficient power already exists within the *Environmental Protection Act 1994* to impose a ‘no net decline’ requirement for new prescribed ERA and resource activities. However, supporting amendments will be required to the Environmental Protection Regulation 2008.

The Bill will also include provisions to apply Great Barrier Reef water quality offsets through the existing legislative framework for an environmental authority under the *Environmental Protection Act 1994*. Water quality offsets are actions used to counterbalance or offset a contaminant release from a new activity that cannot be avoided or mitigated. A water quality offsets condition will not be applied to an environmental authority unless a policy has been prescribed by the Environmental Protection Regulation 2008 for Great Barrier Reef water quality offsets.

The intent of the offset provisions is to give the government the head of power to mandate Great Barrier Reef water quality offsets in the future to apply to agricultural ERAs in addition to existing resource activities and prescribed ERAs, for contaminants such as dissolved inorganic nitrogen and fine sediment.

#### Amendment to the *Fisheries Act 1994*

To achieve the objectives of the Bill in giving effect to the Common Assessment Method for Threatened Species, minor changes are proposed to the *Fisheries Act 1994*. These provide authority under the *Fisheries Act 1994* to manage certain fish species that are listed as ‘threatened’ under the *Nature Conservation Act 1992*. This amendment makes it clear that fish continue to be regulated under the *Fisheries Act 1994* where a relevant authority to take, keep, use, move or deal with the fish is not required under the *Nature Conservation Act 1992*. This will remove the possible unintended consequence of regulating these fishing industries under the *Nature Conservation Act 1992*, rather than *Fisheries Act 1994*.

### Amendments to the *Nature Conservation Act 1992*

The Commonwealth, state and territory governments each have different legislative frameworks for assessing and listing threatened species. This has resulted in the generation of nine distinct threatened species lists across the country. These inconsistencies and the resulting misalignment of lists has led to confusion about the status of listed species and created complexities for people who require multi-jurisdictional approvals for development impacts on species (e.g., both state and Commonwealth approval).

In order to reduce the confusion and duplication of effort currently experienced across jurisdictions, the Australian, state and territory governments are establishing a standardised method – the common assessment method – for assessing and listing nationally threatened species.

The adoption of a common method was a specific target in the Australian Government's Threatened Species Strategy, which was launched in July 2015. It is being given effect through the Intergovernmental memorandum of understanding – Agreement on a Common assessment method for listing of threatened species and threatened ecological communities (the MoU), signed by Queensland in March 2017.

In giving effect to this method in Queensland, amendments are required to the *Nature Conservation Act 1992* to include International Union for Conservation of Nature (IUCN) classes of wildlife, which are part of the common assessment method. This will involve establishing two new classes of wildlife: 'extinct' and 'critically endangered'. This amendment will produce a list of wildlife classes, which is consistent with the IUCN criteria, as per the common assessment method. These classes are extinct, extinct in the wild, critically endangered, endangered, and vulnerable.

Necessary consequential changes to the criteria for existing wildlife classes are also included in these amendments. This is because insertion of the new classes will have the effect of splitting existing classes into two. The 'extinct in the wild' class will be split into 'extinct in the wild' and 'extinct', and the existing 'endangered' class will be split into 'endangered' and 'critically endangered'. The wording of the criteria for listing a species as 'vulnerable' under the *Nature Conservation Act 1992* also requires amendment in order to better align with the common assessment method.

Whilst the *Nature Conservation Act 1992* establishes the classes of wildlife, the Nature Conservation (Wildlife) Regulation 2006 establishes the list of species in each class, and the Nature Conservation (Wildlife Management) Regulation 2006 and Nature Conservation (Administration) Regulation 2017 establish the permit and licencing requirements for the take, keep and use of wildlife. Consequently, the new classes of wildlife will have no effect until consequential amendments are made to these regulations.

Another proposed amendment to the *Nature Conservation Act 1992* will clarify that it is an offence to provide misleading information in any manner. Currently this offence only applies to providing information to an authorised person, and not the Department of Environment and Science's online permit and licencing system. This is achieved by allowing the chief executive

to approve the use of an information system for communications between an authorised person and another person. The result of this is that communications received by the information system are taken to be documents given to the authorised person. Likewise, a decision generated by the information system is taken to be a decision made by the authorised person.

#### Amendment to the *Vegetation Management Act 1999*

To achieve the objectives of the Bill in giving effect to the Common Assessment Method for Threatened Species, a minor change is proposed to the *Vegetation Management Act 1999* to recognise a new class of wildlife under the *Nature Conservation Act 1992*. By including ‘critically endangered wildlife’ to the definition of ‘protected wildlife’, this amendment will provide a consistent approach to wildlife listed under the *Nature Conservation Act 1992*.

### **Alternative ways of achieving policy objectives**

Strengthened Reef protection regulation is part of a suite of instruments to accelerate progress toward meeting the Reef water quality targets. There are no other alternative ways of achieving the policy objectives. Despite significant government and industry investment, particularly in agriculture, voluntary approaches have failed to facilitate sufficient uptake of improved practices and at the present trajectory, the Reef water quality targets will not be met. Poor water quality continues to be identified as a significant cause of harm to the Great Barrier Reef, second only to climate change.

Since 2009, the Queensland Government has invested over \$70 million in industry-led BMP programs, science and on-ground programs to assist landholders in improving their agricultural management practices. Additionally, significant funding has been available under a range of Queensland and Australian government programs to assist producers to voluntarily improve their practices. These opportunities have been embraced by many growers and landholders. However, there are still large numbers who choose not to make the necessary changes. In these circumstances, regulation is the only suitable tool to bring everyone up to minimum practice standards.

No other alternative models would effectively achieve the policy objectives of establishing a standard method across all jurisdictions for assessing and listing threatened species.

### **Estimated cost for government implementation**

#### Amendments to the *Environmental Protection Act 1994*

Implementation of the Bill will result in additional administrative, auditing and compliance activities for the Department of Environment and Science. There will be additional administrative activities related to processing applications for an environmental authority for new cropping activities. The total cost of administering these applications is estimated to be a maximum of \$55,775 per annum. While the department already has the necessary data for assessing applications, it is estimated that there will be an additional one-off cost of \$4,275 for pulling this data together for the purpose of this assessment process. These costs will be absorbed in the department’s existing budget.



There will also be additional costs to the Department of Environment and Science for monitoring compliance with agricultural ERA standards and environmental authorities for new cropping activities. The number of operators caught by the new provisions will expand from approximately 3,300 to 13,000. The department will employ a range of tools to prioritise compliance, including remote sensing, direct monitoring and desktop analysis.

In the 2018/19 State Budget, the Queensland Government announced an additional \$13.8 million over four years to assist farmers in transitioning to minimum practice standards. This includes additional funding of \$3.7 million over three years for compliance activities related to the Reef regulatory package. This funding is in addition to the \$1.65 million per year already budgeted for compliance of Reef regulations under the Queensland Reef Water Quality Program.

The \$10.1 million has been allocated over the next four years to help affected producers transition into compliance with agricultural ERA standards, starting with the sugarcane, grazing and banana sectors. This funding will support access to professional and agronomic advice and improve connections to education and extension services. There will also be additional communication costs estimated at \$230,000 over four years for education and awareness raising activities related to the new regulatory requirements for the regulated community.

The transition package complements existing investments under the Queensland Reef Water Quality Program into education and extension, behaviour change and improved farm practice. This includes investment supporting industry-led voluntary BMP programs for cane, bananas, grazing and horticulture. Since 2009, the Queensland Government has invested over \$70 million in BMP programs, science and on-ground programs to assist landholders in improving their agricultural management practices. It also complements other investment by the Australian and Queensland governments in improving water quality in Great Barrier Reef catchments, with total investment commitments reaching more than \$614 million between 2017-2022, of which a significant amount is directed at the agricultural community.

