

## Queensland



### Explanatory Notes for SL 1997 No. 136

#### *Environmental Protection Act 1994*

## **ENVIRONMENTAL PROTECTION (WATER) POLICY 1997**

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### **GENERAL OUTLINE**

#### **Title**

*Environmental Protection (Water) Policy 1997.*

#### **Authorising Law**

This explanatory note pertains to the *Environmental Protection (Water) Policy 1997* under the *Environmental Protection Act 1994*. Chapter 2 of the Act provides the head of power to make this policy.

#### **Purpose**

The purpose of the policy is to achieve the object of the Act in relation to Queensland waters.

#### **How will the policy purpose be achieved?**

In order to achieve the purpose of the policy, emphasis is placed on conserving water, preventing and minimising the production of waste, recycling waste water and improving the quality of waste water that is released to the environment. Sewage and waste water, including contaminated stormwater, from industry and urban areas are targeted.

(Contaminated stormwater and waste water from most rural activities are to be managed by a code of practice under the Act.)

### **Consistency with authorising law/other legislation**

The policy is consistent with the authorising law. The Act states that the protection of Queensland's environment is to be achieved by an integrated management program that is consistent with ecologically sustainable development. The policy is part of that integrated management program. The policy is not inconsistent with the objectives of other legislation.

### **Alternative regulatory options**

Alternative means of achieving the policy objectives were considered. These options are addressed in the regulatory impact statement.

### **Benefits and costs of implementation**

The regulatory impact statement covers all major benefits and costs of the policy. Where possible, dollar values have been calculated for costs and benefits. Many benefits cannot be given a monetary value but are highly valued by members of the community and will be valued by future generations.

In developing the policy, attention has been given to assessing the value that various groups in the community place on environmental protection. Attention was also given to identifying the impact the policy would have on various groups. The policy provides a fair balance between protecting the environment and minimising social and economic impacts.

### **Fundamental legislative principles**

While some sections of the policy reverse the onus of proof, requiring defendants to establish a defence, this is necessary for consistency with the authorising Act and because of legal technicalities.

Sections 28 to 32 of the policy require that a person charged with offences created by these sections must prove certain matters in their defence. This reverses the normal onus of proof which requires the prosecution to prove all elements of an offence.

The reversal of the onus of proof is justified because—

- it is consistent with sections 119 and 183 of the *Environmental Protection Act 1994*; and
- it is needed to achieve consistency with similar provisions (sections 28, 36, 43, 48 and 56) in the *Transport Operations (Marine Pollution) Act 1995*; and
- the defences provided for are, necessarily, peculiarly within the knowledge of the defendant and, in such circumstances, it is not practicable to require the prosecution to prove matters which can more easily be attested to by the defendant.

## **Consultation**

### ***How was the consultation carried out?***

Two rounds of public consultation have been carried out for the policy, as required under the authorising law.

The first round of consultation was carried out in 1993 in conjunction with final consultations on the Environmental Protection Bill. The second round of consultation was carried out in 1995. During both periods of consultation, the draft policy was circulated, public meetings were held and submissions were invited and received.

Public consultation with Queensland government departments and key stakeholder groups with an interest in the policy was carried out in July 1996. The draft policy was then reviewed by the Environment Protection Council of Queensland.

### ***Results of consultation***

The draft policy was revised in light of submissions received. The main changes were—

- the policy applies to all Queensland waters, removing the proposed exclusion of private waters;
- the proposed water classification scheme and schedule of water quality classes for major Queensland waters were removed. Identification of the environmental values for a particular water is to be through a coordinated process of consultation and consideration of social and economic impacts. If a consultation

process meeting these criteria has not been carried out for a given water, default environmental values are stated;

- management of activities was broadened to include consideration of matters for environmental management programs and environmental protection orders;
- a provision was incorporated covering consideration of the impact of acid sulphate soils on water quality during the evaluation of activities;
- the requirement for local authorities to develop environmental plans has been amended to recognise that compliance may be achieved through other means, such as the total management planning process administered by the Department of Natural Resources and the Department of Local Government and Planning;
- the time period for development of environmental plans has been extended from 4 to 5 years to allow for development of model environmental plans;
- provisions were incorporated for policy performance assessment.

