



Queensland

Great Barrier Reef Protection Amendment Act 2009

Act No. 42 of 2009



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Great Barrier Reef Protection Amendment Act 2009

Act No. 42 of 2009

An Act to amend the Chemical Usage (Agricultural and Veterinary) Control Act 1988, the Environmental Protection Act 1994, the Integrated Planning Act 1997 and the Sustainable Planning Act 2009 for particular purposes

[Assented to 15 October 2009]

[s 1]

The Parliament of Queensland enacts—

Part 1 Preliminary

1 Short title

This Act may be cited as the *Great Barrier Reef Protection Amendment Act 2009*.

2 Commencement

This Act, other than section 19, commences on a day to be fixed by proclamation.

Part 1A Amendment of Chemical Usage (Agricultural and Veterinary) Control Act 1988

2A Act amended

This part amends the *Chemical Usage (Agricultural and Veterinary) Control Act 1988*.

2B Insertion of new pt 2, div 3, sdiv 1 and sdiv 2 hdg

Part 2, division 3, after division 3 heading—

insert—

‘Subdivision 1 Preliminary

‘12W Definitions for div 3

‘In this division—

agricultural ERA see the *Environmental Protection Act 1994*, section 75.

carrying out, an agricultural ERA, has the same meaning as carrying out an agricultural ERA under the *Environmental Protection Act 1994*.

preparing, for a prescribed agricultural ERA product, means mixing the product or using it for testing.

prescribed agricultural ERA conditions, for a prescribed agricultural ERA product, means the conditions prescribed for using, preparing, storing or possessing the product under section 13C(1)(b).

prescribed agricultural ERA product means an agricultural chemical product prescribed under section 13C(1)(a).

‘Subdivision 2 General provisions’.

2C Amendment of s 13A (Use of unregistered agricultural chemical products)

Section 13A(3)—

insert—

- ‘(e) if the offence relates to the use of a prescribed agricultural ERA product for carrying out an agricultural ERA—the defendant’s use of the product complied with the prescribed agricultural ERA conditions for the product.’.

2D Insertion of new pt 2, div 3, sdiv 3

Part 2, division 3, after section 13B—

[s 2D]

insert—

‘Subdivision 3 Great Barrier Reef protection measures

‘13C Prescribed agricultural ERA products and conditions

- ‘(1) A regulation may—
- (a) declare an agricultural chemical product to be a prescribed agricultural ERA product; and
 - (b) prescribe conditions for using, preparing, storing and possessing the product for carrying out an agricultural ERA.
- ‘(2) However, a regulation may be made under subsection (1) only if the Minister considers it is necessary or desirable to help achieve the purpose of the *Environmental Protection Act 1994*, chapter 4A.

Editor’s note—

Environmental Protection Act 1994, chapter 4A (Great Barrier Reef protection measures), section 74 (Purpose of ch 4A)

- ‘(3) To remove any doubt, it is declared that an agricultural chemical product may be declared as a prescribed agricultural ERA product under subsection (1)(a) and conditions may be prescribed for the product under subsection (1)(b) whether or not the product is a registered agricultural chemical product.

‘13D Compliance with prescribed agricultural ERA condition

- ‘(1) 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—
- (a) the use, preparation, storage or possession of the product complies with the condition; or

- (b) the person uses, prepares, stores or possesses the product in an alternative way and each of the following applies—
- (i) the person has an accredited ERMP for the agricultural ERA;
 - (ii) 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.

‘(2) In this section—

accredited ERMP means an ERMP that is accredited under the *Environmental Protection Act 1994*, chapter 4A, part 3.

ERMP means an environmental risk management plan under the *Environmental Protection Act 1994*, chapter 4A.

Note—

Noncompliance with an accredited ERMP is not, in itself, an offence. However, the non-compliance may be the subject of a direction notice under the *Environmental Protection Act 1994*, section 363B.

