Environment Protection (Water Quality) Policy 2012 and explanatory report

Issued January 2013

EPA 995/13: This information sheet explains the proposed changes to the current Environment Protection (Water Quality) Policy 2003 which are subject to the statutory process required by section 28 of the Environment Protection Act 1993.

Introduction

Water quality in South Australia is protected by the *Environment Protection Act 1993* (EP Act) and the environment protection policies made under it. The *Environment Protection (Water Quality) Policy 2003* (WQ EPP 2003) provides the most specific and detailed protection of the state's surface, marine and underground water sources.

In its last nine years of operation the WQ EPP has provided the structure for the regulation and management of waters. It is a flexible document that allows values to be changed without undue delay and creates specific controls to deal with particular situations. It is also used regularly by local councils as part of their general stormwater management programs.

The policy regulates both specified activities and diffuse sources of pollution by calling up a range of codes of practice which have legal effect through the policy. The codes are formally recognised as another tier in the statutory enforcement and compliance scheme.

Based on past experience, it is now timely to consider the policy's effectiveness and reviewing some of its central clauses. The key question in considering any possible amendments is 'will they lead to a better environmental outcome overall?'. In particular, the changes proposed will create requirements that deal with water quality in a more flexible way, in some cases replacing mandatory requirements with defined and measurable targets enforceable by environmental protection orders, while at the same time being adaptable enough to allow for an active program of continuous improvement. Other changes will correct anomalies, reflect current practices and make the policy easier to navigate.

In December 2008 a discussion paper setting out options for the review of the WQ EPP was released by the EPA. Prescribed bodies and other interested parties were individually notified by letter and an advertisement was also placed in *The Advertiser*. The discussion paper canvassed the following possible changes for the WQ EPP:

- substituting the mandatory provision in clause 13 with a general statutory duty enforceable via an environment protection order (EPO)
- making the mixing/attenuation zone requirements in clauses 14 and 15 less prescriptive, should clause 13 remain a mandatory provision
- tightening the water quality criteria in Schedule 2 in line with national standards

- substituting the mandatory provisions in clauses 17 and 19 with a general statutory duty but only insofar as the clauses relate to listed wastes, ie wastes listed in Part B of Schedule 1 of the Act (*not* the other pollutants to which the clauses apply)
- broadening the current provisions relating to wastewater lagoons and enforcing the required standards through a code of practice.

The proposed changes to the WQ EPP described in this explanatory paper reflect the issues that were raised in the discussion paper. There are also issues not covered in the paper that were either raised in submissions or were subsequently identified by the EPA as desirable or consequential to other changes. Given the policy is under review, there is opportunity to make the policy clearer and more succinct through a significant restructure.

The process of amending the WQ EPP

The proposed changes outlined in this explanatory report are subject to the statutory process required by section 28 of the EP Act. This section outlines consultation requirements for amending an environment protection policy and the decision-making powers of the Minister.

An amendment of this type, following consultation and approval by the Minister, is required by section 30 of the EP Act to be referred to the Environment, Resources and Development Committee of Parliament and both Houses of the Parliament for review and possible amendment or disallowance.

Overview of the proposed amendments

Application of the WQEPP

The current policy (via clause 4) applies to surface (marine, creeks and rivers) and underground waters. It also includes water within a public stormwater disposal system or irrigation drainage channel. But it does *not* include water within the pipes and tanks of a water reticulation system; water within a sewage system or wastewater management system; water within a closed tank constructed of or lined with material impervious to water; and swimming pool water. The following amendments are proposed in the draft revised policy.

Salt interception schemes (SIS)

It is proposed to exclude salt interception scheme (SIS) water within a pipe from the operation of the WQ EPP, but continue to apply the policy to its final discharge into an evaporation basin, where the basin forms a permanent or mainly permanent body of water.

The reasoning for this amendment is to accommodate the use of this saline water by aquaculture businesses, which may then seek to dispose of the water back into the SIS pipe with some amount of nutrients incorporated. Access to the water from these schemes (and any subsequent discharge back to the scheme) is managed by SA Water. This provides for significant control as to the amount of water taken from the scheme and the quality requirements of discharges back into the system, and the overall impact that this may have on the receiving waters (generally evaporation basins).

Catchment management infrastructure

It is proposed to broaden the definition of ‘public stormwater system’ to ensure that catchment management infrastructure such as detention basins and artificial wetlands are included, as well as further clarifying that any public infrastructure for the purpose of collecting, treating or conveying stormwater is part of the public stormwater system.