#### Common Assessment Method for Threatened Species

There are no additional costs associated with the minor amendments to the *Biodiscovery Act 2004*, *Fisheries Act 1994*, *Nature Conservation Act 1992* and the *Vegetation Management Act 1999* to give effect to the Common Assessment Method for Threatened Species, and amended wildlife classes to be consistent with the method.

#### **Consistency with fundamental legislative principles**

The Bill has been examined for consistency with the fundamental legislative principles outlined in Section 4 of the *Legislative Standards Act 1992*.

*Does the legislation adversely affect rights and liberties, or impose obligations, retrospectively—Legislative Standards Act 1992, section 4(3)(g)?*

### Regulatory requirements – agricultural and industrial sector

Implementation of the Bill will affect commercial agricultural activities – cattle grazing; banana and other horticulture cultivation; and the cultivation of other crops, including sugarcane and grains – across the Reef regions, and point source industrial activities that release nutrients and sediments to waters. While the new provisions do not prevent these activities from occurring, they place additional requirements on a person who is undertaking these activities, to reduce nutrient and sediment pollutants flowing to Reef waters.

The latest science provides an unprecedented level of certainty that the main cause of poor Reef water quality is cumulative contributions from agricultural run-off in the Reef catchments, with locally significant contributions from industrial land uses. Despite significant government and industry investment, particularly in agriculture, voluntary approaches have failed to facilitate sufficient uptake of improved practices and at the present trajectory, the Reef water quality targets will not be met.

Implementing the Bill is necessary to accelerate progress toward meeting the Queensland and Australian governments' Reef water quality targets to achieve Reef health. Agricultural and industrial activities in other areas of the state and country are not located adjacent to such an important asset, and are not having the same effect on the Great Barrier Reef.

### Offence provisions

Any increase to maximum penalties raises the fundamental legislative principle that the penalty should be proportionate to the offence.

The Bill consolidates a number of previous offences for contravening the requirements for undertaking an agricultural ERA in Chapter 4A of the *Environmental Protection Act 1994* into a single offence for failing to comply with an agricultural ERA standard. These offences were for the previous section 78 offence for over fertilisation, the section 84 offence for failure to keep certain records, the section 86 offence for failure to provide primary documentation, and the section 85 offence for contravening a prescribed operating requirement. The maximum penalty for these offences was 100 penalty units.

The Bill increases the penalties for an offence against the requirements for carrying out an agricultural ERA. The maximum penalty for an offence for contravening an agricultural ERA standard will be 1,665 penalty units for wilful non-compliance, or otherwise 600 penalty units. This increase is justified because it ensures that penalties accurately reflect the seriousness of the offences and are comparable to similar offences. This offence is similar in nature to other offences for less serious types of environmental harm, such as section 440 – causing environmental nuisance, and section 440ZG – minor water contamination. As such, the penalty for contravening an agricultural ERA standard has been set at the same level as these offences.

### Common Assessment Method for Threatened Species

The minor amendments to the *Biodiscovery Act 2004*, *Fisheries Act 1994*, *Nature Conservation Act 1992* and the *Vegetation Management Act 1999* to give effect to the

Common Assessment Method for Threatened Species, and amended wildlife classes to be consistent with the method, are consistent with fundamental legislative principles.

## Consultation

### Amendments to the *Environmental Protection Act 1994*

Since August 2016, there has been ongoing consultation on the Reef regulatory proposals with:

- Peak agricultural bodies: through the Agricultural Stakeholder Advisory Group: AgForce, Australian Banana Grower's Council, Australian Sugar Cane Farmers Association, Australian Sugar Milling Council, CANEGROWERS, Cattle Council of Australia, Fertilizer Australia, Growcom, Meat and Livestock Australia, Queensland Farmers Federation, Sugar Research Australia and Reef Alliance.
- Key conservation groups: WWF-Australia, Australian Marine Conservation Society, Environmental Defenders Office Qld and Queensland Conservation Council.
- Peak representatives from industrial sectors: Local Government Association of Queensland, Queensland Water Directorate (*qldwater*), Australian Prawn Farmers Association, Australian Barramundi Farmers Association, Queensland Resource Council, North Queensland Bulk Ports, Property Council of Australia and the Urban Development Institute of Australia.
- Natural Resource Management bodies for the six Reef regions – Cape York, Wet Tropics, Burdekin, Mackay Whitsunday, Fitzroy and Burnett Mary.

In March 2017, the discussion paper 'Enhancing regulations to ensure clean water for a healthy Great Barrier Reef and a prosperous Queensland' was released for broader public consultation over a nine week period. Forty-eight submissions were received from across the agricultural, industrial and conservation sectors, and the community. Seventeen regional information sessions were held with key stakeholders.

A Consultation Regulatory Impact Statement (RIS) on the Reef regulatory proposals was released for public consultation for 11 weeks in total. The RIS was initially released between 7 September and 3 November 2017, and again between 22 January and 19 February 2018, due to the 2017 Queensland State election interrupting the original consultation period. Fifty-one submissions were received from across the agricultural, industrial and conservation sectors, and the community. Further targeted consultation occurred over May-November 2018. A Decision RIS was published on the Department of Environment and Science's website, containing a summary of the submissions received and department's response to those submissions.

Feedback through various consultation processes, including the Consultation RIS, consistently showed stakeholder views were divided on further Reef protection regulation. Agricultural stakeholders prefer voluntary approaches for meeting Reef water quality outcomes. The industrial sector (point source nutrient and sediment contributors) believe they are already heavily regulated, and additional requirements are disproportionate to the risk posed from the sector compared to the agricultural sector. The conservation sector support regulation as a necessary step to meet the water quality targets. The Bill reflects and balances feedback from stakeholders, while also achieving significant water quality benefits.

In October 2018, a consultation draft of the Bill was released for comment to key industry stakeholders. Officers from the Department of Environment and Science also met and further discussed the Bill with these stakeholders, upon request.

#### Common Assessment Method for Threatened Species

Prior to signing the MoU, targeted consultation was held with environment and conservation groups and business and industry representatives. The majority of groups consulted on adoption of the MoU expressed support for the common assessment method, but requested ongoing consultation as the finer details are established. Further consultation with stakeholders will be undertaken prior to any subsequent amendments to the Nature Conservation (Wildlife) Regulation 2006, Nature Conservation (Wildlife Management) Regulation 2006, and Nature Conservation (Administration) Regulation 2017.

#### **Consistency with legislation of other jurisdictions**

The provisions about agricultural ERA standards for agricultural ERAs are unique to Queensland and reflect the specific requirements needed to protect the Great Barrier Reef. Industrial point source activities are regulated in all jurisdictions and different emissions standards apply depending on local circumstances, such as the receiving environment. Accordingly, these amendments are broadly consistent.

The amendments related to establishing a Common Assessment Method for Threatened Species, although specific to the State of Queensland, are complementary to Commonwealth, state and territory legislation under the MoU. The proposal will assist in achieving the Australian Government's target of adopting the common assessment method.

## Notes on provisions

### Part 1 Preliminary

#### Short Title

*Clause 1* states that this Act should be cited as the *Environmental Protection (Great Barrier Reef Protection Measures) and Other Legislation Amendment Act 2019*.

#### Commencement

*Clause 2* provides that this Act will commence on a day to be fixed by proclamation.

### Part 2 Amendment of Biodiscovery Act 2004

#### Act amended

*Clause 3* states that this part amends the *Biodiscovery Act 2004*.

