

Great Barrier Reef Protection Amendment Bill 2009

Explanatory Notes for Amendments to be moved during consideration in detail by the Honourable Kate Jones MP

Short title

The short title of the Bill is the Great Barrier Reef Protection Amendment Bill 2009

Objectives of the Amendments

The objectives of the amendments are to amend the –

Chemical Usage (Agricultural and Veterinary) Control Act 1988 to:

- Ensure that the restricted use of unregistered chemicals allowed by the Act includes the requirement to comply with prescribed chemical controls;
- Provide a clear power to prescribe chemical controls by regulation for chemical products used for agricultural environmentally relevant activities;
- To provide a maximum penalty of 100 penalty units, for non compliance with prescribed chemical controls, which is equivalent to the level of similar penalties in the *Environmental Protection Act 1994* (“the EPA”).

Environment Protection Act 1994 to:

Change the threshold for cattle grazing activities captured under the Bill to agricultural properties of more than 2000ha.

Sustainable Planning Act 2009 to:

Amend the definition of ‘material change of use’ to ensure that agricultural ERAs are not unintentionally captured by the *Sustainable Planning Act 2009*.

Reasons for the Objectives

As the legislative amendments necessary for the Reef Protection Package involve primary and subordinate legislation in two [2] separate portfolios it was realised at a late stage that amendments to the *Chemical Usage (Agricultural and Veterinary) Control Act 1988* were necessary to ensure an effective interface between the relevant legislative instruments. For that reason a new offence provision (100 penalty units) will be inserted to reflect the level of similar penalties in the *Environmental Protection Act 1994*.

For the same reason an amendment is necessary to provide a clear power to prescribe chemical controls to assist the objectives of the new provisions in the *Environmental Protection Act 1994* which are intended to protect the Great Barrier Reef.

The *Chemical Usage (Agricultural and Veterinary) Control Act 1988* currently allows the continued use for 2 years of unregistered chemicals from the date registration is not continued due to a decision by the producer of a chemical product not to pay the Australian Pesticides and Veterinary Medicines Authority annual registration fee. One of the conditions of the continued use is that the user complies with label instructions which would have applied if the product was still registered. It is necessary to amend the Act to make compliance with prescribed chemical conditions a further condition for the use of unregistered chemical products. Without the amendment the use of unregistered chemical products could continue for 2 years without the need to comply with the proposed prescribed use controls.

An amendment to the Bill is necessary to limit the scope of new chapter 4A (Great Barrier Reef protection measures) by changing the definition of an 'agricultural ERA' to cattle grazing carried out on agricultural properties of more than 2000ha.

An amendment to the *Sustainable Planning Act 2009* is necessary to prevent unintentional capture of agricultural ERAs by the *Sustainable Planning Act 2009*.

Consistency with Fundamental Legislative Principles

The amendments do not conflict with Fundamental Legislative Principles.

Consultation

The amendments are either technical in nature or are of a regulatory nature in respect of which consultation is not necessary.

Notes on Provisions

1 Amendment of long title

Clause 1 of the amendments to be moved during consideration in detail amends the long title of the *Great Barrier Reef Protection Bill Amendment 2009* to reflect the fact that the Bill also amends the *Chemical Usage (Agricultural and Veterinary) Control Act 1988*, the *Integrated Planning Act 1997* and the *Sustainable Planning Act 2009*.

2 Insertion of new part 1A Amendment of Chemical Usage (Agricultural and Veterinary) Control Act 1988

Clause 2 of the amendments to be moved during consideration in detail inserts new part 1A, and new clauses 2A, 2B, 2C, 2D and 2E into the Bill.

Act amended

Clause 2A states that new part 1A of the Bill amends the *Chemical Usage (Agricultural and Veterinary) Control Act 1988*.

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

Clause 2B inserts new subdivision 1 into part 2, division 3 of the *Chemical Usage (Agricultural and Veterinary) Control Act 1988* and inserts as a consequential amendment a new heading for subdivision 2 (Subdivision 2 General Provisions) in part 2, division 3 of the Act. New subdivision 1 (Preliminary) provides definitions for division 3 of the Act.

