

Environmental Protection (ERA Standards) Amendment Regulation 2022

Explanatory notes for SL 2022 No. 26

made under the *Environmental Protection Act 1994*

General Outline

Short title

Environmental Protection (ERA Standards) Amendment Regulation 2022

Authorising law

Section 580 of the *Environmental Protection Act 1994*

Policy objectives and the reasons for them

The primary objective of the *Environmental Protection (ERA Standards) Amendment Regulation 2022* (the Amendment Regulation) is to prescribe version 2 of the agricultural environmentally relevant activity (ERA) standards for beef cattle grazing, banana cultivation, and the Prescribed methodology for sugarcane cultivation.

Minor amendments are made to ensure ERA standards listed in Schedule 7 of the *Environmental Protection Regulation 2019* (EP Regulation) have effect and to correct the title of the Prescribed methodology for banana cultivation.

Achievement of policy objectives

The policy objective will be achieved by amending the EP Regulation to:

- approve version 2 of the agricultural ERA standards for beef cattle grazing, banana cultivation, and sugarcane cultivation and the Prescribed methodology for sugarcane cultivation;
- re-introduce a section to provide that ERA standards stated in a document in Schedule 7 are approved under section 318D of the *Environmental Protection Act 1994* (EP Act);
- relocate the existing section 29 to a transitional provision to continue the effect of ERA standards approved under the repealed *Environmental Protection Regulation 2008*; and
- correct the title of the Prescribed methodology for banana cultivation.

Version 2 of the Agricultural ERA standards and prescribed methodology for sugarcane

Under Chapter 4A, Part 3 of the EP Act, a person carrying out an agricultural ERA must ensure the activity is carried out in accordance with any agricultural ERA standard that applies to the activity. An agricultural ERA standard may contain a standard condition that requires compliance with a prescribed methodology.

To date, agricultural ERA standards have been prescribed for banana cultivation, sugarcane cultivation and beef cattle grazing under Schedule 7, Part 1 of the EP Regulation. Sections 23 and 24 of the EP Regulation also include reference to the prescribed methodologies for banana and sugarcane cultivation.

Under section 318 of the EP Act, the chief executive may make an ERA standard. Version 2 of the agricultural ERA standards for beef cattle grazing, banana cultivation, and sugarcane cultivation and prescribed methodology for sugarcane cultivation have been made in accordance with sections 318A and 318B of the EP Act (consultation results are outlined below).

Version 2 of these documents contain small administrative updates from version 1 that remove duplication and clarify existing requirements to make it easier for producers to comply with the requirements.

The updates to the agricultural ERA standards for beef cattle grazing, banana cultivation, and sugarcane cultivation include:

- removing an incorrect reference to the EP Regulation;
- removing duplication of record keeping requirements already regulated under the *Chemical Usage (Agricultural and Veterinary) Control Act 1988*;
- for sugarcane cultivation, amending the definition of appropriate person to recognise Smartcane Best Management Practice (BMP) accredited growers; and
- clarify terms such as ground-based application and fertiliser.

The updates to the Prescribed methodology for sugarcane cultivation include:

- removing requirements that are no longer relevant due to the commencement of nutrient and phosphorus budget requirements; and
- inserting clarifying terms.

Clause 7 of the Amendment Regulation gives effect to the new versions of the agricultural ERA standards for beef cattle grazing, banana cultivation, and sugarcane cultivation by inserting 'version 2' against the title of each minimum standard in the list in Schedule 7, Part 2 of the EP Regulation.

Clause 4 gives effect to the new version of the Prescribed methodology for sugarcane cultivation by inserting 'version 2' against the title of the document. The clause also amends the title of the prescribed document for consistency with how the document is referenced in the Agricultural ERA standard for sugarcane cultivation.

