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Commissioner
Queensland Productivity Commission
PO Box 12078
GEORGE STREET QLD 4003

By email:: enquiry@qpc.qld.gov.au

Impact of the Australian Government's 2025 environment protection reforms on Queensland

Kalamia Cane Growers Organisation Limited (**KCGO**) represents sugar cane growers who supply Wilmar Sugar's four mills in the Burdekin and is a bargaining representative pursuant to section 33(3) of the *Sugar Industry Act 1999* (Qld) (**SI Act**).

90,000 hectares of agricultural land in the Burdekin, of which some 84,000 hectares utilised for sugarcane, falls within the catchment of the Great Barrier Reef Marine Park and the Bowling Green Bay Ramsar wetlands, both being defined as "protected matters" in the draft National Environmental Standards on Matters of National Environmental Significance (**MNES**).

The location of the Burdekin triggers concerns regarding likely impact of the reform package to the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (**EPBC Act**) on current sugarcane farming practices.

As the reform package is coming into force in stages, some aspects having not been finalised (for example, the proposed National Environmental Standards and Policy Position/guidelines) and some have only commenced on 1 July 2026 (for example, the role of Environmental Information Australia and National Environmental Protection Agency), the comments below are preliminary in nature and highlight areas of concern or uncertainty in interpreting very complex legislative changes.

Matters of Concern

Robustness of section 43B:

The reform package to the EPBC Act will be unlikely to impact existing sugarcane growers in the Burdekin, with growers relying upon section 43B of the EPBC Act "continue use" provisions, assuming no change in circumstances. However, this will obviously be subject to how robust section 43B protection stands against the interpretation of, and the interaction between, the reform package legislation, any regulations likely to be made to outline the application of each MNES standards and the proposed guidelines referred to in the draft policy documents.[1]

The ambiguity comes from interpreting whether the activities on the land have, since the introduction of the EPBC Act in July 2000:

- Expanded;
- Intensified;
- Changed location; or

- Nature of use;
resulting in substantially greater impact. [2]

If the farming activities fall within the above, then there is no exemption granted via section 43B of the EPBC Act and thus the grower will have to be able to demonstrate that the activity will have an impact below a level that is “significant”. [3]

The Department, in relation to published material, [4] interprets “continuous use” as:

- Interchanging cropping activities without substantially increasing their impact;
- Applying fertiliser at a regular interval without intensifying the use of land;
- Maintaining drainage channels through routine clearing of the channels, but must be outside of drainage lines in the GBR catchment area;
- Continuing weed control methods without increasing cultivated land or intensifying its impact;
- Maintaining existing dams, pumps, troughs and pipes;
- Desilting existing dams and water channels outside of drainage channels within the GBR catchment area.

Uncertainty in interpreting likely implications from the reform package to the EPBC Act is best explained by posing questions, such as:

1. Does changing use of land from avocado or mango plantations to sugarcane trigger intensified land use, because of an increase in cultivation, water, nutrients and herbicides to control weeds?
2. Similarly, growing a rotational or fallow crop (for example, corn) which requires significantly higher amounts of nitrogen than sugarcane, equate to “intensified land use”?
3. Should the section 43B exemption not apply, how does the grower know whether the activity will have an impact below a level that is significant? For example, can the grower rely upon the ERA standard for sugarcane pursuant to the *Environmental Protection Act 1994* (Qld) (**EP Act**) to demonstrate that the activity is below a level that is significant?
4. If the farm borders a drain or watercourse within the 50 m designated zone, to what extent will this impede a grower’s ability to manage weeds that are not declared or noxious weeds under the *Biosecurity Act 2014* (Qld)? For example, wild sorghum, vines and itch grass are not restricted matters pursuant to the *Biosecurity Act 2014* (in contrast with hymenachne (refer to schedule 1A of *Biosecurity Regulation 2016* (Qld) which is) but still have an enormous capacity to damage drains, waterways, channels and watercourses and spread throughout the farming landscape, interfering with productivity.

