

# AgForce submission to the *Environment and Other Legislation (Reversal of the Great Barrier Reef Protection Measures) Amendment Bill 2021*



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## *Who is AgForce?*

AgForce Queensland Farmers Limited (AgForce) is a peak organisation representing Queensland's cane, cattle, grain, and sheep and wool producers. The cane, beef, grain, sheep and wool industries in Queensland generated around \$7.3 billion in on-farm value of production in 2018-19. AgForce's purpose is to advance sustainable agribusiness and strives to ensure the long-term growth, viability, competitiveness and profitability of these industries. Almost 5,900 farmers, individuals and businesses provide support to AgForce through membership. Queensland producers provide high-quality food and fibre to Australian and overseas consumers, and contribute significantly to the social fabric of regional, rural and remote communities.

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## *Why AgForce supports changes to current Reef regulations?*

Queensland Government's current Reef regulations impose onerous record-keeping and regulated minimum practice Standards on commercial Reef farmers, without substantiated scientific evidence Reef health or water quality will benefit at all. There are other environmental factors affecting the Great Barrier Reef such as ocean temperatures and severe weather conditions which are far beyond control by Queensland producers.

AgForce continues to strive for evidence-based science for Reef and government policy. Although AgForce does not support mandatory Reef regulations, this private member's Bill introduced into Queensland Parliament by Member for Hinchinbrook Nick Dametto MP is a step in the right direction towards achieving a balance between Reef water quality with co-existing environmentally sustainable and viable agriculture within the Great Barrier Reef GBR catchment.

Additional points to consider are outlined in this AgForce submission to the *Environment and Other Legislation (Reversal of the Great Barrier Reef Protection Measures) Amendment Bill 2021* (the Bill).

Please contact AgForce with any queries on these suggested amendments.

## Key Points

### 1) SECTION 75 REPLACES SECTION 79 – DEFINITION OF AN AGRICULTURAL ERA

- AgForce supports the Bill’s proposal to revert back to the previous agricultural ERA definition used in the 2009 version of the Act. An agricultural ERA reverts back to three catchments instead of six and only applies to commercial cane farming and commercial cattle grazing enterprises greater than 2000 ha. Water flow from the Burnett Mary catchment generally moves away from the GBR Lagoon and dams capture river flow in most average and below average years.
- Grain and other horticultural crops such as bananas are no longer considered an agricultural ERA. This is sensible. The current Agricultural ERA 13A Standard for new or expanded cropping and horticulture has imposed regulations over a vast range of crops, where there is no previous evidence of impacts to Reef water quality. New developments of commercial crops such as turf, pasture seed, fodder for sale but not fodder for own livestock use, cropping on long-term fallowed land should be exempt of Reef regulations and a requirement for an environmental authority (permit).

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### 2) INSERT NEW CHAPTER 4A OF THE *EPA ACT 1994*

- Chapter 4A of the proposed Reversal Bill 2021 focuses the purpose onto reducing impact of agricultural activities on Reef water quality and contributing to agreed targets. Whereas the current purpose of Chapter 4A of the *Environmental Protection Act 1994* is to improve Reef water quality, enhance biological integrity and improve health and resilience of Reef aquatic ecosystems.
- AgForce recommends the following inclusions to purpose: -

#### 74 Purpose of chapter

The purpose of this chapter is to—

- (a) reduce the impact of agricultural activities on the quality of water entering the reef;
- (b) contribute to achieving **realistic and achievable** targets about water quality improvement for the reef under agreements between the State and the Commonwealth from time to time; and
- (c) **avoid a diminution in the environmental and economic sustainability of farming enterprises in the relevant catchment area.**

- AgForce supports deletion of Part 2 requiring the Minister to develop an environmental protection policy to reduce mass loads of dissolved inorganic nitrogen DIN and suspended sediment from each river basin. Emerging new Reef science by Lewis *et al* (2020)<sup>i</sup> confirms other pathways of natural DIN from ammonium desorption from particulate nitrogen (leaf litter, organic matter) and microbial processing of organic matter in river plumes. These other DIN pathways can contribute 25 to 100 per cent of the DIN load in river plumes and cannot be isolated from “human activity” due to fertiliser runoff.

### 3) SECTION 78 - REDUCED MAXIMUM PENALTIES FOR THE OFFENCE OF OVER FERTILISATION

- Penalty units for offences have reverted back to sensible fine limits within the Bill. The proposed maximum penalty for over-fertilisation is 100 penalty units, whereas the current penalty for contravening an agricultural ERA Standard is 600 penalty units and up to 1665 penalty units for a wilful offence [Section 82 of the *EPA Act 1994*].
- AgForce recommends over-fertilisation specifically by cane farmers should not be a criminal offence and a better option is an enforceable undertaking (Part 5 of the Bill). Fertiliser is one of three sources of bioavailable nitrogen that may enter waterways. Although the land use footprint of other fertiliser users such as horticultural crops, urban gardens and sporting grounds is smaller, there is no penalty for over-fertilising by other land users.