Approval of ERA standards

Section 318D of the EP Act states an ERA standard takes effect when it is approved by a regulation. Section 29 of the EP Reg is currently drafted to give effect to ERA standards that were approved under the repealed *Environmental Protection Regulation 2008* and are listed in a document in Schedule 7 of the EP Regulation. The section erroneously does not give effect to all ERA standards listed in Schedule 7 of the EP Regulation nor link the list to section 318D of the EP Act.

Clause 6 of the Amendment Regulation corrects this omission by inserting a new Section 29 which makes it clear that any ERA standard listed in Schedule 7 of the EP Regulation is approved under section 318D of the EP Act.

Clause 5 renumbers existing section 29 to 194A as a transitional provision, continuing the effect of ERA standards approved under the repealed *Environmental Protection Regulation 2008*.

Title of the prescribed methodology for banana cultivation

Clause 3 amends the EP Regulation to make the title of the banana methodology consistent with how the document is referenced in the Agricultural ERA standard for banana cultivation and the title of the Prescribed methodology for sugarcane cultivation.

Consistency with policy objectives of authorising law

The Amendment Regulation is consistent with the object of the EP Act, which is to protect Queensland's environment while allowing for development that improves the total quality of life, both now and in the future, in a way that maintains the ecological processes on which life depends (ecologically sustainable development).

Inconsistency with policy objectives of other legislation

The Amendment Regulation is consistent with the policy objectives of other legislation.

Benefits and costs of implementation

Costs and benefits of the agricultural ERA standards were comprehensively examined as part of the *Broadening and enhancing Reef protection regulations – Decision Regulatory Impact Statement* (February 2019).

The amendments in this Amendment Regulation are considered administrative in nature and will not have any additional impacts on government, industry, or the community. The new versions of the agricultural ERA standards and Prescribed methodology for sugarcane cultivation contain small updates that remove duplication and make the requirements easier to understand and be applied by producers.

Consistency with fundamental legislative principles

The Amendment Regulation is consistent with fundamental legislative principles outlined in Section 4 of the *Legislative Standards Act 1992*.

Consultation

Consultation occurred on the new versions of the agricultural ERA standards for beef cattle grazing, banana cultivation, and sugarcane cultivation, and Prescribed methodology for sugarcane cultivation, in accordance with section 318A of the EP Act. The proposed documents were made available on the Department of Environment and Science's (DES) website for public consultation between 22 November 2021 and 20 January 2022, with written public submissions sought through the Office of the Great Barrier Reef (OGBR) inbox.

The consultation approach included an online consultation session held on 11 January 2022, which was attended by six industry representatives. Meetings were also held with peak agricultural groups (AgForce, Australian Banana Growers Council, Australian Cane Farmers Association, Australian Sugar Milling Council, Canegrowers, Fertilizer Australia, Growcom, Queensland Farmers Federation, and Sugar Research Australia) and conservation groups (Australian Marine Conservation Society, Capricorn Conservation Council, Environmental Defenders Office, Gladstone Conservation Council, Mackay Conservation Group, Queensland Conservation Council and Wide Bay Burnett Environment Council).

Feedback received during the session was recorded as submissions and analysed along with the five written submissions received in the OGBR inbox. Stakeholders did not raise any substantial concerns with the proposed updates. Small clarifications to the documents were made in response to feedback that was within scope to further help with understanding and applying the requirements.

In accordance with *The Queensland Government Guide to Better Regulation* (the Guidelines), the Office of Best Practice Regulation (OBPR) was consulted on the Amendment Regulation.

In accordance with the Guidelines, OBPR was not consulted on the amendments that correct drafting errors to ensure ERA standards listed in Schedule 7 have effect and the Prescribed methodology for banana cultivation is accurately titled. DES applied a self-assessable exclusion (Category (f)—regulatory proposals that correct technical errors or amend legislation to take account of current Queensland drafting practice).

OBPR advised that all the other amendments are largely administrative and are unlikely to result in significant adverse impacts; therefore, no further regulatory impact analysis is required under the Guidelines.