Environmental and Other Legislation (Reversal of Great Barrier Reef Protection Measures) Amendment Bill 2021

Explanatory Notes

Short title

The short title of the Bill is the *Environmental and Other Legislation (Reversal of Great Barrier Reef Protection Measures) Amendment Act 2021.*

Policy objectives and the reasons for them

The policy objective is to repeal all amendments made to the Environmental Protection Act 1994 and Chemical Usage *(Agricultural and Veterinary) Control Act 1988* by the State Government in their Environmental Protection (Great Barrier Reef Protection Measures) and Other Legislation Amendment Act 2019.

On February 27, 2019, the State Labor Government introduced into the House the Environmental Protection (Great Barrier Reef Protection Measures) and Other Legislation Amendment Bill 2019. The Bill was met with strong opposition by Queensland's agricultural industry, who labelled it a complete assault on farming. The Bill was passed on September 19, 2019 with a Labor party majority and gained royal assent to become an Act on September 26, 2019.

Among the key concerns highlighted by industry regarding the Act include its undermining of existing efforts by growers to improve water quality, imposing "big brother" style supervision over everyday farming decisions and effectively hobbling the cane industry's ability to expand.

Growers are forced to provide an environmental impact statement if they want to crop an existing part of their farm they have cropped in the past and the government now has power to demand information from any advisor or company working with cane farmers.

Growers and the agricultural industry are of the strong view that the Act is based on flawed Reef science which has not been appropriately checked and replicated.

During one of the Federal Senate Rural and Regional Affairs and Transport References Committee's public hearings into the identification of leading practices in ensuring evidence-based regulation of farm practices that impact water quality outcomes in the Great Barrier Reef inquiry in July 2020, Australian Institute of Marine Science (AIMS) CEO Dr Paul Hardisty admitted that there was no link to declining coral core growth rates in Porites coral and farm run-off.

Dr Hardisty's comments were supported by his colleague, AIMS Research Program Director Dr Britta Schaffelke, who stated water quality was not linked to reduced coral calcification, which she instead pointed to marine heatwaves and coral bleaching as causes.

Further, Dr Schaffelke admitted during the public hearing that corals in general “are not that much exposed to pesticides, because they are just further away from where the influence usually lies”. Dr Schaffelke said while concentrations of pesticides were higher inshore, concentrations at actual Reef sites were “relatively low”.

Dr Schaffelke was unable to provide any specific examples of herbicide, which is a chemical frequently used on farms to supress weeds, impacting coral growth rates.

In his own submission to the Senate Inquiry, Dr Peter Ridd called into question the reliability of scientific institutions and the flaws of using peer reviewed literature.

Dr Ridd has termed this issue the “Replication Crisis”, which extends not only to science related to the Great Barrier Reef (GBR) but across the scientific discipline.

Dr Ridd summarises his core arguments on this worrying issue as follows:

- The main system of scientific quality assurance, review by peers, is deficient in many ways not least being that it almost guarantees groupthink and can often exclude views from a dissenting scientist.

- Major errors in work coming from GBR scientific institutions have been identified and there is a general reluctance of the institutions to rectify problems. They are in denial about their serious deficiency of Quality Assurance protocols. In some cases, they actively cover up problems, and vilify or exclude those who raise concerns.

- There is thus considerable doubt that our GBR science institutions are providing reliable scientific evidence. This certainly does not imply all their work is wrong, but we cannot conclude that most individual parts of the scientific evidence, or the “consensus” documents, are reliable.

Dr Ridd’s solution to this Replication Crisis is a thorough audit conducted by a group of independent scientists not attached to government institutions working on the GBR which would give surety to every major industry in Northern Queensland, including agriculture, that is affected by regulations and legislation related to the Reef.

Dr Ridd also casts doubt on the true impact of farming on the Great Barrier Reef, stating in his submission that sediment from farm runoff generally does not reach the Reef where about 99 per cent of the coral lives.

Dr Ridd makes the following points about the impact of farming on the Great Barrier Reef:

- Sediment from farm runoff generally does not reach the GBR where about 99% of the coral lives. On very rare occasions, perhaps for a few days in many years, a few of the 3000 reefs of the GBR are affected by very small concentrations of sediment. The risk, if any, is restricted to the tiny area of inshore Reefs.

- For the inshore Reefs, the churning of the muddy seabed by waves is the primary exposure of coral to mud. River plumes are a very minor factor. Many of these inshore regions have always been muddy due to mud deposited over millennia.

- Science institutions almost never bother to measure pesticides on the GBR as they are generally undetectable even with the most sensitive scientific equipment. This is because the GBR water is well flushed by water from the Pacific Ocean.