This amendment will ensure that discharges from public catchment management infrastructure are excluded from the policy and that further clarification that discharging waste or a pollutant to a street or gutter (being part of the drainage network) is considered a discharge to waters under the policy.

Protective water quality criteria and a general duty

The current policy establishes an offence (clause13) where a person discharges or deposits a pollutant into any waters, causing the applicable water quality criteria established in Schedule 2 to be exceeded.

It is proposed to change this obligation from a mandatory requirement to a general duty which will require a person who discharges or deposits a pollutant into any waters to take 'all reasonable and practicable measures' to ensure that 'any of the water quality criteria applicable to those waters are met'. The obligation can be enforced where necessary by the issuing of an environment protection order (EPO) to give effect to the provisions of the WQ EPP and to prevent, limit or otherwise control any discharge or deposit which pollutes or might pollute the environment.

Compliance with this part of the policy for EPA licensed activities can also be achieved through licence management, including the use of licence conditions. Should a particular activity be better managed through specific mandated water quality criteria, it is still possible to do so for a licensed activity as a condition of licence where the criteria are as stringent, or more stringent than the policy.

In accordance with this change the applicable criteria will be tightened to reflect national guidelines that protect environmental values and will form the basis for an effective continuous improvement approach to reduce discharges into waters to the greatest extent achievable.

The discussion paper made the point that the water quality criteria in the current policy are more generous than desirable and do not adequately protect the state's waters. Current thresholds, in some cases are up to an order of magnitude higher than those necessary to provide adequate protection and in many cases exceed the national guidelines (ANZECC 2000[1]).

The need for tightening of these criteria is evident in the Adelaide coastal waters. The Adelaide Coastal Waters Study (ACWS) identified nitrogen pollution as the primary cause of the loss of thousands of hectares of seagrasses along the Adelaide coastline. The ACWS indicated that nitrogen pollution loads discharged into these waters needed to be reduced by about 75% in order to protect the seagrass beds[2]. Yet the average nitrogen concentrations in these waters comfortably meet the current criteria, but do not adequately protect environmental values.

By comparison to the South Australian position, interstate thresholds (which are set as non-mandatory targets) are far lower and are regarded as goals to be moved towards and achieved through a range of administrative options.

This proposed change was canvassed in the discussion paper and was generally supported. The new approach will allow the EPA to treat every matter on the basis of its environmental impacts and the extent to which the discharges can be reduced to eliminate any impact. The 'reasonable and practicable test' will be determined by what can be expected of the industry generally while the targets (measured by the water quality criteria) will be much more stringent.

Repeal of mixing and attenuation zone requirements (clauses 14 and 15)

The current policy sets out mandatory conditions (clauses 14 and 15) that must apply to any exemptions given to clause 13. A person exempted from clause 13 must comply with clause 14 (a mixing zone in the case of surface waters) or clause 15 (an attenuation zone in the case of underground waters). Both clauses impose a number of requirements on a person exempted from clause 13, including the size of the zones. In practice, these inflexible 'one size fits all' specifications have caused difficulties as they are too restrictive and often cannot be complied with.

If clause 13 becomes a general duty there will be no need for these clauses, since exemptions apply only to mandatory requirements. If clause 13 were to retain a mandatory requirement, there would be a case to re-think the requirement to have fixed dimensions for the mixing or attenuation zones. If exemptions are to be required it would be better to allow the

1 Australian and New Zealand Guidelines for Fresh and Marine Water Quality 2000

2 The Adelaide Coastal Waters Study, Final Report, Vol. 1 (2007).

EPA, having regard to and seeking to further the objects of the Act, to decide the extent of the mixing or attenuation zones in each particular case.

Wastewater storage lagoons

Clause 18 of the current policy relates specifically to wastewater storage lagoons, providing a series of directions from their planning through to their operation.

The current clause provides formal and specific directives to the EPA on assessing planning and licence applications, and is inconsistent with the approach adopted for assessing other activities, where each is assessed based on risk rather than necessarily a set of prescriptive criteria. Furthermore, the subclause applies only in the case of lagoons that are *developments* within the meaning of the *Development Act 1993* or which require an authorisation under the EP Act. Some large agricultural lagoons do not need a licence or development application, but may present a far higher risk than smaller lagoons included in a development or associated with a licensed activity. In this sense clause 18 has a patchy operation that does not necessarily deal with the issues of greatest environmental significance.