#### Amendment of s 50 (Offence to take without a collection authority)

*Clause 4* removes reference to the superseded term of 'rare', and inserts the new 'critically endangered wildlife' and 'extinct wildlife' classes of wildlife to ensure consistency with all classes of threatened wildlife under the *Nature Conservation Act 1992*.

### Part 3 Amendment of Chemical Usage (Agricultural and Veterinary) Control Act 1988

#### Act amended

*Clause 5* states that this part amends the definition of an agricultural ERA in the *Chemical Usage (Agricultural and Veterinary) Control Act 1988*, as a consequence of amendments made by this Bill.

#### Insertion of new pt 4, div 2

#### Division 2 Transitional provision for Environmental Protection (Great Barrier Reef Protection Measures) and other Legislation Amendment Act 2019

#### Section 40 Definition of agricultural ERA

*Clause 6* inserts section 40 into the *Chemical Usage (Agricultural and Veterinary) Control Act 1988* so that the current definition of an agricultural ERA will continue to apply for one year after commencement of the Bill. This section provides sufficient

time for persons carrying out an agricultural ERA, involving sugarcane cultivation and cattle grazing in catchments within the Cape York, Fitzroy and Burnett Mary regions (i.e. newly regulated producers) to obtain the prescribed qualifications and therefore be operating in compliance with the *Chemical Usage (Agricultural and Veterinary) Control Act 1988*.

## **Part 4      Amendment of Environmental Protection Act 1994**

### **Act amended**

*Clause 7* states that this part amends the *Environmental Protection Act 1994*.

### **Replacement of ch 4A (Great Barrier Reef protection measures)**

*Clause 8* replaces the existing Chapter 4A (ss74 to 105) in the *Environmental Protection Act 1994*. The new chapter amends the provisions for agricultural ERAs and removes the provisions for Environmental Risk Management Plans (ERMP). The removal of the ERMP provisions reduces regulatory burden, particularly for farmers already operating at best practice. The agricultural ERA standards replace the role of the ERMPs.

## **Chapter    4A Great Barrier Reef protection measures**

### **Part 1      Preliminary**

#### **Section 74    Purpose of chapter**

This section states that the purpose of Chapter 4A under the *Environmental Protection Act 1994* is to provide for measures to improve the quality of water entering the Great Barrier Reef to support the Outstanding Universal Value of the Reef, for which the Reef was inscribed on the World Heritage List. Improving the quality of water entering the Reef also seeks to protect and enhance the biological integrity and diversity of the aquatic ecosystems of the Reef, and improve the health and resilience of the aquatic ecosystems of the Reef, so they are better able to withstand and recover from disturbances.

Amendments made to the *Environmental Protection Act 1994* through the Bill, and supporting amendments to the Environmental Protection Regulation 2008 will introduce a number of measures to address nutrient and sediment releases from existing and new agricultural production to improve the quality of the water entering the Great Barrier Reef. This includes the intent of ensuring there is a ‘no net decline’ in water quality from new cropping development.

### **Section 75**    **What is the *Great Barrier Reef* catchment**

This section defines the ‘Great Barrier Reef catchment’ as the area shown on a map prescribed by regulation, and that each part of the map defined as a river basin is to be considered a ‘river basin’ for the purposes of Chapter 4A under the *Environmental Protection Act 1994*. There are 35 mainland river basins within the Great Barrier Reef catchment shown on the map.

### **Section 76**    **Other definitions for chapter**

This section defines words and phrases that are used throughout Chapter 4A of the *Environmental Protection Act 1994*.

## **Part 2**        **Environmental protection policy**

### **Section 77**    **Environmental protection policy must set objectives for reduced contaminant loads**

This section commits the Minister to set objectives for reduced contaminant loads in an environmental protection policy to improve the quality of water entering the Great Barrier Reef.

The section does not alter the power of the Minister under Chapter 2 of the *Environmental Protection Act 1994* to make an environmental protection policy, or limit the matters relating to the quality of the water entering the Great Barrier Reef that may be dealt with in an environmental protection policy.

### **Section 78**    **Objectives set in policy must be reviewed every 5 years**

This section requires the Minister to review the objectives within five years after the objectives for reduced contaminant loads are set and then within each subsequent five year period. The review must be completed within one year from the time the review commenced.

## **Part 3**        **Requirements for carrying out agricultural ERAs**

### **Section 79**    **What is an *agricultural ERA***

This section defines an ‘agricultural ERA’. This describes the regulatory net, i.e. who is captured to comply with the regulatory requirements for these activities. An agricultural ERA is an activity that is being carried out on a commercial basis for any of the following:

- cattle grazing
- horticulture, for example, the commercial cultivation of bananas
- cultivation of another crop, for example the commercial cultivation of sugarcane or grains.

This definition expands on the previous definition of an agricultural ERA which only captured commercial sugarcane growing and cattle grazing carried out on an agricultural property of more than 2,000 hectares within one or more of the ‘priority’ Wet Tropics, Mackay Whitsunday and Burdekin regions.

This section has been broadened to include the regulation of commercial horticulture cultivation, such as the cultivation of bananas, corn, macadamias and tomatoes, and other crops, including grains. While sugarcane and grazing activities are the dominate sources of nutrient and sediment pollution from the agricultural sector, the Great Barrier Reef Water Science Taskforce recommended that all key industries that may have an impact on Reef water quality should play their part.

Under this section, an activity is an agricultural ERA if it is carried out on land that is within the Great Barrier Reef catchment shown on the map prescribed by regulation. If only part of a lot is located within the Great Barrier Reef catchment, all the lot is taken to be land that is in the Great Barrier Reef catchment, if the part that is in the catchment is more than 75% of the lot, or more than 20,000 hectares.

#### **Section 80     *Who carries out an agricultural ERA***

This section specifies that a person ‘carries out’ an agricultural ERA if the person carries out the activity on land:

- (a) the person owns; or
- (b) under an arrangement about the use of the land with the owner of the land (e.g. adjustment of land).

A person also carries out an agricultural ERA if the person is employed or otherwise engaged by the person mentioned in (a) or (b) to oversee the carrying out of the agricultural ERA on the other person’s behalf.

This definition makes it clear that the person responsible for carrying out the agricultural ERA is the person in charge of ‘overseeing’ the activity (e.g. farm manager), regardless of whether or not the person is the owner of the land on which the agricultural ERA is undertaken or the owner of the commercial business.

#### **Section 81     *What is an agricultural ERA standard***

This sections states that an agricultural ERA standard is an ERA standard for an agricultural ERA. The purpose of an agricultural ERA standard is to ensure an agricultural ERA, to which the ERA standard relates, is carried out in a way that best achieves:

- the purpose of Chapter 4A; and
- the objective of preventing contaminants entering, or minimising the amount of contaminants that enter, the waters of the Great Barrier Reef because of the agricultural ERA being carried out on land in the Great Barrier Reef catchment; and



- an objective set by an environmental protection policy mentioned in section 77 of this Bill.

Without limiting the provisions of section 318, which allows the chief executive to make an ERA standard, this section states that an agricultural ERA standard may include a standard condition about:

- the use of water, nutrients, agricultural chemical products or other substances in carrying out the agricultural ERA; or
- that requires compliance with a prescribed methodology; or
- the way land, the features of the land and farming infrastructure are designed and used, and farming operations are undertaken, to carry out the agricultural ERA.

An agricultural ERA standard can be made through the existing provisions under sections 318 to 318DA of the *Environmental Protection Act 1994*. These sections require the chief executive to publish a notice and a copy of the proposed ERA standard on the department's website prior to making the standard. The notice must state that a person may make a submission to the chief executive about the proposed agricultural ERA standard within a period of at least 30 days, and how the person may make a submission.

The chief executive (or his or her delegate) must consider all submissions before deciding whether to make an ERA standard. The chief executive must publish a copy of an ERA standard made by the chief executive on the department's website. The ERA standard takes effect when approved by the Environmental Protection Regulation 2008.