### 4) DELETE PART 4 – AGRICULTURAL ERA ADVICE

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- AgForce recommends deleting Part 4 [Sections 83 to 86] relating to providing, recording ERA advice and an offence to provide misleading technical tailored advice. The current 600 penalty units for misleading advice is too high for this misnomer.
- Many agronomists and advisers for crop nutrition, erosion management and farm design are reluctant to provide advice to Reef farmers or hand over commercial-in-confidence details to Queensland Government.

### 5) DELETE PART 6 – REGULATION MAKING POWER FOR RECORDS AND RETURNS

- AgForce recommends Part 6 [Section 89] is deleted. To date, this regulation-making power by the chief executive has not been evoked. Sale records of fertiliser and agricultural chemical products from a manufacturer or distributor has no bearing on usage within the GBR catchment. Farmers often purchase bulk product, depending on sales, tax implications and availability. These products may be stored and used over a long period of time, and often not used within a 12-month period. Some commercial Reef enterprises have additional farmland outside the GBR catchment where these products may be used.

### 6) DELETE AGRICULTURAL CHEMICAL RECORDS FROM SECTION 83

- AgForce recommends deleting Section 83 (2) (i) agricultural chemicals from Agricultural ERA records.



Ongoing, annual marine and freshwater monitoring of pesticides<sup>ii</sup> confirms any occasional detected levels in freshwater are below water quality trigger values. There is no substantiation for additional regulation of pesticide use and record-keeping through Reef agricultural ERA Standards, on top of existing statewide record-keeping regulations under the *Chemical Usage (Agricultural and Veterinary) Control Act 1988* and *Chemical Usage (Agricultural and Veterinary) Control Regulation 2017*.

Section 20(1)(j) of the *Chemical Usage Control Act 1988* and Division 4 of the *Chemical Usage (Agricultural and Veterinary) Control Regulation 2017*<sup>iii</sup> authorises a Department of Agriculture and Fisheries DAF inspector to require a person to produce accounts, books, invoices, records or other documents relating to the sale, storage or use of any agricultural chemical or prescribed substance. Records to be kept for two years.

It is a duplication of government red tape and departmental compliance costs that Section 466 of the *EPA Act 1994* authorises a Department of Environment and Science DES compliance officer to also require a person to produce general records of agricultural chemical usage as outlined in the agricultural ERA standard for beef cattle grazing and cane farming and a usage map as required in Section 25 of the *Environmental Protection Regulation 2019*<sup>iv</sup>. Records to be kept for six years.

## 7) SECTION 318 – ROLE OF MINISTER AND INDEPENDENT REGULATOR IN MAKING AN ERA STANDARD

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- AgForce supports the Bill's proposed changes to Section 318 A to DA whereby the Minister, not the Chief Executive, oversees the making and consultation process for ERA Standards. The Bill also enables an independent Regulator to advise the Minister.

## 8) AMEND SECTION 318I (1) – REGISTER OF SUITABLE OPERATORS

- AgForce awaits the outcome of the current departmental requirement to publish names, Lot/Plan locations and environmental authority permits of "suitable operators" on a public register<sup>v</sup> for the ERA13A Standard for new or expanded cropping and horticulture. The public register of environmental authorities<sup>vi</sup> has previously placed "suitable operators" of intensive feedlots at risk of farm invasion by activists and caused farm biosecurity issues. A similar potential risk with activists occurs for farmers growing genetically modified GMO crops, applying agchemicals or using machinery to cultivate new farm areas. Other Queensland Government departments have provision in their Acts to not publish names on a public register, if it can cause danger to a person. An example is the Department of Health's public versus internal register of "approved persons" holding Schedule 7 poisons under the *Medicines and Poisons Act 2019*.



- AgForce recommends amending Section 318l (1) to:

If the chief executive decides to approve the application, the chief executive must, within 5 business days after deciding the application—

- (a) give the applicant written notice stating that the application is approved; and
- (b) include the applicant's name and address in the public or departmental internal register of suitable operators.

#### 9) OMIT CHAPTER 5A, PART 5A – ACCREDITATION PROGRAMS FOR AGRIC ERA STANDARDS

- Industry accreditation programs for continuous improvement or market access should not be caught up as pathways for Reef regulation. The Bill proposed to remove Chapter 5A – Part 5A [Sections 318Y to 318YW] where the Chief Executive from the Department of Environment and Science DES controls Best Management Practice BMP program content, audits BMP programs, requires an annual list of BMP producers provided to the Department and can impose any other condition. Owners of recognised accreditation programs are required to ensure producers meet ERA Standards for minimum practices and record-keeping.
- The chief executive has extended the scope of recognised accreditation programs to acknowledged practice change projects, whereby project managers must ensure participating producers meet minimum practice ERA Standards <https://www.qld.gov.au/environment/agriculture/sustainable-farming/reef/reef-regulations/producers/providers>. Will the omission of Chapter 5A – Part 5A in the Bill encompass these acknowledged practice change projects as an alternative pathway to Reef regulation compliance requirements?