The discussion paper made the point that clause 18 has the following issues:

- It is too limited in its cover, applying only to wastewater lagoons. It should be extended to cover a wider series of water bodies, namely sedimentation basins, managed wetlands and tailings dams. Furthermore, it does not cover the construction of all lagoons.
- The mandatory provisions impose an arbitrary set of requirements that go so far as to create internal inconsistencies within the WQ EPP itself and which will be better dealt with by a code of practice and enforced through an EPO as necessary.
- The construction and operation of these lagoons is a 'particular activity' which should be more logically be dealt with in Part 4 Division 2.

Generally, the proposed amendments deliver on what was put forward in the discussion paper with minor modifications to accommodate the revised structure of the draft policy.

Anti-foulants

It is proposed that the clause relating to the use of anti-foulants on the hulls of vessels or other surfaces be amended to prohibit the use of tributyltin (TBT). The proposed amendment will bring state legislation in line with current national legislation restricting the use of TBT-based anti-foulants.

Currently the policy (clause 22) allows for the use of anti-foulants containing TBT in certain circumstances, namely that:

- the release rate of TBT from the anti-foulant must be less than 5 micrograms/cm^2 per day
- TBT cannot be used on a vessel that is less than 25 metres in length unless its hull is made of aluminium[3].

The use of TBT has been banned internationally and also nationally, in particular by the *International Convention on the Control of Harmful Anti-fouling Systems on Ships* in 2001, to which Australia became a signatory in January 2008.

The Federal Government has implemented its obligations under this convention through the *Protection of the Sea (Harmful Anti-fouling Systems) Act 2006*. This Act, which came into force in September 2008, applies to harmful anti-fouling compounds notably organotin compounds that act as a biocide in an anti-fouling system. This includes TBT.

This change will not lead to any additional burdens or costs to South Australia's marine industry since it brings the state into line with national requirements and reflects provisions that already apply to SA's vessels through national legislation. The marine community in this state has for some years been aware of the phasing out of anti-foulants containing TBT which have been increasingly in short supply, since its sale and use has also been banned under federal agricultural and

[3] Clause 22(4)(a) & (b).

veterinary chemicals legislation. This change to the policy will improve enforcement by allowing the EPA, administering agencies and delegates under the EP Act to take action in addition to the Australian Maritime Safety Authority.

It is also proposed that clause 22(4) be amended to make it clear that the person involved in cleaning the hull of a vessel has a duty to make sure that material removed during this process does not get into waters, or is not left in any place where it might later get into waters. This is an application of the existing statutory duties expressed in section 25 of the EP Act and clause 11 of the WQ EPP. It reflects good management practice and will not place any additional costs on persons who undertake hull cleaning. There are provisions proposed to exclude certain authorised aquaculture applications under the *Aquaculture Act 2001.*

Scheduled pollutants

Pollutants listed under Part 1 and 2 of Schedule 4 are referred to as Class 1 and 2 pollutants under the draft revised policy. These lists of pollutants are used for the purpose of the mandatory discharge provisions of the policy. These are clauses 17 and 19 in the current policy, and clauses 10 and 11 in the draft revised policy.

Pollutants that are listed in Schedule 4 of the current policy were seen in 2003 as a default position and it was expected that there would be continual monitoring of the policy with a view to updating and modifying the listings.

The proposed changes fall into the following groups:

- more specific referencing of wastes by listing specific types of waste
- additional pollutants which should be added to the list
- clarifications to the existing list.

Other amendments

Given the length of time that the policy has been in operation and in order to best accommodate some of the main amendments described above, the review of the WQ EPP has included a revision of the structure of the policy and also addressed other minor issues, including definitions. These are highlighted where practicable against each of the new clauses.

Draft Environment Protection (Water Quality) Policy 2012

Clause by clause explanation

Part 1–Preliminary

Clause 1: Short title

Clause 1 names the WQ EPP.

Clause 2: Commencement

Clause 2 provides the usual mechanism for the commencement of the WQ EPP by a date to be fixed by the Governor by notice in the Gazette.

Clause 3: Interpretation

Clause 3 provides definitions for terms used throughout the WQ EPP. Changes to the definitions will be able to be made using the simpler procedure available under section 32(1)(c) of the EP Act for changes to be made to some other provision that requires a new or amended definition or for a definition to be deleted.