## **NOTES ON PROVISIONS**

Details of specific clauses are as follows.

### **PART 1—PRELIMINARY**

Section 1 states the short title of the policy.

Section 2 states the commencement date of section 32.

Section 3 refers readers to schedule 2 for a dictionary of terms used in the policy.

## **PART 2—APPLICATION AND PURPOSE OF POLICY**

Section 4 states the application of the policy.

Section 5 states the purpose of the policy.

Section 6 states how the purpose of the policy is to be achieved.

## **PART 3—BASIC CONCEPTS**

Section 7 states the environmental values to be enhanced or protected under the policy.

Section 8 defines indicators for environmental values and states how they are determined.

Section 9 defines water quality guidelines for indicators and states how they are determined.

Section 10 defines protocols and states how they are determined.

## **PART 4—MANAGEMENT GOALS FOR WATERS**

Section 11 states how water quality objectives are determined and where they do not apply.

Section 12 allows the chief executive to decide environmental values or water quality objectives or ways to improve the quality of water. It also states requirements and considerations to be made in the decision and allows the chief executive to develop documents about these matters.

Section 13 states when environmental values are protected.

## **PART 5—MANAGEMENT OF ACTIVITIES**

### *Division 1—Preliminary*

Section 14 states how an administering authority may require a relevant person to take certain actions under this part.

### *Division 2—Waste management evaluation*

Section 15 requires an administering authority to consider the stated waste management evaluation procedure when making an environmental management decision.

### *Division 3—Environmental management decisions*

Section 16 states issues that an administering authority must consider when it is making an environmental management decision about an activity involving waste water recycling.

Section 17 states issues that an administering authority must consider when it is making an environmental management decision about an activity involving waste water releases on land.

Section 18 states issues that an administering authority must consider when it is making an environmental management decision about an activity involving waste water releases (other than contaminated stormwater) to a surface water. It also states actions that an administering authority may require a relevant person to do in certain circumstances.

Section 19 states issues that an administering authority must consider when it is making an environmental management decision about an activity involving the release, or likely release, of contaminated stormwater to a roadside gutter, stormwater drain or a water. It also states actions that an administering authority may require a relevant person to do in certain circumstances.

Section 20 states issues that an administering authority must consider

when it is making an environmental management decision about an activity involving the direct release of waste water to groundwater. It also states actions that an administering authority may require in certain circumstances.

Section 21 states issues that an administering authority must consider when it is making an environmental management decision about an activity involving the incidental release, or likely incidental release, of waste water to groundwater. It also states actions that an administering authority may require a relevant person to do in certain circumstances.

Section 22 states issues that an administering authority must consider when it is making an environmental management decision about an activity involving the construction of an artificial wetland for waste water treatment in a natural wetland.

Section 23 states issues that an administering authority must consider when it is making an environmental management decision about an activity involving the use of natural biological controls in the treatment of waste water.

Section 24 states issues that an administering authority must consider requiring a relevant person to do when the authority is making an environmental management decision about an activity involving the exposure or disturbance of acid sulphate soils or the lowering of a water table associated with acid sulphate soils.

Section 25 states issues that an administering authority must consider when it is making an environmental management decision about an activity involving a place where ships are moored, docked or berthed.

#### ***Division 4—Monitoring***

Section 26 states issues that an administering authority must consider when it is making an environmental management decision about the monitoring of waste water from an activity that involves the release of waste water on land or to a water.

Section 27 states issues that an administering authority must consider when it is making an environmental management decision about the monitoring of the impact of waste water from an activity that involves the release of waste water on land or to water.