- For the inshore Reefs (1-2% of the coral), most pesticides are not detected. Very occasionally, and only for a few of the inshore coral patches very close to river mouths, do pesticides even occasionally reach concentrations that could cause even a very minor impact.

- Science organisations claim that fertiliser from farms causes Crown of Thorns Starfish (COTS) plagues. However, the evidence for this is extremely weak and ignores the fact that plagues occur in regions well away from agriculture.

- The geological evidence indicates that COTS plagues have been around for millennia and there is little good reason to suspect they are worse now than before European settlement.

During a public hearing held by the former State Innovation, Tourism, Development and Environment Committee's inquiry into the Environmental Protection (Great Barrier Reef Protection Measures) and Other Legislation Amendment Bill 2019, the late Professor Jon Brodie, who was formerly a Professorial Research Fellow at the ARC Centre of Excellence for Coral Reef Studies, could not place a specific timeframe with any modelling as to when improved water quality would result in improved health for the Great Barrier Reef.

Prof Brodie said while a reduction in the use of pesticides on cane farms would produce quicker results, fertiliser would take a "couple of years to work its way out of the system". Prof Brodie said this process would happen slowly in grazing areas and that it would "take a while" to get grazing and sugar farms up to low-risk practice standards after which the "results offshore would take a bit longer as well".

The accounts from AIMS, Dr Ridd and Prof Brodie clearly demonstrate that the scientific debate about the impact of coastal agriculture on the health of the GBR is far from settled and calls into question the practical need for the State Governments' Environmental Protection (Great Barrier Reef Protection Measures) and Other Legislation Amendment Act 2019.

Achievement of policy objectives

Amendments to the Chemical Usage (Agricultural and Veterinary) Control Act 1988.

In 2019, the State Government broadened the Chemical Usage (Agricultural and Veterinary) Control Act 1988 to extend beyond a person carrying out an Environmentally Relevant Activity (ERA) involving sugarcane cultivation and cattle grazing in the Wet Tropics, Burdekin or Mackay-Whitsunday catchments.

The legislation, as it was prior to being amended in 2019, is most appropriate given the predominant crop in the above catchments is sugarcane mixed with some cattle farming. This Bill will seek to revert to the previous definition of an agricultural ERA being limited to activities that involve commercial sugar cane growing and cattle grazing carried out on an agricultural property of more than 2000ha.

Amendments to the Environmental Protection Act 1994

This Bill reverses the consolidation of a single offence for failing to comply with an agricultural ERA standard and splits them back into the following Sections as laid out in the Environmental Protection Act 1994 prior to the State Government's Environmental Protection (Great Barrier Reef Protection Measures) and Other Legislation Amendment Act 2019:

- Section 78 Offence about fertiliser application.
- Section 84 Obligation to keep relevant primary documents; and
- Section 86 Offence not to comply with production requirement.

The maximum penalty for each of the above offences will be restored to 100 penalty units ($13,345).

This is greatly reduced from the maximum penalty a failure to comply with an agricultural ERA standard would entail under the current Environmental Protection Act 1994 of either a maximum of 1665 penalty units ($222,194.25) or otherwise a maximum of 600 penalty units ($80,070).

In addition to repealing the amendments made to the Environmental Protection Act 1994 by the State Government's Environmental Protection (Great Barrier Reef Protection Measures) and Other Legislation Amendment Act 2019, this Bill will also:

- Establish an independent regulator with an extensive agricultural and scientific background who will advise and assist the Minister when making a new Environmentally Relevant Activity (ERA) standard and oversees the administering of offences when a person makes an offence with respect to fertiliser application (see Section 78 of the Bill). The regulator will not, or will have ever been, an employee of the Department of Environment and Science or another government agency. This is to ensure the regulator will not have a conflict of interest with the government of the day and their agenda.

- Introduce the penalty of an enforceable undertaking, as opposed to a financial penalty, for a person in relation to a first contravention, or alleged first contravention, by that person of Section 78 of this Bill. This will involve a written undertaking made by a person in relation to their contravention or alleged contravention of Section 78.

- Absolve a person of responsibility if Section 78 is contravened by an employee employed or engaged to carry out the agricultural ERA on the person's behalf in which the employee does not follow the instructions.

- Limits the required period that relevant primary documents for an agricultural ERA record must be kept to 2 years after the last day of the financial year in which the record was made.

- Transfers the power for making an ERA standard from the Chief Executive to the Minister and the Minister alone. This is to ensure that such a decision is made by an elected official and not by an unelected member of the public service. The Minister will, however, be required to consult with the independent regulator, and representatives from two or more industry bodies that the ERA standard will affect before making a new ERA standard.