The current WQ EPP contains definitions throughout the policy rather than being consolidated under 'interpretation'. The draft revised policy consolidates all existing definitions into the one clause. There have also been a number of additions and amendments to the definitions used in the policy to either accommodate changes to other areas of the policy, to better align to the EP Act or other EPPs or to address minor issues identified to date during the review.

The following changes have been made:

abattoir, slaughter house or poultry processing works – added to provide clarity as to the application of provisions in clause 21 of the current policy and proposed to be retained in clause 16 of the draft revised policy.

aquaculture licence – added for the purpose of accommodating exclusions from mandatory provisions of the policy that prohibit discharges of faeces and therapeutic chemicals, and the use of anti-foulants in waters which are a necessary undertaking in some areas of the aquaculture industry and are adequately controlled via licensing under the Aquaculture Act 2001.

cavity in land – added as a consolidated descriptor of terms used in clause 19 of the current policy for use in the draft revised policy in clause 10.

Class 1 pollutant – added as replacement terminology for pollutants listed in Part 1 of Schedule 4 in the current policy for use in clause 9 and Schedule 2 of the draft revised policy.

Class 2 pollutant – added as replacement terminology for pollutants listed in Part 2 of Schedule 4 in the current policy for use in clause 10 and Schedule 3 of the draft revised policy.

composting works – minor amendment to remove specific reference to mushroom compost as a separate descriptor as mushroom compost is a form of compost that will be captured by the broader definition.

contaminated stormwater – minor amendment to reflect the use of the terms 'Class 1' and 'Class 2' pollutants in the draft revised policy.

discharge waste or a pollutant – added to clarify that the use of the term 'discharge' has a broader meaning in the policy.

environmental value of waters – referred in the current policy as 'protected environmental values'. Amendment addresses the change from a schedule of water quality criteria to the use of the national water quality guidelines.

hazardous waste – added to accommodate addition of hazardous waste to the list of pollutants now referred to as Class 1 pollutants.

inland waters – contracted for ease of interpretation.

listed waste – added to inform the definition of hazardous waste.

livestock saleyard – referred to in current policy simply as 'saleyard'. Minor amendment to clarify that it relates to livestock saleyards.

mandatory provision – added to clarify the meaning of 'mandatory provision' in the policy.

MAR scheme – replaces the definition of 'aquifer water storage and recovery scheme' in the current policy and broadens its application to all waters given this technology is now used for treated wastewater and river water in addition to stormwater, which was its only application at the commencement of the current policy.

medical sharp – added to inform the definition of 'medical waste'.

medical waste – added to clarify the coverage of 'medical waste' which has been added as a Class 1 pollutant.

premises – slight amendment to clarify that this relates to fish processing works.

prescribed waters – added for the purpose of making the provisions relating to waste from vessels more concise.

public stormwater system – added to clarify the application of the policy in relation to public stormwater systems. The current policy refers to public stormwater disposal system but does not have a definition. Issues raised with the current definition that have been addressed in the draft revised policy are that stormwater reuse is common and disposal reflects past attitudes towards stormwater as a form of waste rather than a resource and that a strong definition is needed to ensure streets and gutters particularly are considered part of a public stormwater system for the purposes of the policy.

salt interception scheme – included to clarify that exemption added relates to salt interception schemes in the draft revised policy (clause 8).

sinkhole – added to define term that is used in current policy and retained in draft revised policy.

surface waters – amended to simplify definition.

underground waters – amended for clarity and now relates to references to waters (rather than water) in the draft revised policy.

wastewater lagoon – amended to remove reference to storage and better articulated to ensure coverage of the various types of lagoon that the draft revised policy will apply to.

Water Quality Guidelines – added to accommodate the use of the *Australian and New Zealand Guidelines for Fresh and Marine Water Quality 2000.*

Clause 4: Environmental value of waters

This clause essentially has the same function as the definition of 'protected environmental value' in the current policy but has been re-aligned with the Australian and New Zealand Guidelines for Fresh and Marine Water Quality 2000 and enacts the change from having default environmental values listed in the policy to the use of the guidelines in determining appropriate environmental values. The alignment has removed the reference to industrial use as industry has the ability to treat water as necessary to meet quality requirements.

Clause 5: Activation of trigger values

This clause sets the relevant values listed in the Australian and New Zealand Guidelines for Fresh and Marine Water Quality 2000 that trigger the general environmental duty provisions in clause 8 of the draft revised policy. These values replace the ecosystem and primary industry related water quality criteria listed in Schedule 2 of the current policy that operate on a mandatory basis.

