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30 June 2021

Dr Jacqui Dewar
Committee Secretary
Health and Environment Committee
Parliament House
George Street
BRISBANE QLD 4000

By email: hec@parliament.qld.gov.au

Dear Dr Dewar

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

Kalamia Cane Growers Organisation Limited **(KCGO)** is a bargaining representative pursuant to section 33(3) of the *Sugar Industry Act 1999* (Qld), representing approximately 150 growers who supply 1.6 million tonnes of cane to Wilmar Sugar mills in the Burdekin. Accordingly, the comments made in this submission responding to the *Environmental and Other Legislation (Reversal of Great Barrier Reef Protection Measures) Amendment Bill 2021* **(the Bill)** pertain to sugar cane growing in the Burdekin (otherwise referred to as the "dry tropics").

Set out below is KCGO's comments in relation to the Bill.

The Explanatory Notes to the Bill states that the policy objective is to repeal the 2019 amending Act: *Environmental Protection (Great Barrier Reef Protection Measures) and Other Legislation Amendment Act 2019* **(the Act)**, thereby removing from the *Environmental Protection Act 1994* **(EPA)** significantly burdensome compliance costs. KCGO supports the premise of the Bill, in broad strokes, for the following reasons:

- The Act introduced substantial compliance costs (refer to the Consultation Regulatory Impact Statement (RIS) September 2017 and the Explanatory Notes accompanying the Act which described the substantial compliance burden imposed on agricultural producers), without demonstrating that the additional regulation would result in a statistically significant improvement in water quality;
- Any increased profits from changes to farming practices would not exceed likely compliance costs (refer to page 20 of the RIS), with no compensation for agricultural producers for loss in yield or to meet compliance costs;
- Sugar cane growing was already subject to the EPA (for example, the requirement for soil tests, record keeping and prescribed methodology for calculation of nitrogen and phosphorous to prevent over fertilisation) and neither the RIS nor the Explanatory Notes justified further prescriptive measures – that is, any ambiguous benefits in water quality did not outweigh the financial implications and potential yield losses;

- The Act is prescriptive and inflexible; that is, regardless of the environmental and field conditions there is no leeway, only compliance. For example, if there was a significant wet weather event or an invasion of a pest or disease, growers are restricted in their ability to respond, as the Act failed to provide for any exceptions to the rules imposed by the Act. Growers potentially will endure financial loss due to inability to adequately respond to changing circumstances;
- The Bill demonstrates that less prescriptive (as the Bill preserves pre-2019 sections of the EPA) legislation does not equate to no protection for the environment or environmental vandalism by agricultural producers and it is possible to legislatively balance the interests of agriculture and the environment.

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

Set out below are comments in relation to specific clauses of the Bill, with reference to the Act.

Clause of the Bill	***Environmental Protection (Great Barrier Reef Protection Measures) and Other Legislation Amendment Act 2019* – amendments to the EPA**	***Environmental and Other Legislation (Reversal of Great Barrier Reef Protection Measures) Amendment Bill 2021* - proposed provisions**
Clause 8	**Chapter 4A** Section 81 prescribes a list of matters that must be contained in an ERA standard, making the ERA standard prescriptive and inflexible. The list includes the use of water, nutrients, agricultural chemicals and other substances used in carrying out an agricultural ERA (section 81(3)). Agricultural ERA advice had to be in writing, a copy provided to the grower and subject to production (section 86). The Explanatory Notes failed to provide a justification for this requirement, other than some weak reference to an adviser's potential to influence land management decisions. Sections 87 – 88 prescribed different standards for new production, and the Explanatory Notes failed to consider the inequity of imposing higher standards on new producers, with likely higher costs of production that would stifle growth in agriculture, particularly the sugar industry.	**Chapter 4A** **Sections 79 – 82 Conditions to prevent over-fertilisation** **Sections 83 – 84 Documents that must be kept** **Section 85 – Production of documents** The Bill preserves the grower's obligations to use the prescribed methodology for calculating the application of nitrogen and phosphorus; keeping, maintaining and producing documents. However, the Bill limits the grower's obligations to maintain those records (referred to as "primary documents") for two years. The reduced requirement is more realistic and not as onerous, whilst maintain accountability. The Bill otherwise substantially repeals the sections of Chapter 4A (some of which have been particularised in the opposing column).
Clause 8	**Section 82 Offence to contravene ERA Standard** The substantial increase in penalties (to a maximum of 1,665 penalty units) was punitive and not commensurate with any likely breach by an individual grower. There was no evidence provided in the RIS or Explanatory Notes that the increase in penalties was likely to result in long term behavioural change to farming practice.	**Section 78 Offence about over fertilisation** **Section 84 Obligations to keep relevant primary documents** **Section 86 Offence not to comply with production requirements** The Bill restores lower penalties for breaches of the EPA, which are more commensurate with the likely environmental consequences of any individual breach of the EPA by a grower.