While the chief executive has the power to review agricultural ERA standards at any time, this section requires agricultural ERA standards to be reviewed at least once every five years from the time they are made. The review must be completed within one year from the time the review commenced.

Section 768 of this Bill provides a transitional provision allowing an agricultural ERA standard to take effect immediately upon assent, if the agricultural ERA standard is made on or before the commencement of this Bill.

## **Section 82    Offence to contravene agricultural ERA standard**

This section requires anyone who carries out an agricultural ERA, which is not a prescribed ERA, to do so in accordance with an agricultural ERA standard. However, a person does not necessarily commit an offence under this provision if they are accredited under, and operating in compliance with, an accreditation program recognised under the Chapter 5A, Part 5A of this Bill. Under this section, in a proceeding for an offence for not operating in accordance with an agricultural ERA standard, it is a defence for a person to prove that—

- the person is accredited under a recognised accreditation program for the agricultural ERA; and

- the person’s conduct that is alleged to constitute the offence does not contravene the recognised accreditation program.

The Bill consolidates a number of previous offences relating to carrying out an agricultural ERA into a single offence for failing to comply with an agricultural ERA standard. The previous offences were sections 78, 84, 85 and 86 of the *Environmental Protection Act 1994*. The maximum penalty amount for the previous offences was 100 penalty units for each offence.

The Bill increases the maximum penalty units for an offence against the requirements for carrying out an agricultural ERA. The maximum penalty for an offence of contravening an agricultural ERA standard will be 1,665 penalty units for wilful non-compliance, or otherwise 600 penalty units.

Any increase to maximum penalties raises the fundamental legislative principle that the penalty should be proportionate to the offence. This increase is justified because it ensures that penalties accurately reflect the seriousness of the offences and are comparable to similar offences. This offence is similar in nature to other offences for less serious types of environmental harm, such as section 440 – environmental nuisance and section 440ZG – minor water contamination. As such, the penalty has been set at the same level as these offences.

## **Part 4      Agricultural ERA advice**

### **Section 83      Definitions for part**

This section defines the terms ‘adviser’, ‘give advice’ and ‘tailored advice’ for the purposes of part 4, chapter 4A of the *Environmental Protection Act 1994*. An adviser is a person who gives advice about carrying out an agricultural ERA as a service for a reward, such as agronomists. An adviser can also include a person who provides advice about carrying out an agricultural ERA in conjunction with providing goods or another service for a reward, such as a fertiliser distributor or agent. This section also makes it clear that the term ‘give advice’ also includes recommendations given by an adviser to the relevant person. This section refers to section 84 of the Bill for the definition of the term ‘tailored advice’.

### **Section 84      Meaning of *tailored advice* about carrying out an agricultural ERA**

This section states the meaning of ‘tailored advice’ provided by an ‘adviser’ to a person who carries out an agricultural ERA, or to a person who is acting on behalf of another person who carries out an agricultural ERA (e.g. farm hand, contractor).

Tailored advice is advice that relates to a standard condition in an agricultural ERA standard. In contrast to general advice, which is considered to be more broadly applicable, tailored advice considers and addresses the particular objectives and circumstances that the person carrying out the agricultural ERA wants to achieve by

carrying the activity out. It also considers the circumstances under which the activity is being carried out.

### **Section 85 Tailored advice must not be false or misleading**

This section states that when providing ‘tailored advice’, an ‘adviser’ must not give the person advice that relates to a standard condition in an agricultural ERA if the adviser knows, or ought reasonably to know, that the advice is false or misleading.

There is currently no relevant industry body to oversee the professional conduct of agricultural advisers. Recommendations provided by advisers can play an influential role in shaping the land management decisions made by producers, such as fertiliser application rates that are the primary source of nutrient run-off from farms that affect the Reef.

The maximum penalty for giving false or misleading advice under this section is 600 penalty units. This maximum penalty reflects the policy intent of this provision and seriousness of the offence. This penalty amount is consistent with similar offences for the provision of false and misleading information across the statute book, acting as an appropriate deterrent for the provision of false and misleading advice in the agricultural industry.

### **Section 86 Record of tailored advice**

This section states that the adviser must prepare a record of the advice given to a person carrying out the agricultural ERA, or to a person acting on behalf of another person who carries out the agricultural ERA, within five business days after giving the advice. This section also outlines the information that must be included in the record of tailored advice. The adviser must give a copy of the record to the relevant person, and keep the record or a copy of the record for at least six years, unless the adviser has a reasonable excuse.

A reasonable excuse in these circumstances may include that the document has been destroyed in a fire or flood. Failure to remember to keep the record, or stating that it was someone else’s responsibility to keep the record, is not considered a reasonable excuse. The term ‘give advice’ and ‘tailored advice’ are also defined for the purposes of this section.

Under section 466 of the *Environmental Protection Act 1994*, an authorised person has the ability to request documents required to be kept under the Act for inspection at any time. Under section 477 of the Act, it is an offence not to comply with the request given under section 466. The maximum penalty amount associated with failing to produce a document is 50 penalty units.

## **Part 5      Great Barrier Reef water quality offsets**

### **Section 87      Definitions for part**

This section defines words and phrases used throughout Chapter 4A, Part 5 of the *Environmental Protection Act 1994*.

### **Section 88      Application of Environmental Offsets Act 2014 to Great Barrier Reef water quality offsets**

This section links the *Environmental Protection Act 1994* to the *Environmental Offsets Act 2014* by stating words and phrases that can be substituted into the *Environmental Offsets Act 2014* relevant to a Great Barrier Reef water quality offset. This linkage allows the *Environmental Offsets Act 2014* to be used as a mechanism to create an offsets policy for a Great Barrier Reef water quality offset.

Amendments made by the Bill to section 207 of the *Environmental Protection Act 1994* provides the ability to impose a Great Barrier Reef water quality offset condition on an environmental authority. An offset condition can be imposed for ERAs that release restricted contaminants, such as dissolved inorganic nitrogen and fine sediment in the Great Barrier Reef catchment.

The creation of an offsets policy for a Great Barrier Reef water quality offset will guide the delivery of a water quality offset where an offset condition is imposed on an environmental authority. An offsets policy for a Great Barrier Reef water quality offset will take effect when prescribed by the Environmental Protection Regulation 2008.

## **Part 6                      General**

### **Section 89      Regulation-making power for particular records and returns**

This section expands on the current regulation-making power in section 580(2)(b) of the *Environmental Protection Act 1994* which relates to records and returns to be made by a person. This section states that a regulation may require a person involved in the production, manufacture, distribution, supply or use of an agricultural ERA product, fertiliser product or agricultural chemical to keep records or returns.

Records or returns can only be required from a person in the above-mentioned industries if the record or return relates to the sale of a fertiliser product or agricultural chemical, the application of a fertiliser product or agricultural chemical, a soil test, or crop yield. Examples of people who may be captured by this section include an industry extension officer, an agronomist, sugar mills, fertiliser distributor or agent, processing factories and farmers.

### **Amendment of s 207 (Conditions that may be imposed)**

*Clause 9* amends section 207 of the *Environmental Protection Act 1994* to insert a reference to a Great Barrier Reef water quality offset condition. This allows the administering authority to place a Great Barrier Reef water quality offset condition on an authority, or draft authority, for an ERA carried out on land in the Great Barrier Reef catchment. A Great Barrier Reef water quality offsets condition will not be applied to an environmental authority unless a policy relating to a Great Barrier Reef offset has been prescribed by the Environmental Protection Regulation 2008.