The proposed trigger values are considered necessary to protect the environment and are more stringent than those that appear in Schedule 2 of the current policy. The intention of setting more stringent criteria under a non-mandatory arrangement is to drive continuous improvement towards these values. The current criteria do not necessarily protect the environment and their mandatory nature requires exemptions for those who cannot meet them, which does not result in improved environmental outcomes. The new regime of continuous improvement will allow the EPA to require improvements based on what is reasonable and practicable. Compliance with clause 8 can be achieved through the issuing of an environment protection order under the EP Act.

Clause 6: Waste management hierarchy

The waste management hierarchy is within the objects of the current policy. The draft revised policy has not retained the objects as they generally do not add to the compliance requirements of the policy. The waste management hierarchy is considered valuable in the move to general environmental duty for certain provisions of the policy. In order to strengthen this association the waste management hierarchy is included as a relevant requirement for those demonstrating their general environmental duty through clause 8. The link to *Zero Waste SA Act 2004* is also highlighted as a note under this clause.

Clause 7: Application of policy

This clause replaces clause 4 of the current policy. The only amendment is the additional exclusion of water within pipes and closed tanks of a salt interception scheme. This has been added to accommodate appropriate use of this water by the aquaculture industry noting that access to the water and quality of the water being returned will be managed by SA Water who operates the schemes in South Australia.

Part 2–Water quality measures

Division 1–General environmental duty

Clause 8: General measures to prevent or minimise pollution of waters

Clause 8 establishes the newly specified general environmental duty provisions in the draft revised policy and also clarifies the role of codes of practice and guidelines referenced in the policy.

The clause establishes requirements for compliance with section 25 of the EP Act but does not seek to restrict the operation of that section should there be extraneous circumstance to these provisions be considered relevant in meeting the general environmental duty provisions of the EP Act.

Subclauses (a), (b), and (c) establish the necessary consideration of the relevant national guidelines in demonstrating the general environmental duty and subclause (a) specifically provides for the functionality of clause 5 which establishes the trigger values that operate via this subclause. This essentially replaces clause 13 of the current policy.

Subclause (d) provides for the waste management hierarchy that is detailed in clause 6 to be a necessary consideration in demonstrating the general environmental duty.

Subclauses (e) and (f) provide clarity on the operation of codes of practice and guidelines in Schedule 1 of the draft revised policy. There is no change from the operation of codes and guidelines under the current policy but this guidance is not articulated in the current policy.

Division 2–Offences

Clause 9: Class 1 pollutants

This clause replaces clauses 17 and 19 in the current policy as they would relate to pollutants currently in Part 1 of Schedule 4. It remains as a mandatory provision and a Category B offence.

There have been three exclusions added to address potential conflicts in the current policy:

- The first of these relates to aquaculture and addresses a potential conflict whereby 'chemicals designed for human or animal therapeutic use' are listed as a Class 1 pollutant (a Schedule 4 pollutant in the current policy) which prohibits their discharge to waters or onto land in a place from which it is reasonably to enter any waters but can be given Ministerial approval for use under the Aquaculture Act 2001.

  The exclusion is very specific that these chemicals are only excluded where they are used by a holder of a licence under the Aquaculture Act and in accordance with the *Aquaculture Regulations 2005*.

  Regulation 10 of the Aquaculture Regulations controls the use of these chemicals in aquaculture operations. The EPA will seek greater involvement in approvals issued under those regulations and the appropriate use of approved veterinary chemicals under those regulations to ensure environment protection is adequately considered.
- The second exclusion is for the discharge of effluent by the holder of an environmental authorisation in accordance with conditions of their authorisation. Effluent is a new addition to the list of prohibited Class 1 pollutants. This has been added to ensure that discharges from industry that may not be readily identifiable under other pollutant categories can be captured by the policy and remedied quickly with the potential for an expiation to be issued.

  Without any clarification it will also pick up all discharges from licensed activities. This is not the intent. However, picking up discharges that may be in excess of authorised limits or not part of a licence may also be a valuable and efficient compliance tool for the EPA. The exclusion is proposed as only applicable to discharges in accordance with an authorisation rather than carte blanche exclusion for licensed activities.
- The third exclusion is where a Class 1 pollutant may be lawfully discharged under a subsequent provision of the policy. Examples being effluent or sewage discharged from vessels that is lawful when compliant with clause 17 or material is discharged in stormwater from extractive industries where as much material has been removed as is reasonable and practicable as provided for by clause 19.