The above questions merely demonstrate that the reform package to the EPBC Act is likely to have a reach that has not been anticipated or intended. The issues then become:

- (a) How does the Commonwealth Government manage and respond to such circumstances?
- (b) How are growers informed of their obligations under these reforms?
- (c) What is the cost, in time, energy and resources, to the grower to achieve compliance?
- (d) Will compliance be achieved via a self-assessment tool or require a referral to the Minister?

Cost of Compliance:

Of concern is the manner in which the Regulatory Impact Statement [5] assesses the likely cost of compliance, which is based upon the delay costs for projects. In relation to agricultural industries it will likely include the cost of seeking expert assistance in understanding the grower’s obligations, then completing the application process and should also take into account whether there will be any impact on productivity.

Agriculture is essential to support all regional Queensland communities, including the Burdekin. The Burdekin's agricultural industry has an estimated export value of \$837 million [6], generating local jobs (directly and indirectly) of 8,198. [7]

The reform package lacks a balance between social and economic interests and that of the wellbeing and economic viability of regional communities dependent upon viable agricultural industries.

Matters of National Environmental Significant Standards (MNES):

MNES standards are confusing to interpret.

For example, Principle 1 subsection (2) provides:

Step 1 - Avoidance

"To the extent possible, any significant impacts of an action, or class of actions, on a protected matter should be avoided through the design of the action or class of actions."[8]

The issue then becomes how to interpret a person's obligations? For example:

1. What does "to the extent possible" mean?
2. If a grower complies with his/her obligations prescribed by the ERA standard, will this satisfy "to the extent possible"?
3. Does an individual grower's farming practice (particularly application of nitrogen or herbicides or pesticides) equate to "significant impacts" on the GBR Marine Park?
4. Does the person's financial capacity to change farming practices or the likely impact on the viability of the activity by changing farming practices factor into interpreting "to the extent possible"?

Whilst the above example may very well be ridiculous or too simplistic, it does highlight the uncertainty created by the MNES standards, particularly if there is a change in use or intensity of land use that excludes reliance upon section 43B of the EPBC Act. It is certainly unclear as to, in practical terms, how to satisfy this requirement. What does this mean for the manner in which everyday activities are conducted on sugarcane farming enterprises? Words in legislation such as "to the extent possible" shift the burden on to, in this case, individual growers, to determine whether the activity remains exempt or requires steps (outside of or in addition to the ERA standard) to determine, for example, that the activity can proceed or needs approval.

Growers, already burdened with the high costs of compliance with the ERA standard, [9] are unlikely to be able to wear further regulatory compliance costs. It is therefore of concern that the Commonwealth Government has failed to clearly identify the impact on individuals and specific industries to comply with the reform package.[10]

Recognition of Environmental Protection Act 1994 and Regulations (Qld)

Sugarcane farming practices are already regulated by:

1. The provisions of the EP Act and Regulations, notably the Agricultural ERA standard for sugarcane **(ERA standard)**;
2. *Chemical Usage (Agricultural and Veterinary) Control Act 1988* and Regulation (2017) (Qld); and
3. Australian Pesticides and Veterinary Medicines Authority (APVMA) labelling for products supplied (for the control of pests and weeds) and the label includes, amongst other things, directions for use (time of use, nozzle size, spray drift etc).

The ERA standard prescribes farming practices such as:

1. The application of fertiliser;
2. The maximum amount of fertiliser (nitrogen and phosphorus), and the manner in which the amount is calculated, that can be applied to the crop;
3. Measures to minimise soil and sediment movement;
4. A requirement to review the amount of fertiliser that can be applied to the crop; and

5. Requirements to record certain activities, including application of fertiliser.

The EP Act and Regulations prescribes obligations for those persons carrying out sugarcane cultivation in the GBR, as well as general environmental duties (for example, refer to section 319 of the EP Act) that includes:

- The nature of the harm or potential harm of the activity;
- The sensitivity of the receiving environment;
- The current state of technical knowledge for the activity; and
- The likelihood of successful application of different measures to prevent or minimise environmental harm that might be taken.