- Mandate that the Minster must publish on the Department's website a copy of each new ERA standard made by the Minister and the recommendation made by the independent regulator in relation to that ERA standard. This is to be done in the interests of public transparency, such as in scenarios where the Minister's decision to make an ERA standard may go against the recommendation of the regulator.

Alternative ways of achieving policy objectives

There are no practical alternative ways of achieving the policy objectives.

Estimated cost for government implementation

It is not anticipated that this Bill will draw on any additional funds from the government's consolidated revenue.

Consistency with fundamental legislative principles

The Bill is consistent with the fundamental legislative principles as defined in Section 4 of the Legislative Standards Act 1992.

Consultation

Consultation around the principles contained in this Bill has been undertaken with representatives of the cane farming industry.

This has involved advice on what legislative amendments should be added to the Bill in order to largely return the Environment Protection Act 1994 and the Chemical Usage (Agricultural and Veterinary) Control Act 1988 to what it was prior to introduction of the State Government's Environmental Protection (Great Barrier Reef Protection Measures) and Other Legislation Amendment Act 2019.

Consistency with legislation of other jurisdictions

The changes proposed in this Bill are unique to Queensland in that they deal with the impact of nutrient runoff to the Great Barrier Reef.

Notes on Provisions

Part 1

Clause 1: Short title

This amendment describes the short title of the Bill.

Part 2 Amendment of Chemical Usage (Agricultural and Veterinary) Control Act 1988

Clause 2: Act amended

This part states the Chemical Usage (Agricultural and Veterinary) Control Act 1988 is to be amended.

Clause 3: Amendment of s 12W (Definitions for div 3)

This amendment removes reference to Section 79 of the Environmental Protection Act 1994, which describes the definition of an agricultural Environmentally Relevant Activity (ERA) and replaces it with Section 75. Section 75 defines an agricultural ERA activity as commercial sugar cane growing or cattle grazing carried out on an agricultural property of more than 2000ha within the Wet Tropics, Burdekin or Mackay-Whitsunday catchments.

Clause 4: Amendment of s 13D (Compliance with prescribed agricultural ERA condition)

This amendment redefines Section 13D(1) to specify that a person uses, prepares, stores or possesses a prescribed agricultural ERA product for carrying out an agricultural ERA in compliance with a prescribed agricultural ERA condition for the product only if the use, preparation, storage or possession of the product complies with the condition or the person uses, prepares, stores or possesses the product in an alternative way.

If the person uses, prepares, stores or possesses the product in an alternative way, each of the following applies:

- the person has an accredited Environmental Risk Management Plan (ERMP) for the agricultural ERA

- The ERMP states the alternative way is an alternative to compliance with the condition for helping to achieve the purpose of the Environmental Protection Act 1994, Chapter 4A.

The amendment also adjusts Section 13D(2) to where the following terms can now be found in the Environmental Protection Act 1994:

- accredited ERMP means an ERMP that is accredited under the Environmental Protection Act 1994, Chapter 4A, Part 3. and

- ERMP means an ERMP under the Environmental Protection Act 1994, Chapter 4A.

Clause 5: Amendment of schedule (Dictionary)

This amendment redirects where to find the definition of an agricultural ERA from Section 79 to Section 75 of the Environmental Protection Act 1994.

Part 3 Amendment of Environmental Protection Act 1994

Clause 6: Act amended

This part states the Environmental Protection Act 1994 is to be amended.

Clause 7: Amendment of s 18 (Meaning of environmentally relevant activity)

This amendment to Section 18(a) redirects where to find the definition of an agricultural ERA from Section 79 to Section 75.

Clause 8: Replacement of ch 4A (Great Barrier Reef protection measures)

This amendment replaces the existing Chapter 4A (Great Barrier Reef protection measures) with a revised Chapter.

The revised Chapter 4A contains either revisions to existing sections or insertion of new sections.

These sections are as follows: 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105.

The revised Chapter in this Bill closely mirrors the Environmental Protection Act 1994 as it stood prior to the State Government's Environmental Protection (Great Barrier Reef Protection Measures) and Other Legislation Amendment Act 2019 gaining assent on September 26, 2019.

The Bill also adds the following additional provisions of note to the revised Chapter:

Section 78 Offence about fertiliser application

Section 78(1) (Offence about fertiliser application) specifies that a person who carries out an agricultural ERA must not apply nitrogen or phosphorus to soil on the relevant agricultural property unless all of the conditions under Subdivision 2 have been complied with or the person has an accredited ERMP for the agricultural ERA that provides for an alternative procedure to prevent over-fertilisation of the property; and states that the procedure is an alternative to compliance with the conditions under Subdivision 2.