Clause 10: Class 2 pollutants

This clause replaces clauses 17 and 19 in the current policy as they would relate to pollutants currently in Part 2 of Schedule 4. It remains a mandatory provision and a Category B offence.

The clause in the draft revised policy is slightly different in that it introduces the term 'cavity in land' to replace the individual references to subsurface structures in the current policy. There is no functional change as these subsurface structures are included in the definition of 'cavity in land' in clause 3 of the draft revised policy.

The clause also includes three exclusions to address potential conflicts in the current policy:

- The first is specific to dredging by the holder of an environmental authorisation where the dredging is done in accordance with the authorisation. The current policy makes it an offence to discharge soil, clay, gravel or sand into waters. However, the EP Act includes dredging as an activity of environmental significance which can be undertaken with an environmental authorisation. The proposed exclusion will address this conflict.
- The second exclusion is for the discharge into waters of faeces from aquatic organisms by the holder of an aquaculture licence (granted by PIRSA) acting in accordance with the licence. Many aquaculture operations by their nature discharge faeces directly to waters (eg fin fish cages, oyster farms) which is an offence under the current policy. The EPA is referred all aquaculture licence applications for assessment and has directive powers so is able to set licence conditions that are protect the environment. The proposed amendment will only apply when acting in

accordance with the licence so any activity outside of licence conditions (eg additional biomass) that generates faeces will still be an offence under the draft revised policy.

- The third exclusion is where a Class 2 pollutant may be lawfully discharged under a subsequent provision of the policy, as discussed against clause 9. An example of its application is where material is discharged in stormwater from extractive industries where as much material has been removed as is reasonable and practicable as provided for by clause 19.

Clause 11: Discharge limits for declared activities

This clause replaces clause 16 and Schedule 3 of the current policy. It provides for the same functionality but does not provide a schedule for any such determinations to sit. Rather it allows a declaration or amendment to be made under section 32(1)(c) of the EP Act. It is envisaged that any such declaration will take the form of a new clause within the policy and possibly a new schedule.

Clause 16 and Schedule 3 of the current policy have remained unused since the policy commenced in 2003. The scientific work needed to support such controls can be a time-consuming and costly process. The Adelaide Coastal Waters Study (ACWS) is a good example, commencing in 2001 and expected to be completed with the development of a water quality improvement plan in 2013. The EPA considers this tool valuable should the need arise.

The clause will remain a mandatory provision as in the current policy but it is proposed to be changed to a Category A offence. The reason for this is that discharge limits will generally be applied to large polluters and the maximum $4,000 court imposed penalty for a Category B offence is not considered a strong enough financial deterrent.

A limit on the granting of exemptions has been included so as not to contradict clause 8 of the policy. An exemption may be granted where it can be demonstrated that the triggers described in clause 8 are not activated.

Clause 12: Anti-foulants

This clause establishes the prohibition of tributyltin (TBT) as a Category A offence. This replaces current provisions that allow the application of TBT.

The use of TBT has been banned nationally and internationally, in particular by the International Convention on the Control of Harmful Anti-fouling Systems on Ships in 2001, to which Australia became a signatory in January 2008.

The Federal Government has implemented its obligations under this Convention through the Protection of the Sea (Harmful Anti-fouling Systems) Act 2006. This Act, which came into force in September 2008, applies to harmful anti-fouling compounds notably organotin compounds that act as a biocide in an anti-fouling system. This includes TBT.

The Commonwealth legislation applies only where state legislation does not exist. Given TBT is provided for in the current policy it is necessary to amend the policy to ban its use to ensure that South Australia's legislation is compliant with Australia's international treaty obligations.

The non-TBT clauses remain the same in the draft revised policy as in the current policy except for an exclusion which relates to the use of anti-foulant by the holder of an aquaculture licence in accordance with the Aquaculture Regulations. The use of anti-foulants in aquaculture operations is managed via the regulations. The EPA will seek greater involvement in approvals issued under those regulations and the appropriate use of approved veterinary chemicals to ensure environment protection is adequately considered.

Clause 13: Waste from waste depots

This clause replaces clause 37 of the current policy and functions in the same manner.

Clause 14: Waste from septic systems

This clause replaces clause 32 of the current policy. It functions in the same manner, although some changes to the clause were necessary to accommodate the change from mandatory water quality criteria to the general environmental duty and the effect this has on the exclusion provisions as expressed in the current policy.