‘13E Use etc. of registered agricultural ERA products for agricultural ERAs

‘(1) A person must not use, prepare, store or possess a registered agricultural ERA product for carrying out an agricultural ERA other than in a way that complies with the prescribed agricultural ERA conditions for the product.

Maximum penalty—100 penalty units.

‘(2) This section is an eligible law for the definition ‘*permit*’ under section 109 of the Agvet Code.

‘(3) In this section—

registered agricultural ERA product means a registered agricultural chemical product that is a prescribed agricultural ERA product.’.

[s 2E]

2E Amendment of schedule (Dictionary)

Schedule—

insert—

‘agricultural ERA, for part 2, division 3, see the *Environmental Protection Act 1994*, section 75.

carrying out, an agricultural ERA, see section 12W.

preparing, for a prescribed agricultural ERA product, see section 12W.

prescribed agricultural ERA conditions see section 12W.

prescribed agricultural ERA product see section 12W.’.

Part 2 Amendment of Environmental Protection Act 1994

3 Act amended

This part amends the *Environmental Protection Act 1994*.

4 Amendment of s 18 (Meaning of *environmentally relevant activity*)

(1) Section 18(c)—

renumber as section 18(d).

(2) Section 18(a) and (b)—

omit, insert—

‘(a) an agricultural ERA as defined under section 75; or

(b) a mining activity as defined under section 147; or

(c) a chapter 5A activity as defined under section 309A; or’.

5 Amendment of s 19 (Environmentally relevant activity may be prescribed)

Section 19, ‘a mining activity or chapter 5A activity’—

omit, insert—

‘an agricultural ERA, a mining activity or a chapter 5A activity’.

6 Insertion of new ch 4A

After section 73T—

insert—

‘Chapter 4A Great Barrier Reef protection measures

‘Part 1 Preliminary

‘74 Purpose of ch 4A

‘The purpose of this chapter is to—

- (a) reduce the impact of agricultural activities on the quality of water entering the reef; and
- (b) contribute to achieving the targets about water quality improvement for the reef under agreements between the State and the Commonwealth from time to time.

Note—

At the commencement of this section the current agreement was the ‘Reef Water Quality Protection Plan: For catchments adjacent to the Great Barrier Reef World Heritage Area October 2003’.

‘75 What is an *agricultural ERA*

‘(1) An activity is an *agricultural ERA* if—

[s 6]

- (a) it is—
 - (i) commercial sugar cane growing; or
 - (ii) cattle grazing carried out on an agricultural property of more than 2000ha; and

Note—

For part 3, see also section 87A (Extended meaning of agricultural ERA for pt 3).

- (b) it is carried out on an agricultural property in 1 or more of the following catchments (each a ***priority catchment***)—
 - (i) the Wet Tropics catchment;
 - (ii) the Mackay-Whitsunday catchment;
 - (iii) the Burdekin dry tropics catchment.

‘(2) However, if only part of the agricultural property is in 1 or more of the priority catchments, the activity is only an agricultural ERA if—

- (a) more than 75% of the lot on which it is carried out is in 1 or more of the priority catchments; or
- (b) the part of the lot within 1 or more of the priority catchments is more than 20000ha.

‘(3) For subsection (1)(b), the priority catchments—

- (a) are identified on the map held by the department called ‘Map of Great Barrier Reef Catchments covered by the Queensland Government Reef Protection Package’, Map No. g090514-01; but

Editor’s note—

At the commencement of this section the map was available for inspection on the department’s website at <www.derm.qld.gov.au>.

- (b) also include any other land prescribed under a regulation.

‘(4) A regulation may be made under subsection (3)(b) only if—

-
- (a) the other land forms part of an agricultural property that is only partly within any of the catchments identified on the map; and
- (b) each priority catchment will, after the making of the regulation, be a contiguous parcel of land.
- ‘(5) In this section—
- lot* means—
- (a) a lot under the *Land Title Act 1994*; or
- (b) a separate, distinct parcel of land for which an interest is recorded in a register under the *Land Act 1994*.