		Section 507(1A) mandates that a first breach of these obligations is dealt with via an enforceable undertaking, and not a monetary penalty. This removes the "criminal" stigma of only the imposition of penalties and assists growers to devise a plan (that is, the "undertaking") to ensure compliance with the legislation.
Clauses 14 - 18	**Section 318 and section 81(4)** The Chief Executive's powers to make an ERA standard was ambiguous and without limitation. There were no criteria or guidelines (in contrast to section 319(2) of the EPA) defining how the powers were to be utilised. That is, there were no criteria that were specified that the Chief Executive must have regard to when making an ERA standard. The requirements contained within any ERA standard had the potential to impose huge compliance costs, particularly if substantial changes to existing farming practices were required.	**Chapter 8B Sections 444P – 444Z Independent Regulator** **Sections 318 – 318DA – Making of ERA standards** The power to make an ERA standard is with the Minister (section 318), removing all reference to the Chief Executive (that is, a public servant) having powers to impose ERA standards. The Minister must specifically give notice of a proposed ERA standard to industry bodies and the Independent Regulator (section 318A(4)). The function of the Independent Regulator (section 444W) is to provide technical advice and experience to the Minister in the fields of science and agriculture; to create criteria and guidelines to assist the Minister with making an ERA standard and enforceable undertakings. Of note is the requirement of the Independent Regulator to publish these guidelines so that there is transparency in relation to role and information being provided to the Minister, and thus the ability to scrutinise the Minister's decisions. The inclusion of Section 318(5)(c) permits the Independent Regulator to make a submission to the Minister about the proposed ERA standard.
Clause 46	**Sections 77 – 78 Objectives set in policy must be reviewed every 5 years** The review of the objectives of the policy was limited to whether there had been improvements in water quality and the review was not required to take account of any negative financial impact on agricultural producers.	**Section 795 Review of impact of new ch 4A on contaminant levels and economy** Introduces the requirement that the Minister consider the economic impact of the legislation.
Clause 19	**Chapter 5A Accreditation programs for agricultural ERAs** Sections 318YA – 318 YV prescribed an accreditation process to establish an "accreditation program" for what is best management practice for agricultural industries. The process was very detailed and subject to significant requirements to maintain	**Chapter 5A Accreditation programs for agricultural ERAs** The Bill repeals the government oversight of best management practice, such that it is left to the agricultural industry to determine and set the standards for agricultural producers to achieve best management practice. BMP smart cane program is an example of an agricultural industry

	accreditation. The Explanatory Notes were silent on the anticipated cost to agricultural industries, particularly whether the State Government would continue to provide financial support for such programs. The Chief Executive had unfettered powers to determine whether the program would be recognised for the purpose of an agricultural ERA.	itself setting the standard for best management practice.

The purpose of the above table is to highlight some of the differences between the Act and the Bill, particularly to demonstrate that there are alternate measures that could have been adopted by the Queensland Government to bring balance to the interests of agricultural producers and the environment. Of note is the fact that the Bill does not remove or repeal all oversight by the EPA of the sugar and grazing industries, merely seeks to predominantly restore the EPA to pre-2019 rules.

Conclusion

It is sufficiently important to reiterate that onerous legislation is not required to achieve changes in farming practices. The Bill demonstrates that it is possible to achieve a greater balance between the interests of agriculture and the environment, without imposing claustrophobic red tape and prescriptive legislation, the resultant being –

- Unacceptable risk of loss of productivity, income and viability;
- Changes to farming practices, to comply with regulations, that are unstainable
- Compliance costs that are prohibitive for small farming enterprises.

KCGO is of the opinion that there cannot be proper consideration of the Bill unless there is proper consultation by the Committee, including –

1. Holding public hearings in regional Queensland (that is, the Great Barrier Reef catchment to which the legislation pertains) and open the hearings to agricultural producers and representative organisations to be properly informed of current farming practices and the experience of producers complying with the Act; and
2. Attending on-farm to properly understand farming practices.

KCGO is also seeking to appear at any public hearing/s held by the Committee to discuss this submission and the Bill further.

Please do not hesitate to contact the writer should you wish to discuss any matter or this submission further.

We await your reply.

Yours faithfully

Paine

Dave Paine
MANAGER AND COMPANY SECRETARY