If these conditions are not met under Section 78(1), the maximum penalty is 100 penalty units unless it is a first offence by which an enforceable undertaking will be accepted (See Section 507(2) of the Bill).

However, under Section 78(2), a person does not commit an offence against 78(1) to the extent that:

- the person employs or engages someone else (the employee) to carry out the agricultural ERA on the person's behalf

- before nitrogen and phosphorus was applied to the soil in contravention of Subsection (1), the person gave instructions to the employee about the carrying out of the agricultural ERA

- the employee did not comply with the instructions; and

- the application of the nitrogen or phosphorus would not have contravened 78(1) if the employee had complied with the instructions.

Section 84 Obligation to keep relevant primary documents

Section 84 of the Bill limits the required period that relevant primary documents must be kept for an agricultural ERA record to 2 years after the last day of the financial year in which the record was made.

This is as opposed to Section 771 of the current Environmental Protection Act 1994 which stipulates that relevant primary documents for the record are required to be kept from the commencement until the day that is 5 years after the record was made or required to be made.

Consultation with the agricultural sector has found that the requirement for primary documents to be kept for five years for an agricultural ERA to be both onerous and unnecessary, with two years more than sufficient for this purpose.

Clause 9: Amendment of s 112 (Other key definitions for ch 5)

In the definition for Great Barrier Reef catchment waters, this amendment changes paragraph (a) from "a river in the Great Barrier Reef catchment" to "a river in the area shown on a map prescribed by regulation as the Great Barrier Reef catchment".

Clause 10: Amendment of s 125 (Requirements for applications generally)

This amendment removes Section 125(5) of the current Environmental Protection Act 1994 which discusses the requirements for an application that is a variation or site-specific application for the prescribed ERA mentioned in the Environmental Protection Regulation 2019, Schedule 2, Section 13A.

With the removal of Section 125(5), the amendment also renumbers Section 125(6) as the new Section 125(5).

Clause 11: Amendment of s 207 (Conditions that may be imposed on environmental authority)

This amendment removes Section 207(1)(d) from the current Environmental Protection Act 1994 which stipulates that a condition imposed on an environmental authority or draft environmental authority may, for an authority or draft authority for an environmentally relevant activity carried out on land in the Great Barrier Reef catchment - be a Great Barrier Reef water quality offset condition.

With the removal of Section 207(1)(d) from the Environmental Protection Act 1994, the Bill will renumber Section 207(1)(e) through to (h) as Section 207(1)(d) through to (g).

Clause 12: Amendment of s 213 (Amendment of environmental authorities to reflect new standard conditions)

This amendment makes the Minister, instead of the Chief Executive, responsible for making an ERA standard providing for standard conditions for the activity.

Clause 13: Amendment of s 226A (Requirements for amendment applications for environmental authorities)

This amendment removes Section 226A(4) from the Environmental Protection Act 1994, which states that if the amendment application is for an environmental authority for the prescribed ERA mentioned in the Environmental Protection Regulation 2019, Schedule 2, Section 13A, it need only to include:

- the matters mentioned in subsection (1)(f)(i) to (iv), (g) and (h) to the extent the matters relate to fine sediment, or dissolved inorganic nitrogen, entering the water of the Great Barrier Reef or Great Barrier Reef catchment waters; and

- subsection (1)(f)(v) does not apply for the amendment application.

Clause 14: Amendment of s 318 (Chief executive may make ERA standard)

This amendment makes the Minister responsible for making an ERA standard by amending the heading of Section 318 and replacing “Chief Executive” with “Minister” in Section 318(1) in terms of who makes an ERA standard.

Clause 15: Amendment of s 318A (Notice of proposed ERA standards)

This amendment replaces the wording in Section 318A(1) and (2) so it reflects that it is the Minister, and not the Chief Executive, who makes an ERA standard and that it is the Minister who must publish on the department's website a copy of the proposed ERA standard (Section 318A(a)) and the additional required information in accordance with Section 318A(1)(b) (i) through to (iv)

The Amendment also revises Section 318A(4) to stipulate that the Minister must give written notice about a proposed ERA standard to each holder of a relevant existing authority to which the standard conditions will apply and that is in effect immediately before the consultation period for the proposed standard conditions in the ERA standard starts.

Furthermore, the Minister must give written notice about the proposed ERA standard to each industry affected by the proposed standard, whether it be one industry body representing that industry or two or more industry bodies representing that industry.

The independent regulator must also receive written notice from the Minister about the proposed ERA standard.