‘76 Who *carries out* an agricultural ERA

‘A person *carries out* an agricultural ERA only if the person—

- (a) carries it out personally; or
- (b) employs or engages someone else to carry it out on the person’s behalf.

‘77 Other definitions for ch 4A

‘In this chapter—

accredited, for an ERMP, means accredited under part 3.

agricultural chemicals means agricultural chemical products, as defined under the Agvet Code of Queensland applying under the *Agricultural and Veterinary Chemicals (Queensland) Act 1994*.

agricultural ERA record see section 83(1)(a).

agricultural property means a parcel or parcels of land, managed as one unit to carry out an agricultural activity.

cattle means beef cattle of all ages.

ERMP means environmental risk management plan.

ERMP direction see section 88(b).

[s 6]

optimum amount, for the application of nitrogen and phosphorus to soil on an agricultural property, means the highest amount of nitrogen and phosphorus that can be applied without over-fertilising the property.

over-fertilisation, of an agricultural property, means that fertiliser has been applied to soil on the property at above the needs of the plants being or to be fertilised.

priority catchment see section 75(1)(b).

production requirement see section 85(1).

reef means the Great Barrier Reef.

relevant agricultural property for—

- (a) a provision about an agricultural ERA—means the agricultural property on which the agricultural ERA is carried out; or
- (b) a provision about an ERMP—means the agricultural property on which the agricultural ERA the subject of the ERMP is carried out.

relevant primary documents, for an agricultural ERA record, see section 84(2).

sugar cane growing means a system for growing sugar cane, whether or not it includes the rotation of other crops.

**‘Part 2 Requirements for carrying out
 agricultural ERAs**

‘Division 1 Fertiliser application requirements

‘Subdivision 1 Offence

‘78 Offence about fertiliser application

‘A person who carries out an agricultural ERA must not apply nitrogen or phosphorus to soil on the relevant agricultural property unless—

- (a) all of the conditions under subdivision 2 have been complied with; or
- (b) the person has an accredited ERMP for the agricultural ERA and the ERMP—
 - (i) provides for an alternative procedure to prevent over-fertilisation of the property; and
 - (ii) states that the procedure is an alternative to compliance with the conditions.

Maximum penalty—100 penalty units.

Note—

Noncompliance with an accredited ERMP is not, in itself, an offence. However, the noncompliance may be the subject of a direction notice. See section 363B.

**‘Subdivision 2 Conditions to prevent
 over-fertilisation**

‘79 Application of sdiv 2

‘This subdivision applies to a person carrying out an agricultural ERA.

[s 6]

‘80 Working out optimum amount

- ‘(1) The person must work out the optimum amount of nitrogen and phosphorus that can be applied to soil on the relevant agricultural property.
- ‘(2) The working out must use the results of soil tests required under section 81.
- ‘(3) A regulation may prescribe a methodology for working out the optimum amount.
- ‘(4) If a prescribed methodology applies for the application of nitrogen or phosphorus to soil on the property, the optimum amount must be worked out under the methodology.

‘81 Soil testing

- ‘(1) The person must cause—
 - (a) soil tests of the relevant agricultural property to be carried out to test the characteristics of the soil to allow the optimum amount to be worked out; and
 - (b) reports to be prepared for each of the tests that shows its results.
- ‘(2) The tests and the reports must be carried out or prepared by a person with appropriate experience or qualifications.
- ‘(3) A regulation may prescribe—
 - (a) the intervals at which the tests must be carried out; and
 - (b) a methodology for carrying out the tests.
- ‘(4) The carrying out of the tests must comply with the regulation.

‘82 Restriction on application of fertiliser

‘Fertiliser containing nitrogen or phosphorus must not be applied to soil on the relevant agricultural property if doing so may result in more than the optimum amount of nitrogen or phosphorus being applied to the soil.

‘Division 2 Document requirements

‘Subdivision 1 Documents that must be kept

‘83 Required record

‘(1) A person who carries out an agricultural ERA must unless the person has a reasonable excuse—

- (a) make or cause to be made within the required period a record (an *agricultural ERA record*) in the approved form about the matters mentioned in subsection (2); and
- (b) keep the record for at least 5 years.