### **Insertion of new ch 5A, pt 5A**

*Clause 10* inserts new Part 5A into Chapter 5A of the *Environmental Protection Act 1994* to establish an administrative framework for the approval of a recognised accreditation program for an agricultural ERA. The purpose of recognising an accreditation program for an agricultural ERA is to provide an alternate pathway for a person conducting an agricultural ERA to meet the requirements of an agricultural ERA standard.

## **Part 5A Accreditation programs for agricultural ERAs**

### **Division 1 Preliminary**

#### **Section 318YA Definitions for part**

This section defines words and phrases used throughout Part 5A.

#### **Section 318YB What is an *accreditation program***

This section defines the functions required for a program to be considered as an ‘accreditation program’ for an agricultural ERA.

### **Division 2 Recognition of accreditation program**

#### **Section 318YC Application**

This section allows the owner of an accreditation program for an agricultural ERA to apply to the chief executive to have their program recognised. The application must be made in the approved form. The application must also provide sufficient information, including the arrangements, procedures and controls for each of the functions of an accreditation program defined in section 318YB of this Bill. It is an offence under section 480 of the *Environmental Protection Act 1994* to provide false or misleading information to the administering authority or an authorised person.

### **Section 318YD      Criteria for recognition**

This section specifies that the chief executive may recognise an accreditation program for an agricultural ERA, if the chief executive is satisfied that the program has the necessary governance and administrative arrangements that appropriately provide for the ownership, operation and management of the program. The chief executive must also be satisfied that the program has arrangements, procedures and controls that provide a sound basis for the operation of a program for each of the functions mentioned in section 318YB of this Bill, and that the program must meet any other criteria that may be prescribed by regulation.

### **Section 318YE      Conditions of recognition**

This section imposes conditions on an accreditation program for an agricultural ERA if the chief executive grants recognition of an accreditation program or approves the amendment of a recognised accreditation program. This includes the conditions under which accreditation can be given to program participants for meeting an agricultural ERA standard, and for record keeping requirements.

A register of persons who have been accredited must also be kept by the program owner, and provided to the chief executive annually, within 10 business days after the anniversary of the program's recognition.

If an agricultural ERA standard changes, the program owner must review the relevant program for consistency with the standard. If the program is not consistent with the modified agricultural ERA standard:

- within three months of the change, the program owner must amend the program so that it is consistent with the agricultural ERA standard; and
- the program owner must provide a copy of the amended program to the chief executive.

The chief executive may also impose additional conditions if necessary for individual programs. Under section 466 of the *Environmental Protection Act 1994*, an authorised person has the ability to request documents that are required to be kept under the Act, for inspection at any time. Under section 477 of the *Environmental Protection Act 1994*, it is an offence not to comply with the production request given under section 466. The maximum penalty amount associated with failing to produce a document is 50 penalty units.

### **Section 318YF      Term of recognition**

This section specifies that the chief executive must decide the period of recognition for an accreditation program, which must be stated in the instrument of recognition (or an approval). The term of recognition cannot be issued for a period of longer than five years, though recognition may be cancelled before the five-year period ends.

### **Division 3 Renewal of recognition of accreditation program**

#### **Section 318YG Assessment of program**

This section specifies that a program owner must commission an assessment of the management and operation of their accreditation program prior to applying to renew the term of their recognition.

In particular, the assessment must include a review of whether the program still provides for the functions mentioned in section 318YB (e.g. regularly reviewing and evaluating the program) and that the appropriate means are in place to achieve each of the functions (e.g. adequate record keeping systems are in place). The assessment must not be started earlier than one year before the term of recognition ends to ensure the assessment is up-to-date and relevant.

A program owner cannot commence an assessment under this section unless the chief executive has approved the person that will carry out the assessment. The chief executive can only approve a person to undertake an assessment under this section if the chief executive is satisfied the person is appropriately qualified to carry out the assessment and is not employed, engaged or otherwise involved in the operation or management of the accreditation program.

#### **Section 318YH Renewal of recognition of program**

This section allows a program owner to apply to the chief executive to renew the program recognition prior to its expiry. The application for renewal must be made in the approved form and be accompanied by the assessment report prepared by the person approved by the chief executive to undertake the assessment, under section 318YG of this Bill

This section also specifies that in deciding a renewal application, the chief executive must consider the criteria in section 318YD of this Bill and the assessment report prepared under section 318YG. Under section 318YN of this Bill, the chief executive has the power to decide whether to approve the application, approve the application with conditions, or refuse the application.

#### **Section 318YI Approval continues pending decision about renewal**

This section specifies that recognition of an accreditation program continues in force after it would have otherwise expired until the:

- application for renewal is withdrawn; or
- application for renewal is approved and the application is decided; or
- application for renewal is refused and the chief executive provides an information notice for the decision to the applicant; or
- owner's approval is suspended or cancelled before the application for renewal is decided or withdrawn.

This section only applies if an application for recognition renewal is made in compliance with section 318YH and at least 60 days before the current recognition term ends. The 60-day time limit ensures that there is enough time for the chief executive to make a decision about the renewal application. If the chief executive is unable to assess the application in the 60-day timeframe and the program's recognition would have expired, this section allows the recognition to continue until a decision is made so as not to disadvantage the program owner.

#### **Division 4 Application to amend recognised accreditation program or conditions**

##### **Section 318YJ Application to approve amendment of recognised accreditation program or condition**

This section states that the owner of a recognised accreditation program for an agricultural ERA may apply to the chief executive for approval to amend the program, or to amend a condition imposed on the accreditation program's recognition. The application must be made in the approved form and provide sufficient information about the proposed amendment in order for the chief executive to decide on the application. The section also specifies that the amendment provisions under this section do not apply where the owner of the program is required to make the amendment under section 318YE (3).

##### **Section 318YK Deciding amendment application**

This section specifies that in deciding an application made under section 318YJ of this Bill to amend a recognised accreditation program or an approval condition, the chief executive must consider the criteria in section 318YD of this Bill.

#### **Division 5 General provisions for applications**

##### **Section 318YL Application of division**

This section specifies that this division applies to deciding applications under Part 5A.

##### **Section 318YM Inquiry about application**

This section enables the chief executive to require the owner of an accreditation program to provide further information or documentation that the chief executive reasonably considers is necessary to decide the application. The information request must be made by notice and given to the applicant within 30 days of the application being lodged. The chief executive may require the information or documentation to be verified by statutory declaration. The applicant must be given at least 30 days to provide the additional information. If the program owner fails to comply with the requirement, the application is taken to have been withdrawn.



### **Section 318YN      Decision on application**

This section provides the chief executive with three options when considering an application made under Part 5A of this Bill. The chief executive can approve the application, approve the application with conditions, or refuse the application. A notice must be provided to the applicant about the decision made by the chief executive.

Amendments to section 540A of the *Environmental Protection Act 1994* made under this Bill requires the administering authority to keep a public register of recognised accreditation programs for agricultural ERAs.

### **Section 318YO      Failure to decide application**

This section specifies that if the chief executive fails to decide an application within 30 days after receiving it, the chief executive is taken to have refused to grant the application.

Where the chief executive has required the applicant to provide further information under section 318YM of this Bill, the chief executive is taken to have refused the application if the chief executive does not decide the application within 30 days after receiving the additional information. If the application is taken to be refused, the applicant is entitled to an information notice for the decision.

## **Division 6      Amendment, suspension and cancellation by chief executive**

### **Section 318YP      Amendment by chief executive**

This section provides the chief executive with the power to amend a recognised accreditation program, or a condition of the program recognition, under this division if the chief executive deems it necessary.