The above provisions are important to ensuring that the proposed ERA standard receives the necessary feedback from industry and the regulator, so the Minister has the best information available before deciding whether to proceed with the implementation of that standard, or whether to implement changes to that said standard.

Again, in keeping with these provisions, Section 318(5)(a) must state that, for a written notice about a proposed ERA (Section 318A(4)), the notice must state that the Minister proposes to make an ERA and that standard conditions provided for under the proposed ERA standard will apply to relevant existing authorities.

The Bill adjusts Section 318A(5)(c) to specify that the holder of a relevant existing authority or industry body may make a submission to the Minister – not the Chief Executive - about a proposed ERA standard during the consultation period.

Section 318A(5)(d) is added to say that a notice under Section 318A(4) must state, for a notice given to the independent regulator, that the independent regulator may make a recommendation to the Minister about a proposed ERA standard during the consultation period.

Clause 16: Replacement of s 318B (Consideration of submissions)

This amendment removes Section 318B as outlined in the current Environmental Protection Act 1994, which states that the Chief Executive must consider all submissions made during the consultation period before deciding whether to make an ERA standard.

Instead, the Bill replaces the above with a revised Section 318B (Consideration of Submission and recommendations) which now refers to the Minister's sole power to make an ERA standard. As such, the Minister must consider the following before deciding whether to make an ERA standard:

- all submissions made about the ERA standard during the consultation period; and

- a recommendation made by the independent regulator about the ERA standard during the consultation period.

Clause 17: Replacement of s 318C (Publication of ERA standard)

This amendment replaces Section 318C as outlined in the current Environmental Protection Act 1994 which states the Chief Executive must publish a copy of each ERA standard made by the Chief Executive on the Department's website.

Instead, the Bill replaces the above with a revised Section 318C (Publication of ERA standards and recommendations) which now states it is the Minister who must publish, on the department's website, a copy of each ERA standard made by the Minister and each recommendation made by the independent regulator about a proposed ERA standard. This is to be done in the interests of public transparency, such as in scenarios where the Minister's decision to make an ERA standard may go against the recommendation of the regulator.

Clause 18: Amendment of s 318DA (Minor amendment of ERA standard)

In Section 318DA(1) and (3), this amendment replaces the Chief Executive for the Minister in giving the power to make a minor amendment of an ERA standard by publishing a copy of the amended ERA standard on the department's website.

Clause 19: Omission of ch 5A, pt 5A (Accreditation programs for agricultural ERAs)

This amendment removes Chapter 5A, Part 5A (Accreditation programs for agricultural ERAs) from the current Environmental Protection Act 1994.

Clause 20: Amendment of s 320A (Application of div 2)

This amendment removes mention of an agricultural ERA standard in Section 320A(4) in the Environmental Protection Act 1994 when discussing causes where the application of Division 2 does not apply.

The agricultural ERA standard is instead replaced with an accredited ERMP as a cause.

Clause 21: Omission of s 322A (Chief executive may require environmental audit about recognised accreditation program for agricultural ERA)

This amendment removes the power of the Chief Executive to require the owner of a recognised accreditation program for an agricultural ERA to commission an audit (also an environmental audit) about a stated matter concerning the accreditation program and give the administering authority an environmental report about the audit.

Clause 22: Amendment of s 323 (Administering authority may require environmental audit about other matters)

This amendment removes an agricultural ERA standard (Section 323(1)(a)(iii)) as an activity the administrative authority is satisfied the person is contravening.

With the removal of an agricultural ERA standard as an activity, Section 323(1)(a)(iv) and (v) will now be renumbered as Section 323(1)(a)(iii) and (iv) in the Environmental Protection Act 1994.

Clause 23: Amendment of s 324 (Content of audit notice)

This amendment removes an accreditation program and the agricultural ERA to which the program relates as a piece of information an audit notice must state if the notice is given under Section 322A in the Environmental Protection Act (Section 324(1)(c)). This is consistent with the removal of Section 322A from the Act, as outlined in Clause 21 of the Bill.

As a result of the removal of Section 324(1)(c), Section 324(1)(d) and (e) will be renumbered as Section 324(1)(c) and (d).

Clause 24: Amendment of s 326 (Administering authority may conduct environmental audit for particular activities)

This amendment replaces the word “particular” in the heading of Section 326 with “resource”.

The addition of “ ;or ” will be added after the words “resource activity” in Section 326(1)(a).

The phrase “or owner of the recognised accreditation program” will be removed from Section 326(3) and (4).