Sugarcane cultivation is, at the State level, subject to extensive regulation that is devised to minimise harm to watercourses, the GBR marine park and improve water quality.

Important Conclusion: It is important that the Queensland Government seeks recognition from the Commonwealth Government that compliance with the ERA standard and the provisions of the EP Act and Regulations satisfies all statutory obligations pursuant to the reform package of the EPCB Act. This would remove the scenario where growers are potentially being audited and prosecuted for any alleged breach under both State and Commonwealth legislation. From a cursory review of the reform package of the EPCB Act (which is very extensive) it appears possible that a grower could offend both State and Commonwealth obligations for the same or series of events.

Sugarcane cultivation, as opposed to agricultural activities that are not subject to such stringent regulation, should therefore be distinguished and the practices accredited at by the Commonwealth Government. Accreditation of existing regulations pursuant to the EP Act would remove all uncertainty over compliance and, in all the circumstance, is sensible.

Environmental Information Australia (EIA) v. Reef Report Cards

The EIA is a newly created agency tasked with collecting high quality environmental data and information via a “State of Environment” report every two years.

The GBR Marine Park is already subject to significant scrutiny with water testing for nutrients, chemicals and sediment loads, all of which is reported in “Reef Report Cards” which measures progress towards the Reef 2050 Water Quality Improvement Plan.

This raises queries regarding the role of the EIA in collecting data associated with the GBR Marine Park (as a protected matter in the MNES standards). For example:

1. Will the EIA rely upon the data already being collected and reported in the Reef Report Cards?
2. Will the EIA’s conclusions be identical to the Reef Report Cards in relation to water quality in the GBR Marine Park?
3. The State of Environment report will be utilised by the Minister to specify environmental targets to be achieved and the time to achieve them. How will this influence the objectives in the Reef 2050 Water Quality Improvement Plan?

EP Act (Qld) v. Reform Package to EPBC Act

There is much discussion around whether the Queensland sugar industry is likely to transition into a biofuels/bioenergy industry, and the industry is looking at opportunities to expand. With the proposed extension of the Burdekin Falls Dam wall by some 2 metres, this would substantially increase the availability of water for use in agriculture. It is enticing to envisage sugarcane expanding, for example, south of Inkerman, for a new mill to produce ethanol or Sustainable Aviation Fuel.

If development such as above was to occur, what is unclear is the interaction between the provisions in the EP Act, particularly GBR water quality offset requirements [11] and the *Environmental Offsets Act 2014* (Qld) and the reform package to the EPBC Act.

Whilst section 109 of the Commonwealth Constitution dictates that the EPBC Act overrides the EP Act in relation to any inconsistency, however, it potentially means the sugar industry (millers and growers) would have to satisfy both as there are likely to be different requirements, rather than one overruling the other. The issue then is, is this reasonable and sensible in all the circumstances?

It is however noted that the Commonwealth Government has published draft regulations, which amongst other provisions, seeks to reduce duplication of environmental assessments. This will be dependent upon achieving accreditation under bilateral agreements or Commonwealth accreditation declarations. Please note this is a very preliminary comment given that the consultation period for subordinate legislation (*Environment Protection and Biodiversity Conservation Amendment (2026 Measures No. 1) Regulation 2026*) (Cth) only closed in June 2026.

There should be clarity in relation to how Queensland and Commonwealth environment obligations marry to insure there is certainty for farming practices in the sugar industry, insuring no duplication of obligations.

Communication

With the passage of the *Environmental Protection (Great Barrier Reef Protection Measures) and other Legislation Amendment Act 2019* (Qld) that amended the EP Act and ERA standard, it became clearly evident that growers generally had little understanding of their obligations in the EP Act pre-amendments.