### **Section 318YQ      Grounds for suspending or cancelling program recognition**

This section identifies the grounds for suspending or cancelling the recognition of an accreditation program. The program can be suspended or cancelled where recognition was obtained by materially incorrect or misleading information or by a mistake, or the owner of the program has contravened a condition of the recognition. The program can be suspended or cancelled where the owner of the program has committed:

- an offence against the *Environmental Protection Act 1994*; or
- an offence against a law relating to the supply or use of an agricultural chemical product; or
- an offence against a law of the Commonwealth, another State or a foreign country if the offence substantially corresponds to an offence against the *Environmental Protection Act 1994*, or an offence against a law relating to the supply or use of an agricultural chemical product.

**Section 318YR            Show cause notice**

This section enables the chief executive to give a show cause notice to the owner of a recognised accreditation program if the chief executive proposes to amend the program, to amend a condition of program recognition, or suspend or cancel program recognition. The notice must set out the relevant information pertaining to the grounds for amending, suspending or cancelling the program's recognition, or condition of the recognition. The show cause period must end at least 28 days after the holder is given the show cause notice.

**Section 318YS            Representation about show cause notice**

This section specifies that the owner of a recognised accreditation program may make written representations about a show cause notice issued under section 318YR of this Bill to the chief executive and the chief executive must consider all the representations.

**Section 318YT            Ending show cause process without further action**

This allows the chief executive to end the show cause process without any further action, after considering the representations made during the show cause period by the owner of the accreditation program under section 318YS, concerning the suspension or cancellation of program recognition. The chief executive must give a notice to the owner of the accreditation program of the decision to take no further action about the show cause notice.

**Section 318YU            Amendment, suspension or cancellation**

This section applies after the chief executive has considered any submissions made during the show cause period. The chief executive may direct the owner of the recognised accreditation program to amend the program, or amend a condition of the program, or suspend, or cancel the program if the proposed action is warranted. This clause also applies to a situation where there are no representations made.

If the chief executive decides that an amendment, suspension or cancellation is warranted, the chief executive must as soon as practicable give an information notice to the owner of the recognised accreditation program about the decision. The decision takes effect on the day the information notice is given or the day stated in the notice, whichever comes later.

Amendments to section 540A of the *Environmental Protection Act 1994* under this Bill require the administering authority to keep a public register of all accreditation programs for agricultural ERAs, including suspended or cancelled accreditation programs.

### **Section 318YV Immediate suspension of recognition of accreditation program**

This section enables the chief executive to immediately suspend the recognition of the accreditation program if there are grounds to do so and this action is necessary because:

- persons who are carrying out an agricultural ERA in a way that contravenes an agricultural ERA standard have been accredited under the program; or
- there is an immediate and serious risk that persons who are carrying out an agricultural ERA in a way that contravenes an agricultural ERA standard will be accredited under the program.

To immediately suspend the program's recognition, the chief executive must give an information notice for the decision, and a show cause notice under section 318YR of this Bill, to the owner of the accreditation program. The suspension commences when the notices are given to the program owner. The suspension continues to operate until the suspension is cancelled, or the show cause notice is dealt with, or for 45 days after the notice – whichever comes first.

The chief executive cannot immediately cancel program recognition under this section. Where the chief executive believes there are grounds for cancellation, the chief executive is required to issue a show cause notice to the owner of the accreditation program under section 318YR of this Bill, prior to taking further action.

Amendments to section 540A of the *Environmental Protection Act 1994* under this Bill require the administering authority to keep a public register of suspended or cancelled recognition, of accreditation programs for agricultural ERAs.

Regardless of whether the accreditation program is operational, suspended or cancelled, it is the responsibility of a person carrying out an agricultural ERA to undertake the activity in accordance with the relevant agricultural ERA standard.

### **Section 318YW Required action after amendment, suspension, cancellation or end of accreditation program or recognition**

Under this section, the owner of a recognised accreditation program must inform persons accredited under the program if the program has been amended, suspended or cancelled because of action taken under chapter 5A, part 5A of this Bill, or the program owner decides to stop providing the program. The program owner must notify accredited persons within five business days after the action takes effect.

A maximum penalty of 100 penalty units applies where a program owner fails to notify an accredited person of the action taken.

The program owner must also give a copy of the notice to the chief executive within five business days of the notice being given to the accredited persons and the name of each accredited person given the notice. A maximum penalty of 100 penalty units applies where the program owner fails to provide the chief executive with a copy of

the notice. This penalty amount is consistent with other document-keeping requirements in the *Environmental Protection Act 1994*.

### **Insertion of new s 322A**

*Clause 11* inserts section 322A into the *Environmental Protection Act 1994* to enable the chief executive to require the owner of a recognised accreditation program to commission an environmental audit about a matter concerning the requirements of a program.

#### **Section s 322A      Chief executive may require environmental audit about recognised accreditation program for agricultural ERA**

This section allows the chief executive, by written notice, to require the owner of a recognised accreditation program, to commission an audit and provide the chief executive with a report about a stated matter in the notice, concerning the requirements of the program. The chief executive may only issue a notice if the chief executive believes it is necessary or desirable to do so.

The *Environmental Protection Act 1994* already provides similar provisions related to the ability to require an audit about certain matters relevant to the requirements of an environmental authority. This provision would be used in the same way to require an audit, which could be in the form of an evaluation of the program about matters such as whether the program is meeting the conditions for program recognition. This provision would be used to provide a more extensive investigation into the program to occur outside the provisions of a show cause notice under section 318YR, or before a show cause notice is issued. It is an offence under section 325 of the *Environmental Protection Act 1994* for non-compliance with an audit notice without a reasonable excuse.

#### **Amendment of s 323      (Administering authority may require environmental audit about other matters)**

*Clause 12* amends section 323 of the *Environmental Protection Act 1994* to allow the administering authority, by written notice, to require a person conducting an agricultural ERA, to commission an environmental audit and provide a report on the findings of the audit, concerning compliance with an agricultural ERA. It is an offence under section 325 of the *Environmental Protection Act 1994* for non-compliance with an audit notice, without a reasonable excuse.

#### **Amendment of s 324      (Content of audit notice)**

*Clause 13* amends section 324 of the *Environmental Protection Act 1994* to insert a reference to an environmental audit for a recognised accreditation program and the agricultural ERA to which the program relates.

**Amendment of s 326 (Administering authority may conduct environmental audit for resource activities)**

*Clause 14* amends the heading of section 326 of the *Environmental Protection Act 1994* to clarify that this section applies to ‘particular’ activities, which includes other activities besides resource activities, i.e. a recognised accreditation program for an agricultural ERA. This allows the administering authority to conduct an environmental audit of the activity, and prepare a report about the activity.

If the administering authority decides to carry out this function, the owner of the accreditation program must be informed of this decision through an information notice. If a report is prepared, the administering authority must give the program owner a copy of the report within 10 business days of it being prepared.

Under section 326A of the *Environmental Protection Act 1994*, the administering authority has the power to recover any cost it incurs in undertaking the environmental audit or preparing a report.

**Amendment of s 326A (Administering authority’s costs of environmental audit or report)**

*Clause 15* amends section 326A of the *Environmental Protection Act 1994* to allow the administering authority to recover any costs it incurred in undertaking an environmental audit or preparing a report under section 326, about a recognised accreditation program. Under this section, the owner of a recognised accreditation program for an agricultural ERA must pay the costs that were reasonably incurred by the administering authority to undertake the audit. The administering authority may recover the amount owed as a debt.

**Amendment of s 330 (What is a transitional environmental program)**

*Clause 16* amends section 330 of the *Environmental Protection Act 1994* to insert a reference to an agricultural ERA standard that applies to an agricultural ERA.

This allows the administering authority to issue a transitional environmental program (a type of compliance tool), which can be used as a mechanism to achieve compliance with an agricultural ERA standard that applies to an agricultural ERA.