Clause 25: Amendment of s 326A (Administering authority’s costs of environmental audit or report)

This amendment removes the part sentence “or owner of the recognised accreditation program, given an information notice for the audit decision under section 326(3)” from Section 326A(2), to maintain consistency with Clause 24 of the Bill.

The phrase “or owner” is removed from Section 326A(2)(b); and Section 326A(4), the definition of an audit decision, is removed entirely.

Clause 26: Amendment of s 330 (What is a transitional environmental program)

This amendment removes an agricultural ERA standard that applies to an agricultural ERA (Section 330(1)(c)(iv)) as one of the conditions a transitional environmental program is required to comply with.

Clause 27: Amendment of s 346 (Effect of compliance with program)

This amendment removes an agricultural ERA standard as something the holder of an approved transitional environmental program may or may not do, or something that is not a contravention of, as described in Sections 346 (2)(f) and (3)(f).

The agricultural ERA standard is replaced with an accredited ERMP in both (2)(f) and (3)(f).

Clause 28: Amendment of s 358 (When order may be issued)

This amendment removes an agricultural ERA standard (Section 363A(1)(b)) from a list of conditions the administering authority may issue an environment protection order to a person to secure compliance by that person with.

The agricultural ERA standard is replaced with an accredited ERMP.

Clause 29: Amendment of s 363A (Prescribed provisions)

This amendment removes the contravention of a provision of an agricultural ERA standard for an agricultural ERA as a reason for a direction notice to be issued (Section 363A(1)(b)).

The provision of an agricultural ERA standard for an agricultural ERA is replaced with a provision of an accredited ERMP for an agricultural ERA.

As a result the wording of section 363A(2) is replaced with the following:

However, a provision of the accredited ERMP is a prescribed provision only if the person contravening the provision is the person carrying out the agricultural ERA.

Note — See also section 346 for the effect of compliance with a transitional environmental program.

Clause 30: Amendment of s 426 (Environmental authority required for particular environmentally relevant activities)

This amendment removes an agricultural ERA that is not a prescribed ERA (Section 426)(2)(a)) as a condition in which Subsection (1) does not apply.

Instead, Section 426(2)(a) is reworded to “an agricultural ERA”.

For context, Subsection (1) states that a person must not carry out an environmentally relevant activity unless the person holds, or is acting under, an environmental authority for the activity.

Clause 31 Amendment of s 444M (Staff services from government agency)

This amendment removes what the definition of government agency from Section 444M.

Clause 32: Insertion of new ch 8B

This amendment inserts a new chapter, Chapter 8B Independent Regulator, into the Environmental Protection Act 1994 which describes the appointment process, conditions of appointment, suspension and removal from office and functions and powers for the independent regulator.

Of particular note is the following:

Section 444P Appointment

Section 444(P)(2) mandates that the Minister can only appoint a person to the position of independent regulator if they are satisfied that person has the necessary qualifications, experience or standing in the fields of agriculture and science and that the person has not, or has ever been, an employee of the Department of Environment and Science or another government agency. This is to ensure the regulator will not have a conflict of interest with the government of the day and their agenda.

Furthermore, the above criteria will give confidence to those in the agricultural sector that the regulator will take a balanced approach to any matter involving an ERA agricultural standard and the enforcement of penalties for breaches of legislation contained in the Environmental Protection Act 1994.

Section 444W Functions

As laid out in Section 444W, the independent regulator will be tasked with:

- Making recommendations about proposed ERA standards.
- Overseeing compliance with an enforceable undertaking made by a person who contravenes, or allegedly contravenes Section 78 (Offence about fertiliser application) of this Bill.
- Developing guidelines about said enforceable undertakings; and
- Other functions given to the independent regulator by this Bill.

Clause 33: Amendment of s 452 (Entry of place—general)

This amendment removes the ability for an authorised person to enter a place to which a recognised accreditation program for an agricultural ERA relates and entry is made when the place is open for conduct of business or the place is otherwise open for entry (Section 452(1)(f)).

With the removal of Section 452(1)(f), Section 452(1)(g) through to (l) will be renumbered Section 452(1)(f) through to (k) in the Environmental Protection Act 1994.

Clause 34: Amendment of s 458 (Order to enter land to conduct investigation or conduct work)

This amendment removes an agricultural ERA standard (Section 458(1)(a)(iii)(A)) as a reason for which an authorised person may apply to a magistrate for an order to enter land to secure compliance. Instead, an accredited ERMP is inserted as a reason in place of the agricultural ERA standard.

Clause 35: Amendment of s 466 (Power to require production of documents)

This amendment removes an agricultural ERA standard that applies to an agricultural ERA and a recognised accreditation program for an agricultural ERA as framework for a document to be held, or kept under, that an authorised person may require a person to produce to that authorised person for inspection (Refer to Section 466(1)(c) and (d) of the current Environmental Protection Act 1994.)