A Queensland compliance officer made the comment (in the writer's presence) or words to the effect that "*growers should be aware of their obligations as the EP Act came into existence in 1994 and they had more than adequate time to become knowledgeable*". Unfortunately this attitude fails to understand that primary producers are not sedentary office workers, sitting at a desk all day, reviewing updates on government websites. Assuming any growers were apprised of their obligation pursuant to the EP Act pre 2019 amendments (thereafter the Queensland Department of Environment undertook a regiment of information sessions for growers), legislation is very difficult to interpret, and certainly, without legal advice, to ascertain its meaning.

It is beyond unreasonable to assert that merely the passage of legislation is how primary producers should become aware of changes in legislation, particularly legislation as complex as the reform package to the EPBC Act. All governments should be tasked with, and obligated to, properly inform and explain to the community, in this case primary producers, of such legislative changes.

Information sharing, education sessions and government representatives attending regional agricultural communities for ease of access, should be a priority. It would be advantageous for the Queensland Government to advocate that the Commonwealth Government should attend to educating primary producers on the operation of the reform package to the EPBC Act, particularly informing primary producers when it is necessary to act rather than assuming that all have acquired this knowledge by osmosis.

Conclusion

KCGO is not proposing to hold any special knowledge in relation to the reform package to the EPBC Act. The comments made in this submission are merely to highlight the level of uncertainty that exists and concerns regarding whether there is likely to be any indirect, direct or immediate impact on current sugarcane farming practices.

Further, it is reiterated that there is already a high regulatory burden on sugarcane growers with complying with the EP Act and Regulations. It is vitally important that any further regulatory burden is minimised by eliminating duplication and the Commonwealth Government should publish a very easy to read guidebook (in plain English), with practical examples that demonstrate how the reform package is to be interpreted and applied to all different primary industries, including sugarcane. The guidelines must be fit for purpose, and not generic. Generic guidelines will simply complicate how the reform package should be interpreted and applied.

Primary producers are very good stewards of their land and surrounding landscape. What primary producers require is a reasoned, practicable and workable approach to balancing environment objects and economic viability.

Please do not hesitate to contact the writer (contact details above) should you wish to discuss any matters raised in this submission. We are also willing to be involved in the next stage of the consultation process should this be required.

Yours faithfully

KALAMIA CANE GROWERS ORGANISATION LIMITED

Julie Artiach

IN-HOUSE SOLICITOR

Endnotes

- [1.] Department of Climate Change, Energy, the Environment and Water, *DRAFT Policy Position: National Environmental Standard for Matters of National Environmental Significance*, Canberra; and Department of Climate Change, Energy, the Environment and Water, *DRAFT Policy Position: National Environmental Standard for Environmental Offsets*, Canberra.
- [2.] Department of Climate Change, Energy, the Environment and Water, *Agricultural action exemptions*, Canberra, published on department's website.
- [3.] Ibid.
- [4.] Ibid.
- [5.] Department of Climate Change, Energy, the Environment and Water, *Environmental Law Reform: Certification of Final Report of the EPBC Act Review – Addendum to the Final Report*, Canberra, published on department's website.
- [6.] Burdekin Shire Council, Annual 2024/25 Report, Ayr, p.4.
- [7.] Ibid.
- [8.] Department of Climate Change, Energy, the Environment and Water, *DRAFT Policy Position: National Environmental Standard for Matters of National Environmental Significance*, Canberra.
- [9.] Regulatory Impact Statement for the *Environmental Protection (Great Barrier Reef Protection Measures) and Other Legislation Amendment Bill 2019*, Brisbane.
- [10.] Department of Climate Change, Energy, the Environment and Water, *Environmental Law Reform: Certification of Final Report of the EPBC Act Review – Addendum to the Final Report*, Canberra, published on department's website.
- [11.] Part 5A of the EP Act.