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#### 10) SECTION 507 – ACCEPTING ENFORCEABLE UNDERTAKINGS

- AgForce recommends the following amendments to: -  
**Section 507 - Administering authority may accept enforceable undertakings.**
    - (1) The administering authority may accept a written undertaking (an *enforceable undertaking*) made by a person in relation to a contravention or alleged contravention by the person of this Act, other than an indictable offence.
    - (1A) Without limiting subsection (1), the administering authority must accept a written undertaking (also an enforceable undertaking) made by a person in relation to a first contravention or alleged contravention by the person of section 78(1), **where that contravention has not been committed wilfully.**
- Insert -*
- (9) **The administering authority must issue and publish on the department's website, guidelines in relation to the acceptance of an EPA undertaking.**



### Section 508 – Effect of enforceable undertaking

- (1) An enforceable undertaking takes effect **and becomes enforceable** when the administering authority gives, the person who made the undertaking, notice of the decision to accept the undertaking, **or at any later date stated in the notice.**

#### Justification for amendment

It is important when enforceable undertakings are considered, additional weighting needs to be given by the decision-maker to a first-time offender who may have contravened the provisions without any wilful intent. In those circumstances an enforceable undertaking must be accepted if offered.

Not all enforceable undertakings will have immediate effect and there should be provision to take effect at a later date. This is particularly important when crop cycles are taken into account as action may not be taken until a future event has occurred.

AgForce recommends the administering authority for decisions under this section should be made by the independent regulator.

## 11) SECTION 774 AND 795 – REVIEW OF IMPACT OF CHAPTER 4A ON CONTAMINANT LEVELS

- Queensland Government has duty to rural communities in the GBR catchment in addition to Reef water quality targets. AgForce recommends the impact review needs to be holistic and consider impact on agricultural economy.

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

#### **Section 795 Transitional Provisions**

(1) The Minister must review the extent to which new chapter 4A has been effective in reducing the load of the following contaminants **that enter** the water in river basins in the Great Barrier Reef catchment—

- (a) dissolved inorganic nitrogen in the water;
  - (b) sediment suspended in the water; and
  - (c) **impacts the economy of the Great Barrier Reef catchment.**
  - (d) **impacts the productivity, profitability and affordability (including the costs of compliance) of the carrying out of the ERAs.**
- (2) **The review must include a consultation process with industry and stakeholders to whom any agricultural ERA Standards apply.**

#### Justification for amendment

Clarify water quality targets for agriculture are both realistic and achievable. The primary goal of improving water quality of the GBR needs to be balanced with a secondary goal of ensuring such improvement does not result in a permanent diminution in the environmental and economic sustainability of Reef farming enterprises. Queensland Government need to get the balance right.





The current review process does not require the Minister to consider the impacts of the Reef regulations on the economy of farming enterprises directly affected, nor a requirement to consult with producers or industry.

## 12) AMENDMENT TO SCHEDULE 4 - DICTIONARY

- AgForce recommends including the independent regulator in the “administering authority” definition within Section 7 of the Dictionary.

*administering authority* means—

- (a) for a matter, the administration and enforcement of which has been devolved to a local government under section 514—the local government; or
- (b) for a matter under Chapter 10, Part 5 see sections 507 through 513 – an independent regulator appointed by the Governor-in-Council being a public service officer appointed under the Public Service Act 2008 and who must act independently when making decisions under the Act.
- (c) for another matter—the chief executive.

## 13) REFERENCES

<sup>i</sup> Lewis, S., Bainbridge, Z., Stevens, T., Garzon-Garcia, A., Chen, C., Bahadori, M., Burton, J., Rezaei Rashti, M., James, C., Smithers, S., & Olley, J. (2020). *What’s really damaging the Reef?: Tracing the origin and fate of the environmentally detrimental sediment and associated bioavailable nutrients. Report to the National Environmental Science Programme.* Reef and Rainforest Research Centre Ltd, Cairns.

<https://nesptropical.edu.au/index.php/round-5-projects/project-5-8/>  
<https://nesptropical.edu.au/wp-content/uploads/2021/05/NESP-TWQ-Project-5.8-Final-Report.pdf> (267pp)

<sup>ii</sup> Great Barrier Reef Marine Park Authority 2020. Marine monitoring program: Annual report for inshore pesticide monitoring 2018-19. <https://elibrary.gbrmpa.gov.au/jspui/handle/11017/3666>

<sup>iii</sup> Queensland Government 2017. *Chemical Usage (Agricultural and Veterinary) Control Regulation 2017* <https://www.legislation.qld.gov.au/view/html/inforce/current/sl-2017-0136#pt.3-div.4>

<sup>iv</sup> Queensland Government 2019 *Environmental Protection Regulation 2019* <https://www.legislation.qld.gov.au/view/html/asmade/sl-2019-0155#sec.25>

<sup>v</sup> Queensland Government (2021). Suitable operator register <https://environment.des.qld.gov.au/licences-permits/suitable-operators>

<sup>vi</sup> Queensland Government (2021). Public register of Environmental Authorities – download full list <https://apps.des.qld.gov.au/public-register/search/ea.php>