Maximum penalty—100 penalty units.

‘(2) For subsection (1)(a) the matters are all of the following—

- (a) any of the following applied on the relevant agricultural property—
 - (i) agricultural chemicals;
 - (ii) fertilisers;
 - (iii) soil conditioners;
- (b) soil test reports prepared under section 81;
- (c) optimum amounts worked out under section 80;
- (d) any other matter prescribed under a regulation.

‘(3) In this section—

required period means 10 business days after the happening of the event mentioned in subsection (2) for which the record must be made.

‘84 Obligation to keep relevant primary documents

‘(1) A person who makes an agricultural ERA record must keep all relevant primary documents for the record for at least 5

[s 6]

years after making it unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

- ‘(2) The *relevant primary documents*, for an agricultural ERA record, are—
- (a) documents relating to the carrying out of the agricultural ERA the subject of the record from which information in the record was obtained; and
- Example—*
- invoices for the purchase of fertiliser
 - (b) soil test reports mentioned in the record.

‘Subdivision 2 Production of documents

‘85 Power to require production of documents

- ‘(1) An authorised person may, by written notice, require (a *production requirement*) a person carrying out an agricultural ERA (the *operator*) to produce to the authorised person for inspection within 10 business days—
- (a) the operator’s current agricultural ERA records; or
 - (b) the relevant primary documents for the records.
- ‘(2) A production requirement may be for—
- (a) all of the operator’s current agricultural ERA records; or
 - (b) the operator’s current agricultural ERA records for a stated period; or
 - (c) a stated current agricultural ERA record of the operator.
- ‘(3) If the record or document produced is a hard copy, the authorised person—
- (a) may keep the record or document to take an extract from, or make a copy of, it; but

(b) must return it to the operator as soon as practicable after taking the extract or making the copy.

‘(4) This section does not limit section 466.

‘(5) In this section—

current agricultural ERA records, for the operator, means any of the operator’s agricultural ERA records that are still subject to the requirement under section 83(1)(b).

‘86 Offence not to comply with production requirement

‘A person of whom a production requirement has been made must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

‘87 Derivative use immunity for production

‘(1) It is not a defence to a proceeding for an offence against section 86 that the relevant document contains information that might tend to incriminate the defendant.

‘(2) However, if the defendant is an individual, incriminating evidence is not admissible in evidence against the defendant in a civil or criminal proceeding.

‘(3) Subsection (2) does not apply to a proceeding for an offence for which the falsity or misleading nature of the relevant document is relevant.

‘(4) In this section—

incriminating evidence means evidence of, or evidence directly or indirectly derived from a relevant document or information it contains that might tend to incriminate the defendant.

relevant document means a record, or a relevant primary document for a record, the subject of the relevant document production requirement.

[s 6]

‘Part 3 Environmental risk management plans

‘Division 1AA Preliminary

‘87A Extended meaning of *agricultural ERA* for pt 3

- ‘(1) This section applies to cattle grazing carried out on an agricultural property carrying more than 100 standard cattle units.
- ‘(2) For this part, the cattle grazing is an *agricultural ERA* if, disregarding the size of the property, the cattle grazing would be an agricultural ERA under section 75.
- ‘(3) This section does not limit what is an agricultural ERA under section 75 for this part.
- ‘(4) In this section—

standard cattle units means units of measurement based on the live weight of cattle as follows—

Live weight of head (kg)	Number of standard cattle units
up to 350	0.67
more than 350 to 400	0.74
more than 400 to 450	0.81
more than 450 to 500	0.87
more than 500 to 550	0.94
more than 550 to 600	1.00
more than 600 to 650	1.06
more than 650 to 700	1.12
more than 700	1.18.