The current policy contains an exclusion for discharges that have been treated to ensure that the water quality objectives for those waters that the discharge will, or is likely to, enter are not prejudiced at the point of discharge. With the removal of mandatory water quality objectives the exclusion is no longer appropriate for this mandatory provision of the policy. It was necessary to extract the most relevant water quality criteria from the current policy and include these within the clause as the mandatory criteria to be met. The criteria proposed for use are total nitrogen (as nitrogen), total phosphorous (as phosphorous) and biochemical oxygen demand. This will result in retaining the status quo with regard to regulation of septic tank discharges and limits the number of criteria to be measured against reducing the regulatory burden of compliance.

Clause 15: Waste from sewerage or sewage treatment systems

This clause replaces clause 34 of the current policy and functions in the same way. As with septic tanks, some changes were necessary to accommodate the change from mandatory water quality criteria to the general environmental duty and the effect this has on the exclusion provisions as expressed in the current policy.

The current policy contains an exclusion for discharges that have been treated to ensure that the water quality objectives for those waters that the discharge will, or is likely to, enter are not prejudiced at the point of discharge. Mandatory water quality objectives are proposed to be removed from the policy and therefore the exclusion is no longer appropriate for this mandatory provision in the policy.

The intended coverage of this clause is to establish a penalty for unauthorised discharges from sewerage or sewage treatment systems. The current exclusion relates to discharges that have been treated to differentiate between those discharges covered by the clause (unauthorised) and those that are excluded.

An alternative exclusion is proposed which ensures all discharges explicitly authorised by an environmental authorisation under the EP Act or through an approval issued under the *Public and Environmental Health (Waste Control) Regulations 2010* are excluded from the policy. This is somewhat easier to comply with and enforce as the exclusion relates to an approval issued to undertake the activity rather than having to consider the level of treatment that a discharge has been subject to. All unauthorised discharges will remain covered by the policy.

Clause 16: Waste from prescribed works

This clause consolidates the main regulatory components of clauses 21, 23–25, 27–31, 35 and 38 of the current policy. Each of these clauses share the same compliance requirement in the current policy so the consolidation of these clauses will still operate in exactly the same manner.

The interpretation from these clauses has been moved to clause 3 in the draft revised policy and any references to guidelines have moved to Schedule 1 in the draft revised policy and operates via clause 8.

Clause 17: Waste from vessels

This clause replaces clause 37 of the current policy and functions in the same way. The interpretation from clause 37 has been moved to clause 3 in the draft revised policy and the reference to guidelines has moved to Schedule 1 in the draft revised policy and operates via clause 8.

Clause 18: Wastewater lagoons

This clause replaces clause 18 from the current policy. The proposed replacement clause is significantly different from the current policy and has incorporated all of what was proposed in the earlier discussion paper.

The title has been amended to reflect the breadth of purpose for wastewater lagoons rather than simply for storage. To support this, the definition (clause 3) has been extended to cover a wider range of water bodies including sedimentation basins, managed wetlands and tailings dams.

The bulk of the mandatory provisions of the current policy impose an arbitrary set of requirements that go so far as to create internal inconsistencies within the policy itself and which will be better dealt with by a code of practice that can be enforced through an EPO as necessary. The code of practice has been listed in Schedule 1 and operates via clause 8. The construction of all lagoons will also be covered by the code of practice and can be enforced through an EPO as necessary. This new approach negates the need for the clause which will be covered by the code of practice.

The one remaining mandatory provision relates to prevention of overflows and is an adaptation of clause 18(5) from the current policy. It removes the 600-mm freeboard provision that may or may not be an adequate figure depending on location or engineering, and replaces it with a focus on preventing outcomes caused by escaping wastewater.

The clause has been amended to make it clear that it does not apply to public infrastructure that is used for managing stormwater quality or quantity. The reason for this exclusion is that these structures are generally engineered to overflow, and built for a public benefit rather than for the management of industrial wastewater or addressing source pollution.

Clause 19: Stormwater from extractive industries

This clause replaces clause 26 from the current policy. It functions in the same way although the definition of 'extractive industry' within the clause in the current policy has been moved to clause 3 and amended to clarify that the clause does not apply to dredging or sand replenishment activities. These are by their nature unlikely to comply with the clause and can be appropriately managed via other provisions in the EP Act.

Division 3–Administration

Clause 20: Matters to be taken into account under Part 6 of the Act

This clause replaces clause 43 from the current policy and functions in the same way. It outlines specific requirements for determining matters under Part 6 of the Act (Environmental Authorisations and Development Authorisations).