## **PART 6—MANAGEMENT OF CERTAIN SOURCES OF CONTAMINATION**

Section 28 prohibits the release of certain substances from ships into non-coastal waters. It also provides a maximum penalty and defences if a person is charged with an offence.

Section 29 prohibits the release of sewage from ships into non-coastal waters in certain circumstances. It also provides maximum penalties and a defence if a person is charged with an offence.

Section 30 prohibits the disposal of rubbish from ships into non-coastal waters. It also provides a maximum penalty and defences if a person is charged with an offence.

Section 31 prohibits, in certain circumstances, the deposit or release of certain things into a roadside gutter, stormwater drain or water, or in a place where they could reasonably be expected to move or be washed into a roadside gutter, stormwater drain or water. It also provides maximum penalties and a defence if a person is charged with an offence.

Section 32 prohibits, in certain circumstances, the deposit of sand, silt or mud and the release of stormwater runoff that results in the build-up of sand, silt or mud in a roadside gutter, stormwater drain or water. It also provides maximum penalties and a defence if a person is charged with an offence.

Section 33 requires a local government to consider stated issues if it is considering a planning scheme, rezoning application or development application that proposes the use of a number of on-site domestic waste water treatment systems.

## **PART 7—ENVIRONMENTAL PLANS**

### *Division 1—Preliminary*

Section 34 requires a local government or the chief executive (water



resources) that develops environmental plans under this part to also prioritise the plans and determine a timetable for developing and implementing plans.

Section 35 requires a local government or the chief executive (water resources) to consider the purpose of the policy and how the purpose will be achieved when developing an environmental plan.

Section 36 states the period for developing and implementing the first plan for each matter developed under this part.

Section 37 requires a local government or the chief executive (water resources) to regularly review performance of environmental plans, priorities, timetables and economic and social impacts of the plans.

Section 38 allows that compliance with this part may be achieved in other ways.

Section 39 states the reporting requirements for plans developed under this part.

### ***Division 2—Local government environmental plans***

Section 40 requires a local government that operates a sewerage system to develop a sewage management plan for each system. It also states issues that must be considered in developing the plan.

Section 41 requires a local government that operates a sewerage system to develop a trade waste management plan for each system. It also states issues that must be considered in developing the plan.

Section 42 requires a local government that has an urban stormwater system to develop an urban stormwater quality management plan for each system. It also states issues that must be considered in developing the plan.

Section 43 requires a local government that operates a water supply system to develop a water conservation plan for each system. It also states issues that must be considered in developing the plan.

***Division 3—Other environmental plans***

Section 44 requires the chief executive of the department in which the *Water Resources Act 1989* is administered to develop plans to provide water for the environment. It also states issues that must be considered in developing the plans.

Section 45 requires the chief executive of the department in which the *Water Resources Act 1989* is administered to develop plans to protect groundwaters. It also states issues that must be considered in developing the plans.

**PART 8—MISCELLANEOUS*****Division 1—Functions of chief executive***

Section 46 requires the chief executive to promote a coordinated strategy to educate and inform the community about water quality management issues. It also requires an administering authority to promote community education and information about water quality management issues for which it is responsible.

Section 47 requires the chief executive to report the results of any ambient monitoring carried out to assess the state of Queensland waters.

***Division 2—Miscellaneous***

Section 48 allows for amendment of stated sections of the policy after consultation but without going through the procedures applying to preparation and approval of policies under chapter 2 of the Act.

Section 49 requires the chief executive to consider using stated measurable performance indicators in assessing the policy's environmental effectiveness and economic efficiency in accordance with section 33(2) of the Act.

## **SCHEDULES**

Schedule 1 states the documents to be used for environmental values and water quality objectives for the waters listed.

Schedule 2 defines terms used in the policy.

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### **ENDNOTES**

1. Laid before the Legislative Assembly on . . .
2. The administering agency is the Department of Environment.