‘Division 1 General matters

‘88 When an accredited ERMP is required

‘A person who carries out an agricultural ERA must have an accredited ERMP for the agricultural ERA if—

- (a) it consists of—
 - (i) sugar cane growing on more than 70ha in the Wet Tropics catchment under section 75; or
 - (ii) cattle grazing on more than 2000ha in the Burdekin dry tropics catchment under section 75; or

Note—

See however section 657 (Deferral of automatic ERMP requirement for existing agricultural ERAs).

- (b) the person is the recipient of a direction given under this division (an ***ERMP direction***).

Note—

An ERMP may also be voluntarily submitted for accreditation. See section 97.

‘89 When ERMP direction may be given

‘The Minister may give a person carrying out an agricultural ERA an ERMP direction only if—

- (a) the Minister considers an ERMP is necessary or desirable—
 - (i) to improve the quality of water being released from the relevant agricultural property; or
 - (ii) because the agricultural ERA is causing or may cause unlawful environmental harm; and
- (b) the direction complies with section 90; and
- (c) if it has more than 1 recipient—section 91 is complied with.

[s 6]

‘90 Form of ERMP direction and what it may require

- ‘(1) An ERMP direction must—
- (a) be written; and
 - (b) identify the recipient; and
 - (c) state each of the following—
 - (i) the agricultural ERA for which an ERMP is required;
 - (ii) the relevant agricultural property;
 - (iii) the recipient’s obligations under section 92;
 - (iv) that it is an offence for the recipient not to comply with the obligations under section 92 unless the recipient has a reasonable excuse;
 - (v) the maximum penalty for the offence; and
 - (d) be accompanied by or include an information notice about the decision to give the direction.
- ‘(2) Despite section 92, an ERMP direction may provide that the ERMP need not include the matters mentioned in section 94(d).
- ‘(3) An ERMP direction may require the recipient to include in the ERMP any matter that the Minister reasonably considers is necessary or desirable to reduce the impact of the agricultural ERA on the quality of water entering the reef.

‘91 Public notice of ERMP directions with multiple recipients

- ‘(1) This section applies if an ERMP direction has more than 1 recipient.
- ‘(2) As well as giving the ERMP direction to each of the recipients individually, the Minister must also publish it in a modified form—
- (a) in a newspaper circulating generally in the State; and

-
- (b) in another newspaper published generally in the relevant priority catchment.
- ‘(3) The modified form—
- (a) must not include any of the recipient’s names; but
 - (b) must include enough detail about the area or a type of agricultural ERA to which the ERMP direction applies to allow each recipient to be aware that it applies to them.

‘92 **Obligations if accredited ERMP required**

‘If, under section 88, a person must have an accredited ERMP, the person must unless the person has a reasonable excuse—

- (a) prepare, for the person’s agricultural ERA, an ERMP that complies with the requirements under division 2 (the *ERMP content requirements*); and
- (b) within 3 months submit it to the administering authority for accreditation.

Maximum penalty—300 penalty units.

‘93 **Unaccredited ERMP has no effect**

‘Other than for the purpose of submission to seek accreditation, an ERMP has no effect unless it has been accredited.

‘Division 2 **ERMP content requirements**

‘94 **General content requirements**

‘An ERMP must—

- (a) state each of the following—
 - (i) the person who prepared it;
 - (ii) the agricultural ERA the subject of the ERMP;

[s 6]

- (iii) the person carrying out the agricultural ERA;
 - (iv) a description of the relevant agricultural property;
 - (v) the period for which the ERMP applies; and
- (b) identify any hazards of the property that may cause the release of contaminants into water entering the reef; and
- Examples of things that may be a hazard—*
- the application of fertiliser or agricultural chemicals
 - erosion zones
 - low levels of ground cover
- (c) include measurable targets and performance indicators for improving the quality of water being discharged from the property; and
- (d) subject to sections 90(2) and 95, include a management plan for the agricultural ERA that provides for the management of—
- (i) the application of agricultural chemicals on the property; and
 - (ii) nutrients applied to soil on the property; and
 - (iii) sediment loss from the property, including the management of ground cover and erosion zones to prevent sediment loss; and
- (e) if an ERMP direction has been given—provide for any matter that, under section 90(3), must be included in the ERMP; and
- (f) provide for any matter that is reasonably necessary to reduce the impact of the agricultural ERA on the quality of water entering the reef; and
- (g) any other matter prescribed under an environmental protection policy or a regulation.