**Amendment of s 363A (Prescribed provisions)**

*Clause 17* amends section 363A of the *Environmental Protection Act 1994* so that a direction notice (a type of compliance tool) can be issued to a person who is contravening a provision of an agricultural ERA standard for an agricultural ERA. This section is also amended to remove reference to an accredited Environmental Risk Management Plan (ERMP), as a consequence of this Bill removing all reference to an ERMP. Accredited ERMPs were previously required for certain agricultural ERAs under chapter 4A of the *Environmental Protection Act 1994*.

**Amendment of s 426 (Environmental authority required for particular environmentally relevant activities)**

*Clause 18* amends section 426 of the *Environmental Protection Act 1994* so that a person carrying out an agricultural ERA that is a prescribed ERA must obtain an environmental authority for the activity. It is an offence under this section not to comply with this requirement. It is also an offence under section 430 to contravene a condition of an environmental authority. The maximum penalty for an offence of contravening an environmental authority is 6,250 penalty units or five years imprisonment for wilful non-compliance, or otherwise 4,500 penalty units.

An environmental authority will be required for a prescribed agricultural ERA for new agricultural production. An environmental authority will condition the activity to meet higher standards in the form of farm design standards as well as minimum practice standards. As with all applications for an environmental authority for ERAs, the administering authority or the chief executive has the power to refuse an application.

**Amendment of s 452 (Entry of place – general)**

*Clause 19* amends section 452 of the *Environmental Protection Act 1994* to provide authorised officers with powers of entry to a place to which a recognised accreditation program for an agricultural ERA relates. Entry to this place can only occur if the place is open for the conduct of business or is otherwise open for entry. There is no ability to enter a private residence, and the entry must be made at a reasonable time.

**Amendment of s466 (Power to require production of document)**

*Clause 20* amends section 466 of the *Environmental Protection Act 1994* to make it clear that an authorised person can, at any time inspect documents that are required to be kept under:

- an agricultural ERA standard that applies to an agricultural ERA
- a recognised accreditation program for an agricultural ERA.

Under section 477 of the *Environmental Protection Act 1994* it is an offence not to comply with section 466.

**Amendment of s520 (Dissatisfied person)**

*Clause 21* amends section 520 of the *Environmental Protection Act 1994* so that:

- the applicant for the recognition of an accreditation program for an agricultural ERA can be considered a ‘dissatisfied person’, where it is decided to refuse the application
- the owner of a program can be considered a ‘dissatisfied person’ for a decision made about the recognised accreditation program for an agricultural ERA.

Dissatisfied persons have the right to have that decision reviewed via internal review, and appealed to a court if they are dissatisfied with the review decision. This ensures natural justice for the affected person.

This section is also amended to remove reference to an accredited ERMP, as a consequence of this Bill removing all reference to an ERMP. Accredited ERMPs were previously required for certain agricultural ERAs under chapter 4A of the *Environmental Protection Act 1994*.

**Amendment of s538 (Appeals may be heard with planning appeals)**

*Clause 22* amends section 538 of the *Environmental Protection Act 1994* to remove reference to an ERMP direction, as a consequence of this Bill removing all reference to an ERMP. An ERMP direction could previously be issued for certain agricultural ERAs under chapter 4A of the *Environmental Protection Act 1994*.

**Amendment to s540A (Registers to be kept by chief executive)**

*Clause 23* amends section 538 of the *Environmental Protection Act 1994* to remove reference to an ERMP direction, as a consequence of this Bill removing all reference to an ERMP. This clause also amends section 540A of the *Environmental Protection Act 1994* and will require that the administering authority keep a public register of:

- recognised accreditation programs for agricultural ERAs
- suspended or cancelled recognition of accreditation programs for agricultural ERAs.

The inclusion of documents on public registers in the *Environmental Protection Act 1994* provides for public access to information where it is considered that this information should reasonably be available in the public interest. This section is also amended to remove reference to an ERMP direction, as a consequence of this Bill removing all reference to an ERMP. An ERMP direction could previously be required for certain agricultural ERAs under chapter 4A of the *Environmental Protection Act 1994*.

**Insertion of new ch 13, pt 28**

*Clause 24* inserts a new part 28 into chapter 13 of the *Environmental Protection Act 1994* to carry transitional provisions for this Bill.

**Part 28 Transitional provisions for Environmental Protection (Great Barrier Reef Protection Measures) and Other Legislation Amendment Bill 2019**

**Section 767 Definitions for part**

This section provides definitions, which only apply to the transitional provisions in this part.

**Section 768 Initial agricultural ERA standards**

This section allows an agricultural ERA standard to take effect immediately upon assent if the agricultural ERA standard is made on or before the commencement of this Bill.

Section 17 of the *Acts Interpretation Act 1954* provides the power to make a particular statutory instrument before the provision that confers the power commences.

The initial agricultural ERA standards have already undergone considerable consultation as a consequence of this Bill, including public consultation through a Consultation RIS. Initial agricultural ERA standards will be made that set minimum operating requirements for commercial cattle grazing, banana growing and sugarcane growing. Initial agricultural ERA standards will also be made that set a number of farm design standards for new cropping and horticultural development.

### **Section 769 Recognition of existing accreditation programs**

This section provides the opportunity for existing industry best management practice (BMP) programs to be automatically recognised as an accreditation program for an agricultural ERA. Automatic recognition is subject to certain conditions, within six months of commencement without having to meet the administrative application process under part 5, chapter 5A of this Bill.

The Queensland Government has been working with the cane and grazing sectors since 2012 to implement BMP programs that assist producers to enhance productivity, profitability and stewardship outcomes, while meeting legislative requirements for protecting Reef water quality. The functions, criteria and conditions to be met by an accreditation program under part 5A of chapter 5A of the Bill have been guided by the requirements of the existing BMP program agreements established between the State government and the agricultural industry for Reef water quality outcomes.

For an existing BMP to be recognised under this section, the program must meet the functions of an accreditation program under section 318YB. The program owner must ensure that the accreditation program is consistent with each agricultural ERA standard that applies to the agricultural ERA. A copy of the program must be provided to the chief executive where the program has been amended to be consistent with the agricultural ERA standard. In addition, the program owner must ensure producers that were accredited under the program prior to the Bill commencing, are carrying out the agricultural ERA in a way that does not contravene an agricultural ERA standard that is in effect for the agricultural ERA.

The chief executive may also impose additional conditions on the program owner's recognition within three months of the Bill commencing, if it becomes apparent that this is necessary or desirable. If the chief executive decides to apply another condition, the chief executive must provide an information notice about the decision to the program owner. The program owner has the right to appeal the information notice, as this decision is taken to be an original decision for the purposes of chapter 11, part 3 of the *Environmental Protection Act 1994*.

The recognition of an accreditation program or the imposition of conditions under this section does not limit the power of the chief executive to decide an application or take other action in relation to the program or conditions under chapter 5A, part 5A of this



Bill. If the requirements for automatic recognition are not met within six months, the chief executive has the ability to suspend or cancel recognition of the program.

#### **Section 770 Persons accredited under existing accreditation programs**

This section states that section 82 of this Bill does not apply to a person who is accredited under an accreditation program for an agricultural ERA immediately before the program became a recognised program for an agricultural ERA under section 769 of this Bill. This section makes it clear that the person is not contravening an agricultural ERA standard during the six-month period after commencement of the Bill. The purpose of this section is to provide existing accredited producers sufficient time to adjust their practices to align with the regulated agricultural ERA standard that relates to their agricultural ERA, where necessary, where they are operating under a program under section 769 of this Bill.

#### **Section 771 Record keeping obligations for existing agricultural ERA continues**

This section states that if a person was required to keep a record under the previous section 83 of the *Environmental Protection Act 1994* and it has been less than five years since the record was made, the person is still required to keep the record. This also applies to all relevant primary documents for the record under the previous section 84.