Clause 36: Amendment of s 490 (Evidentiary provisions)

This amendment adds the words “accredited ERMP” to Section 490(5)(c), which can be used as evidence in a certificate purporting to be signed by the administering executive.

The amended Section 490(5)(c) should therefore read as follows:

an accredited ERMP environmental requirement or other authority or permit issued or given under this Act-

Clause 37: Amendment of 493A (When environmental harm or related acts are unlawful)

This amendment removes the words “agricultural ERA standard” from Section 493A(4)(a) with respect to what circumstances a defendant can prove they have taken to have complied with the general environmental duty.

“Agricultural ERA standard” is removed from Section 493(5)(c), which details the circumstances a defendant is also taken to have complied with the general environmental duty.

The words “accredited ERMP” replace the above-mentioned words in both 493A(4)(a) and (c).

This amendment also removes the word “standard” from Section 492A(4)(b) when discussing what circumstances a defendant can prove they have taken to have complied with the general environmental duty.

Instead, “standard” is replaced with “ERMP” to read to “the extent it is relevant, the defendant complied with the ERMP”.

Clause 38: Amendment of s 507 (Administering authority may accept enforceable undertakings)

This amendment changes the heading of Section 507 in the Environmental Protection Act 1994 to “507 Accepting enforceable undertakings”.

Further to this, Subsection (1A) is inserted, which stipulates that the administering authority must accept a written undertaking (read enforceable undertaking) made by a person in relation to a first contravention or alleged first contravention by the person of Section 78.

The word “The” is removed from Section 507(4) which discusses in what circumstances an administering authority will accept an unenforceable undertaking. The following preamble replaces the word “The”:

For an enforceable undertaking other than an enforceable undertaking mentioned in subsection (2), the

Finally, Section 507(1A) through to (7) will be renumbered as Section 507(2) through to (8).

Clause 39: Amendment of s 514 (Devolution of powers)

This amendment replaces “another matter under this Act (other than chapter 2 or chapter 7, part 8)” as a reason for the Governor in Council to devolve to a local government the administration and enforcement of powers to (see Section 514(1)(c)).

The replacement words to Section 514(1)(c)) will now read “another matter under this Act”.

The amendment adds Section 514(2A) which states that the administration and enforcement of Chapter 2, Chapter 7 Part 8 or the function or power of the independent regulator under Chapter 8B must not be devolved to a local government under this section.

Further, the words in the following subsections in the current Environmental Protection Act 1994 are to be either renamed or renumbered:

- Under Section 514(4), “subsection (3)(c)” is replaced with the words “subsection (4)(c)”.

- Under Section 514(6), “subsection (5)(a)” is replaced with the words “subsection (6)(a)”.

- Under Section 514(6A), “subsection (5)(b)” is replaced with the words “subsection (6)(b)”.

- Section 514(2A) to (7) is renumbered as Section 514(3) to (9).

Clause 40: Amendment of s 520 (Dissatisfied person)

This amendment inserts a sub-paragraph into Section 520(1)(a) which details the circumstance in which a person is considered to be a “dissatisfied person” regarding an original or review decision.

Section 521(1)(aa) will add the following:

if the decision is to refuse to accredit an ERMP—the person who submitted the ERMP; or

Section 521(1)(g) and (h) are both removed given they reference a decision to either refuse an application to recognise an accreditation program for an agricultural ERA or the decision is about a recognised accreditation program for an agricultural ERA.

Reference to Section 322A is removed from Section 520(1)(i). This was in reference to the Chief Executive's power to require the owner of a recognised accreditation program for an agricultural ERA to commission an audit (also an environmental audit) about a stated matter concerning the accreditation program and give the administering authority an environmental report about the audit. Section 322A was removed in Clause 21 of this Bill.

Section 520(1)(k) will now feature the words "ERMP direction" so it reads as follows:

if the decision is about an ERMP direction environmental investigation or environmental protection order—the recipient; or

Finally, Section 520(1)(aa) through to (o) on first mention will be renumbered as Section 520 (1)(b) through to (n).

Clause 41: Amendment of s 538 (Appeals may be heard with planning appeals)

This amendment adds in what circumstances constitute an original of review decision when a person appeals an administering authority's decision about the following:

- to refuse to accredit an ERMP; or
- about an application for an environmental authority for a prescribed ERA

The previous wording in Section 538(1)(a) from the word "decision)" onwards is removed and replaced with the above.