‘95 Exceptions for management plan requirement

- ‘(1) Section 94(d)(i) does not apply if the person carrying out the agricultural ERA has been certified as an organic operator by the Australian Quarantine Inspection Service.
- ‘(2) If the agricultural ERA the subject of the ERMP is cattle grazing, section 94(d)(ii) only applies for pastures on the relevant agricultural property that are to be fertilised.

‘96 Documents that may make up ERMP

- ‘(1) The ERMP content requirements may be complied with in any number of documents or by incorporating the provisions of other documents into the ERMP.
- ‘(2) The documents may be documents prepared for another purpose.
- ‘(3) An ERMP need not be called an environmental risk management plan.

Example for section 96—

A person carrying out an agricultural ERA will comply with the ERMP content requirements if—

- (a) for good business practice, the person prepares a document called a ‘farm management system’ that includes an environmental management component; and
- (b) the component consists of a land management agreement under the *Land Act 1994* and other documents; and
- (c) the agreement and the other documents, when read together, comply with the ERMP content requirements, but they are not identified as an ERMP; and
- (d) the person submits the component for accreditation as an ERMP.

[s 6]

‘Division 3 Accreditation of ERMPs

‘97 Application of div 3

‘This division applies if a person has submitted an ERMP to the administering authority for accreditation, whether or not the person was required to do so under section 92.

‘98 Request for further information

‘The administering authority may, by written notice, ask the person to give the authority further information or documents about the ERMP content requirements by the reasonable date stated in the notice.

‘99 Deciding whether to accredit

- ‘(1) The administering authority must decide to accredit or refuse to accredit the ERMP—
- (a) if additional information is not required—within 60 business days after receiving the ERMP; or
 - (b) if additional information is required—within 60 business days after the information is received or should have been given, whichever is earlier.
- ‘(2) The administering authority may decide to accredit the ERMP only if the authority is satisfied it complies with the ERMP content requirements.

‘100 Notice of decision

‘Within 10 business days after making the decision, the administering authority must give the person—

- (a) if the decision is to accredit—a written notice of the decision; or
- (b) if the decision is to refuse to accredit—an information notice about the decision.

‘101 Amended ERMP required if accreditation refused

- ‘(1) If the decision is to refuse to accredit, the person must—
- (a) amend the ERMP to address the reasons for the decision; and
 - (b) within 20 business days after receiving notice of the decision or of any extended period under subsection (2), give the administering authority the amended ERMP.

Maximum penalty—100 penalty units.

- ‘(2) The administering authority may extend the period of 20 business days mentioned in subsection (1).
- ‘(3) This division applies to the amended ERMP—
- (a) as if a reference to the ERMP were a reference to the amended ERMP; and
 - (b) with other necessary changes.

‘Division 4 Amendment of accredited ERMPs

‘102 Application of div 4

‘This division applies to a person carrying out an agricultural ERA for which there is an accredited ERMP.

‘103 Voluntary amendment

- ‘(1) The person may at any time—
- (a) amend the ERMP; and
 - (b) submit it to the administering authority for accreditation.
- ‘(2) Division 3 applies to the amended ERMP—
- (a) as if a reference to the ERMP were a reference to the amended ERMP; and

[s 6]

- (b) as if a reference to accreditation of an ERMP were a reference to accreditation of the amended ERMP; and
- (c) with other necessary changes.