New section 12W Definitions for div 3

New section 12W of the *Chemical Usage (Agricultural and Veterinary) Control Act 1988* contains definitions which ensure consistency with the

definitions in the *Environmental Protection Act 1994* so that chemical controls prescribed for the use of chemical products apply for the purpose of Environmentally Relevant Activities in the *Environmental Protection Act 1994*.

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

Clause 2C inserts new sub paragraph (3)(e) into subsection 13A(3) of the *Chemical Usage (Agricultural and Veterinary) Control Act 1988* to make the permitted use of unregistered chemicals subject to compliance with prescribed chemical controls. Without this amendment a person could use unregistered chemicals within the sanctioned 2 year period without the need to comply with chemical controls prescribed for the purpose of protecting the Great Barrier Reef.

Insertion of new pt 2, div 3, sdiv 3

Clause 2D inserts new subdivision 3 (Subdivision 3 Great Barrier Reef protection measures) into part 2, division 3 of the *Chemical Usage (Agricultural and Veterinary) Control Act 1988*.

New section 13C (Prescribed agricultural ERA products and conditions)

New section 13C of the *Chemical Usage (Agricultural and Veterinary) Control Act 1988* is a regulation making power which allows chemical product use controls to be prescribed for a chemical product which has been declared a prescribed agricultural ERA product. Section 13C is only available where the Minister considers a regulation is desirable or necessary to support the purposes of the Great Barrier Reef protection measures under Chapter 4A of the EPA. Subsection (3) makes it clear that prescribed chemical controls can apply to the use of unregistered chemical products - such as in new sub paragraph 13A(3)(e) mentioned above.

New section 13D (Compliance with prescribed agricultural ERA condition)

New section 13D of the *Chemical Usage (Agricultural and Veterinary) Control Act 1988* requires that a person who uses, prepares, stores or possesses a chemical product, which is prescribed as an agricultural ERA

product for carrying out an Environmentally Relevant Activity, must comply with any prescribed conditions.

The only exception to the requirement operates where a person has an accredited Environmental Risk Management Plan and that ERMP specifies an alternative way of helping to achieve the purpose of chapter 4A of the *Environment Protection Act 1994*. The purpose of chapter 4A is to reduce the impact of agricultural activities on water quality in the reef and to help meet water quality targets agreed between the State and the Commonwealth.

A person undertaking an agricultural ERA may be required to prepare an ERMP that addresses chemical management issues or may voluntarily prepare an ERMP for the purposes of this section. A voluntarily prepared would not need to address all hazards on the property (i.e. it would not be a full ERMP). Although it must address each element of the ERMP content requirements in section 94 of the *Environment Protection Act 1994* (inserted by clause 6 of this Bill), it will be a simpler ERMP which may be limited to the potential hazards related to the prescribed agricultural ERA products (currently Diuron, Atrazine, Ametryn, Hexazinone and Tebuthiuron) and the way in which the hazards are managed as an alternative to any or all of the prescribed agricultural ERA condition/s. For instance the ERMP under this section may include a combination of:

- (1) the prescribed agricultural ERA conditions; and
- (2) alternate methods to achieving other prescribed agricultural ERA conditions.

Reporting under the annual reporting requirement in section 105 of the *Environment Protection Act 1994* (inserted by clause 6 of this Bill) for this ERMP will only apply to those elements specified under paragraph 2 above.

New section 13E (Use etc. of registered agricultural ERA products for agricultural ERAs)

New section 13E of the *Chemical Usage (Agricultural and Veterinary) Control Act 1988* is the offence provision for the requirement in section 13D and provides a maximum penalty of 100 penalty units which is comparable to similar provisions in the *Chemical Usage (Agricultural and Veterinary) Control Act 1988* and in the *Environment Protection Act 1994*.

The effect of new subsection 13E(2) is to allow permits to be issued as authorised by the Agvet Code.

Amendment of schedule (Dictionary)

Clause 2E inserts cross references in the schedule to the *Chemical Usage (Agricultural and Veterinary) Control Act 1988* to the definition of 'agricultural ERA' in the *Environment Protection Act 1994* and to definitions located in section 12W (Definitions for div 3).