Section 538(1)(b) is also adjusted to insert the words "ERMP or" so it reads as follows:

(b) a person appeals against the assessment manager's decision under the Planning Act about a planning or development matter for the premises to which the ERMP or application for the authority relates.

Clause 42: Amendment of s 540A (Registers to be kept by chief executive)

This amendment inserts a subparagraph after Section 540A(a) to add ERMP directions and accredited ERMPs under Chapter 4A as information the Chief Executive must keep a register of. This will become Section 540A(1)(a)(aa).

Recognised accreditation programs for agricultural ERAs and suspended or cancelled recognition of accreditation programs for agricultural ERAs are removed from information the Chief Executive must keep a register of (Section 540A(1)(b)(vi) and (vii).

Finally, Section 540A(1)(aa) through to (f) is to be renumbered as Section 540A(1)(b) through to (g).

Clause 43: Amendment of s 549 (Chief executive may make guidelines to inform persons)

This amendment removes the ability for the Chief Executive to make guidelines to inform persons about matters to be considered in making ERA standards under chapter 5A, part 1 (Section 549(1)(b)).

As a result, Section 549(1)(c) and (d) is to be renumbered Section 549(1)(b) and (c).

Clause 44: Amendment of s 565 (Only suitably qualified person can perform regulatory functions)

In light of the changes specified under Clause 43 of this Bill, this amendment replaces reference to Section 549(1)(c) with Section 549(1)(b) in Section 565.

Clause 45: Amendment of s 774 (Review of impact of ch 4A on contaminant levels)

This amendment adds a provision which states that Section 774 stops having effect upon the commencement of the Environmental and Other Legislation (Reversal of Great Barrier Reef Protection Measures) Amendment Act 2021. It will be temporarily known as Section 774(3A).

With the above addition, Section 774(3A) and (4) will then be renumbered as Section 774(4) and (5).

Clause 46 Insertion of new ch 13, pt 31

This amendment inserts a new Part to Chapter 13, Part 31, which describes the transitional provisions for the Environmental and Other Legislation (Reversal of Great Barrier Reef Protection Measures) Amendment Act 2021.

Part 31 adds the following sections to the Environmental Protection Act 1994: 792, 793, 794, 795, 796 and 797.

Of those new sections, the following are of note:

Section 793 Recognition of accredited ERMPs

This section restores recognition of an ERMP that was accredited under the original Chapter 4A, Part 3 of the Environmental Protection Act 1994 prior to the commencement of the State Government's Environmental Protection (Great Barrier Reef Protection Measures) and Other Legislation Amendment Act 2019.

Section 795 Review of impact of new ch 4A on contaminant levels and economy

This section mandates that the Minister must conduct a review of the extent to which the new Chapter 4A described in this Bill (see Clause 8) has been effective in reducing the load of dissolved inorganic nitrogen and sediment suspended in the water in river basins in the Great Barrier Reef Catchment and the impact to the economy of the Great Barrier Reef catchment.

The review should commence no earlier than two years from the date in which the Environmental and Other Legislation (Reversal of Great Barrier Reef Protection Measures) Amendment Act 2021 comes into force and must be completed within a year of it commencing followed by a report tabled in the Legislative Assembly.

Section 797 Notice of proposed ERA standards published or given before commencement

This amendment states that if the Chief Executive published or gave notice of a proposed ERA standard under the previous Section 318A, and immediately before the commencement of this Bill, the Chief Executive had not made the proposed ERA standard under the previous Chapter 5A, Part 1, the Minister will accept responsibility as having published notice of those proposed ERA standards from the commencement of the new Section 318A in this Bill (See Clause 15).

Further, any submissions previously made to the Chief Executive about the proposed ERA standard are now to be taken has having been made to the Minister.

Clause 47: Amendment of sch 2 (Original decisions)

This amendment adds a new Division under Schedule 2, Part 1 to be known as Division 2 Decisions under Chapter 4A.

Division 2 refers to decisions under the Bill's Chapter 4A, which covers Great Barrier Reef Protection Measures.

Division 2 adds two new description of decision:

- Section 90: decision to give ERMP direction; and
- Section 100: decision to refuse to accredit ERMP

References to Section 318YN(1)(b), 318YN(1)(c) and 318YU(2) will be removed from Schedule 2, Part 1, Division 3 as they refer to decisions involving an accreditation program for an agricultural ERA.

Clause 48: Amendment of sch 4 (Dictionary)

This amendment removes definitions not relevant for the purposes of this Bill under Schedule 4 Dictionary of the Environmental Protection Act 1994 and replaces those omitted definitions with ones that are relevant for the purposes of this Bill.