'104 Direction to amend

- '(1) This section applies if the administering authority considers it is necessary or desirable to amend the ERMP—
 - (a) because it no longer complies with ERMP content requirements; or
 - (b) to improve the quality of water being discharged from the relevant agricultural property; or
 - (c) because the agricultural ERA the subject of the ERMP is causing or may cause unlawful environmental harm.
- '(2) The administering authority may give the person carrying out the agricultural ERA a written direction to—
 - (a) amend the ERMP in a stated way so as to comply with ERMP content requirements; and
 - (b) within 3 months submit it to the administering authority for accreditation.
- '(3) Divisions 1 to 3 apply—
 - (a) as if the direction were an ERMP direction; and
 - (b) as if a reference to an ERMP were a reference to the amended ERMP; and
 - (c) as if a reference to accreditation of an ERMP were a reference to accreditation of the amended ERMP; and
 - (d) with other necessary changes.

‘Division 5 Annual reporting

‘105 Annual reporting requirement

- ‘(1) This section applies to a person carrying out an agricultural ERA for which there is an accredited ERMP.
- ‘(2) The person must, within 2 months after the end of each financial year, give the administering authority an annual report in the approved form about the implementation of the ERMP unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.’.

7 Amendment of s 320 (Duty to notify environmental harm)

Section 320(2)—

insert—

‘(g) an accredited ERMP.’.

8 Amendment of s 346 (Effect of compliance with program)

Section 346(2) and (3)—

insert—

‘(f) an accredited ERMP.’.

9 Amendment of s 358 (When order may be issued)

Section 358(d)—

insert—

‘(x) an accredited ERMP.’.

10 Replacement of s 363A (Prescribed provisions)

Section 363A—

omit, insert—

[s 11]

‘363A Prescribed provisions

‘(1) This part provides for a direction notice to be issued for a contravention of any of the following (each of which is a *prescribed provision*)—

(a) section 440, 440Q or 440ZG;

Editor’s note—

section 440 (Offence of causing environmental nuisance), 440Q (Offence of contravening a noise standard) or 440ZG (Depositing prescribed water contaminants in waters and related matters)

(b) a provision of an accredited ERMP for an agricultural ERA.

‘(2) 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—

If there is a transitional environmental program for the activity, see section 346 (Effect of compliance with program).’.

11 Amendment of s 452 (Entry of place—general)

Section 452(1)(ca), after ‘to which’—

insert—

‘an agricultural ERA.’.

12 Amendment of s 458 (Order to enter land to conduct investigation or conduct work)

Section 458(1)(a)(iii)(A), after ‘an’—

insert—

‘accredited ERMP’.

13 Amendment of s 490 (Evidentiary provisions)

(1) Section 490(5)(a), after ‘report,’—

insert—

‘accredited ERMP’.

- (2) Section 490(5)(c), after ‘an’—

insert—

‘accredited ERMP’.

14 Amendment of s 493A (When environmental harm or related acts are unlawful)

- (1) Section 493A(5)—

renumber as section 493A(6).

- (2) Section 493A(4)—

omit, insert—

- ‘(4) The defendant is taken to have complied with the general environmental duty if the defendant proves—

(a) an accredited ERMP applied to the doing of the relevant act; and

(b) to the extent it is relevant, the defendant complied with the ERMP.

- ‘(5) The defendant is also taken to have complied with the general environmental duty if the defendant proves—

(a) an approved code of practice applied to the doing of the relevant act; and

(b) to the extent it is relevant, the defendant complied with the code; and

(c) no accredited ERMP applied to the doing of the relevant act.’.

15 Amendment of s 520 (Dissatisfied person)

- (1) Section 520(1)—

insert—

[s 16]

‘(aa) if the decision is to refuse to accredit an ERMP, the person who submitted it; or’.

- (2) Section 520(1)(f), after ‘an’—

insert—

‘ERMP direction,’.

16 Amendment of s 538 (Appeals may be heard with planning appeals)

- (1) Section 538(1)(a), after ‘registration certificate’—

insert—

‘or to accredit an ERMP’.

- (2) Section 538(1)(b), ‘which the certificate’—

omit, insert—

‘which the certificate or the ERMP’.

17 Amendment of s 540 (Required registers)

- (1) Section 540(1)(e) to (t)—

renumber as section 540 (1)(f) to (u).