Clause 21: Exemptions

This clause replaces clause 44 from the current policy and functions in the same way. There is a minor amendment to clarify that the EPA may require the checked and verified results to be made available to the Authority. The wording in the current policy is ambiguous and requires the results of the checks and verification (rather than necessarily the results themselves) to be made available to the Authority.

Part 3–Amendment of policy

Clause 22: Amendment of policy without following normal procedure (section 32 of the Act)

This clause replaces clause 6 from the current policy. This clause sets out the provisions that may be amended without following normal procedure as provided for by section 32(1)(c) of the EP Act. The provisions in the draft revised policy are different from the current policy, given the changes that have been made:

- Clause 22(1)(a) allows the Minister to amend the policy to establish particular environmental values for specific bodies of water where they are at variance to the water quality guidelines referenced in the policy.
- Clause 22(1)(b) allows the Minister to amend the policy to declare or amend a pollutant load as provided for by clause 6 of the draft revised policy.
- Clause 22(1)(c) allows modification of Class 1 and 2 pollutants.

- Clause 22(1)(d) allows for updating of relevant documents or legislation referred to in the policy.
- Clause 22(1)(e) allows for consequential amendments to be made.

Schedule 1–Codes and guidelines

Schedule 1 consolidates all of the various references to codes of practice and guidelines in the current policy and operates via clause 8 in the draft revised policy.

Guidelines or codes of practice for cattle feedlots, piggeries and water recycling have been updated as part of the revision.

A new guideline for the construction of wastewater lagoons has been included but has yet to be finalised. It will be finalised prior to the new policy commencing.

A guideline for fire protection pipework systems has also been included. In the current policy fire sprinkler test water is a listed pollutant for the purpose of the policy and must not be discharged to waters or land where it is likely to enter waters. In the nine years that the current policy has operated this has been problematic in that the water must be directed to sewer or irrigated on land where it will not enter waters. The quality of water from fire protection pipework systems varies and on occasions the current policy has required good quality water to be discharged to sewer rather than given an alternative use. The EPA has a guideline on its appropriate use so the draft revised policy will allow for reuse where compliant with the guidelines.

Schedule 2–Class 1 pollutants

This schedule replaces Part 1 of Schedule 4 from the current policy and operates via clause 9 in the draft revised policy.

The following additions have been made to the schedule in order to update the list which has remained unchanged since the current policy commenced:

- air conditioning or cooling system wastewater moved to Schedule 3
- building construction or demolition waste replaced with construction and demolition waste (whether or not inert)
- wastes listed in Part B of Schedule 1 of the Act removed and is now covered by general duty provisions of clauses 5, 6 and 8.
- biosolids and wastewater treatment sludge added
- bundwater (untreated water collected in bunded areas) added
- domestic waste (being waste produced in the course of a domestic activity) added
- effluent added with caveat applied in clause 9 that it does not apply to discharges authorised by an environmental authorisation under the EP Act
- hard waste (eg vehicles, tyres, batteries, metal parts, piping, electronic equipment and municipal solid waste) added
- hazardous waste added
- medical waste added
- quarantine waste (waste that is subject to quarantine under the Commonwealth *Quarantine Act 1908*) added
- radioactive waste (the management or disposal of which is regulated under the *Radiation Protection and Control Act 1982* or a law of the Commonwealth) added
- rubbish and litter (eg bottles, cans, cartons, cigarette butts, food scraps, packaging and paper, glass or plastic items or materials) added.

Schedule 3–Class 2 pollutants

- airconditioning or cooling system wastewater added
- soil, clay, gravel or sand (unless discharged or deposited in the course of a dredging activity lawfully approved by the Authority) amended.

Further information

Legislation

Legislation may be viewed on the Internet at: <www.legislation.sa.gov.au>

Copies of legislation are available for purchase from:

Service SA Government Legislation Outlet	Telephone:	13 23 24
Adelaide Service SA Centre	Facsimile:	(08) 8204 1909
108 North Terrace	Website:	<shop.service.sa.gov.au>
Adelaide SA 5000	Email:	<ServiceSAcustomerservice@sa.gov.au>

For general information please contact:

Environment Protection Authority	Telephone:	(08) 8204 2004
GPO Box 2607	Facsimile:	(08) 8124 4670
Adelaide SA 5001	Freecall (country):	1800 623 445
	Website:	<www.epa.sa.gov.au>
	Email:	<epainfo@epa.sa.gov.au>