This section also makes it clear that the previous chapter 4A, part 2, division 2 continues to apply to the record and the relevant primary documents for the record (e.g. invoices) as if this amendment Bill had not amended the *Environmental Protection Act 1994*.

#### **Section 772 Proceedings for offence against previous provisions**

This section relates to a person who has allegedly committed an offence against the previous sections 78, 83, 84 or 86 of the *Environmental Protection Act 1994*. This section makes it clear that, without limiting section 20 of the *Acts Interpretation Act 1954*, a proceeding for an offence may be continued or started, and the person may be punished for the offence, as if this amendment Bill had not amended the *Environmental Protection Act 1994*.

This section also makes it clear that a person who has committed an offence against the previous sections 78, 83, 84 and 86 can be penalised, if found guilty, as a result of the proceeding. This provision ensures that any proceedings against a person for contravening a previous section mentioned above can continue, in the absence of those provisions being located in the *Environmental Protection Act 1994*.

#### **Section 773 Amnesty for environmental risk management plan offences**

This section applies to a person that was required to hold an accredited environmental risk management plan (ERMP) under the previous section 88 of the *Environmental Protection Act 1994*. Section 772 establishes an amnesty period for a person carrying out an agricultural ERA under an accredited ERMP that commences at the start of the

ERMP's expiry and ends when the Bill begins. The amnesty period provides reprieve to a person who was given an ERMP direction under chapter 4A, part 3, division 1 which required them to comply with the previous section 92 (obligations if accredited ERMP required) and section 105 (ERMP annual reporting requirement) of the *Environmental Protection Act 1994*.

#### **Section 774 Review of impact of ch 4A on contaminant levels**

This section requires the Minister to review the extent to which chapter 4A has been successful in reducing the amount of dissolved inorganic nitrogen and sediment in river basins in the Great Barrier Reef catchment. The Minister must start the review no earlier than three years, and no later than three years and three months, after the commencement of chapter 4A. This section requires the Minister to, as soon as possible after finishing the review, table a report about the outcome of the review in the Legislative Assembly.

#### **Amendment of sch 2 (Original decisions)**

*Clause 25* amends Schedule 2 of the *Environmental Protection Act 1994* to update the list of original decisions for which an appeal or internal review of the decision may be made. These amendments are a consequence of the amendments made to the *Environmental Protection Act 1994* by this Bill.

#### **Amendment of sch 4 (Dictionary)**

*Clause 26* amends the Dictionary in schedule 4 of the *Environmental Protection Act 1994* to:

- delete definitions of 'agricultural chemicals', 'agricultural ERA record', 'agricultural property', 'cattle', 'ERMP', 'ERMP content requirements', 'ERMP direction', 'optimum amount', 'over-fertilisation', 'priority catchment', 'production requirement', 'reef', 'relevant agricultural property', 'relevant primary documents' and 'sugar cane growing'.
- replace definitions of 'accredited', 'agricultural ERA', and 'carries out'.
- insert definitions of 'accreditation program', 'agricultural chemical product', 'agricultural ERA standard', 'Great Barrier Reef catchment', 'Great Barrier Reef water quality offset condition', 'owner', 'recognised accreditation program', 'river basin', 'show cause period'.

### **Part 5 Amendment of Fisheries Act 1994**

#### **Acts amended**

*Clause 27* states that this part amends the *Fisheries Act 1994*.

### **Amendment of s 5 (Meaning of *Fish*)**

*Clause 28* amends the meaning of ‘fish’ to not include protected animals under the *Nature Conservation Act 1992* for which a person needs a relevant authority under that Act to take, keep, use, move or deal with the animal. This amendment clarifies that the Fisheries Act may continue to apply to fish species that are listed under the *Nature Conservation Act 1992*.

## **Part 6 Amendment of Nature Conservation Act 1992**

### **Act amended**

*Clause 29* states that this part amends the *Nature Conservation Act 1992*.

### **Amendment of s 71 (Classes of wildlife to which Act applies)**

*Clause 30* adds ‘extinct’ and ‘critically endangered’ to the list of classes of wildlife to which the *Nature Conservation Act 1992* applies. This is done to reflect the classes of wildlife under the common assessment method.

### **Replacement of ss 76-78**

*Clause 31* inserts and amends the criteria for the different wildlife classes. New sections 76 and 78 are inserted into the *Nature Conservation Act 1992*.

#### **Section 76 Native wildlife may be prescribed as extinct wildlife**

This section outlines when native wildlife may be prescribed under a regulation as ‘extinct’ wildlife.

#### **Section 77 Native wildlife may be prescribed as extinct in the wild wildlife**

This section outlines when native wildlife may be prescribed under a regulation as ‘extinct in the wild’ wildlife.

#### **Section 78 Native wildlife may be prescribed as critically endangered wildlife**

This section outlines when native wildlife may be prescribed under a regulation as ‘critically endangered’ wildlife.

#### **Section 78A Native wildlife may be prescribed as endangered wildlife**

This section outlines when native wildlife may be prescribed under a regulation as ‘endangered’ wildlife.

#### **Section 78B Native wildlife may be prescribed as vulnerable wildlife**

This section outlines when native wildlife may be prescribed under a regulation as ‘vulnerable’ wildlife.

**Amendment of s 79 (Native wildlife may be prescribed as near threatened wildlife)**

*Clause 32* replaces ‘78(1)’ with ‘78B(1)’, to reflect the new section that describes the requirements for native wildlife to be prescribed as ‘near threatened’ wildlife.

**Amendment of s 88 (Restrictions on taking protected animal and keeping or use of unlawfully taken protected animal)**

*Clause 33* adds the wildlife classes, ‘extinct’ and ‘critically endangered’, to the definition of a class 1 offence. The purpose of this amendment is to provide an offence for the new classes of wildlife adopted as a result of the common assessment method.

**Amendment of s 89 (Restriction on taking etc. particular protected plants)**

*Clause 34* adds the wildlife classes, ‘extinct’ and ‘critically endangered’, to the definition of a class 1 offence. The purpose of this amendment is to provide an offence for the new classes of wildlife adopted as a result of the common assessment method.

**Insertion of new s 143B**

*Clause 35* inserts a new section to clarify that a person must not give false or misleading information to an authorised person, or an information system that is approved by the chief executive.

**Section 143B Chief executive may approve use of information system**

The new section explains that the chief executive may approve an information system for communications between an authorised person and another person, and that subsequent communications received or generated by the system are seen to be given to, or made by, the authorised person.

**Amendment of schedule (Dictionary)**

*Clause 36* makes amendments to the Dictionary for the *Nature Conservation Act 1992* to reflect adoption of the common assessment method. This is achieved by adding the definitions for ‘critically endangered wildlife’ and ‘extinct wildlife’, and amending the definitions of ‘protected wildlife’ and ‘threatened wildlife’ to acknowledge the new ‘critically endangered wildlife’ and ‘extinct wildlife’ classes of wildlife.

**Part 7 Amendment of Vegetation Management Act 1999**

**Acts amended**

*Clause 37* states that this part amends the *Vegetation Management Act 1999*.

### **Amendment of schedule (Dictionary)**

*Clause 38* amends the definition of ‘protected wildlife’ to include the ‘critically endangered’ class of wildlife, to ensure consistency with classes of protected wildlife under the *Nature Conservation Act 1992*.

## **Part 8      Acts amended**

### **Acts amended**

*Clause 39* outlines the consequential amendments to the *Chemical Usage (Agricultural and Veterinary) Control Act 1988* and the *Environmental Protection Act 1994*, as a consequence of this Bill that are minor in nature, such as realigning sections, numbers and replacing previous terms with updated terms.