- (2) Section 540(1)—

insert—

‘(e) in relation to chapter 4A—

- (i) ERMP directions; and
- (ii) accredited ERMPs;’.

18 Insertion of new ch 13, pt 13

Chapter 13—

insert—

‘Part 13 Transitional provisions for Great Barrier Reef Protection Amendment Act 2009

‘657 Deferral of automatic ERMP requirement for existing agricultural ERAs

‘Section 88(a) does not apply to an agricultural ERA carried out before the commencement of this section until 6 months after the commencement.

‘658 Provision for appeals for ch 4

‘The *Great Barrier Reef Protection Amendment Act 2009*, section 19(2) is taken to have had effect from 23 February 2009.’.

19 Amendment of sch 2 (Original decisions)

- (1) Schedule 2, part 1, division 2—
omit, insert—

‘Division 2 Decisions under chapter 4A

Section	Description of decision
89	decision to give ERMP direction
99	decision to refuse to accredit ERMP’.

- (2) Schedule 2, part 2—
insert—

[s 20]

‘Division 1A Decisions under chapter 4

Section	Description of decision
73E	refusal to grant an application for registration
73F	refusal to grant a single registration certificate
73FA	decision to cancel a single registration certificate for activities and issue 2 or more registration certificates for the activities
73L	decision to cancel or suspend registration
73O(3)	decision to refuse surrender of registration certificate’.

- (3) Schedule 2, part 2, division 3—
relocate and *renumber* as schedule 2, part 1, division 3A.

20 Amendment of sch 4 (Dictionary)

- (1) Schedule 4—
insert—
‘accredited, for an ERMP, see section 77.
agricultural chemicals see section 77.
agricultural ERA means—
(a) generally—an agricultural ERA as defined under section 75; and
(b) for chapter 4A, part 3—see also section 87A.
agricultural ERA record see section 83(1)(a).
agricultural property see section 77.
carries out, an agricultural ERA, see section 76.
cattle see section 77.
ERMP see section 77.

ERMP content requirements see section 92(a).

ERMP direction see section 88(b).

optimum amount, for the application of nitrogen and phosphorus to soil on an agricultural property, see section 77.

over-fertilisation, of an agricultural property, see section 77.

priority catchment see section 75(1)(b).

production requirement see section 85(1).

reef see section 77.

relevant agricultural property see section 77.

relevant primary documents, for an agricultural ERA record, see section 84(2).

sugar cane growing see section 77.’.

- (2) Schedule 4, definition *chapter 4 activity*, ‘a mining activity or a chapter 5A activity’—

omit, insert—

‘an agricultural ERA, a mining activity or a chapter 5A activity’.

- (3) Schedule 4, definition *contaminated land register*, ‘section 540(1)(f)(ii)’—

omit, insert—

‘section 540(1)(h)(ii)’.

- (4) Schedule 4, definition *environmental management register*, ‘section 540(1)(f)(i)’—

omit, insert—

‘section 540(1)(h)(i)’.

- (5) Schedule 4, definition *recipient*, paragraph (c)—

omit, insert—

‘(c) for an ERMP direction, direction notice, clean-up notice or cost recovery notice—the person to whom the direction or notice is issued; or’.

-
- (d) a mobile and temporary environmentally relevant activity.’.

24 Amendment of sch 10 (Dictionary)

- (1) Schedule 10—

insert—

‘*agricultural ERA* see the *Environmental Protection Act 1994*, section 75.’.

- (2) Schedule 10, definition *specified activity*, paragraph (c), ‘a mining activity’—

omit, insert—

‘an agricultural ERA, a mining activity’.

Part 4 Amendment of Sustainable Planning Act 2009

25 Act amended

This part amends the *Sustainable Planning Act 2009*.

26 Amendment of s 10 (Definitions for terms used in development)

Section 10(1), definition *material change of use*, paragraph (b), after ‘, other than for’—

insert—

‘an agricultural ERA under the *Environmental Protection Act*, section 75.’.