3. Amendment of clause 6 (Insertion of new ch 4A)

Clause 3 of the amendments to be moved during consideration in detail amends clause 6 of the Bill which inserts the definition of 'agricultural ERA' in new section 75(1)(a)(ii). The Bill currently defines an agricultural ERA to include cattle grazing carried out on an agricultural property carrying more than 100 standard cattle units. This threshold was intended to ensure that low risk activities were not captured by the regulatory net. However the existing threshold inadvertently captures cattle grazing for dairying and coastal pasture grazing. Scientific advice now indicates that these activities generally pose a significantly lower risk to reef water quality than dry land grazing as the maintenance of pasture cover reduces the sediment run off from these properties.

However, in the event that the smaller activities excluded by the new threshold for cattle grazing are found in the future to pose a risk to water quality entering the Reef, the Minister will retain the power to issue an ERMP direction under section 89 of the Bill for properties over 100 standard cattle units.

Changing the threshold to agricultural properties of more than 2000ha will effectively exclude low risk cattle grazing properties from the operation of new chapter 4A.

4. Amendment of clause 6 (Insertion of new ch 4A)

Clause 4 of the amendments to be moved during consideration in detail is consequential to the amendment made by Clause 3 of the amendments to be moved during consideration in detail, which makes the definition of 'standard cattle units' and the associated calculation table unnecessary in this Part of the Bill.

5. Amendment of clause 6 (Insertion of new ch 4A)

Clause 5 of the amendments to be moved during consideration in detail amends the definition of cattle to capture only beef cattle. This is because scientific evidence indicates that cattle grazing on dairy farms generally poses a significantly lower risk to reef water quality than dry land beef cattle grazing as the maintenance of pasture cover reduces the sediment run off from these properties.

6. Amendment of clause 6 (Insertion of new ch 4A)

Clause 6 of the amendments to be moved during consideration in detail amends clause 6 of the Bill by replacing the term ‘optimum rate’ in new section 82 with the term ‘optimum amount’ to ensure consistency with the definition of ‘optimum amount’ in new section 77 (Other definitions for ch 4A).

7. Amendment of clause 6 (Insertion of new ch 4A)

Clause 7 of the amendments to be moved during consideration in detail removes the requirement for persons undertaking cattle grazing to keep records on stocking rates under new section 83. The majority of cattle grazing properties regulated in the Bill will be required to prepare environmental risk management plans, which will duplicate these requirements. Accordingly, the requirement for general record keeping is not required.

8. Amendment of clause 6 (Insertion of new ch 4A)

Clause 8 of the amendments to be moved during consideration expands the operation of Part 3 of the Bill by including an expanded definition of agricultural ERA for the purposes of this Part. Cattle grazing properties over 2000ha are already regulated as agricultural ERAs. This amendment will enable the Minister to give an ERMP direction under section 89 for any cattle grazing property over 100 standard cattle units in the regulated catchments, which would not otherwise be regulated as they are under 2000 hectares. However, these cattle grazing properties over 100 standard cattle units but below 2000 hectares will not otherwise be regulated by the provisions of the Bill. The definition of standard cattle unit is also included in this section.

9. Clause 24 (Amendment of sch 10 (Dictionary))

Clause 9 of the amendments to be moved during consideration in detail amends the definition of ‘agricultural ERA’ consequent to clauses 3 and 8 of the amendments to be moved during consideration in detail.

10. Insertion of new part 4 Amendment of Sustainable Planning Act 2009

Clause 9 of the amendments to be moved during consideration in detail inserts new part 4, and new clauses 25 and 26 into the Bill.

Act amended

Clause 25 of the Bill states that new part 4 of the Bill amends the *Sustainable Planning Act 2009*.

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

Clause 26 of the Bill amends the definition of ‘material change of use’ in section 10 of the *Sustainable Planning Act 2009* to ensure that agricultural ERAs are not captured by the Act. Clause 26 mirrors the amendment made by clause 22 to the *Integrated Planning Act 1997* in the Bill because the commencement date for the *Sustainable Planning Act 2009*, which will repeal the *Integrated Planning Act 1997*, is at this point uncertain.

The amendments to schedule 8 and schedule 10 of the *Integrated Planning Act 1997*, which are in clauses 23 and 24 of the Bill, are not needed to the *Sustainable Planning Act 2009*. This is because schedule 8 of the *Integrated Planning Act 1997* will be in the regulation to the *Sustainable Planning Act 2009* and is not contained in the Act itself, and the definition of ‘agricultural ERA’ in schedule 10 of the *Integrated Planning Act 1997* has been incorporated into this clause.