



Queensland

Environmental Protection (Water) Policy 2009

Explanatory Notes for SL 2009 No. 178

made under the

Environmental Protection Act 1994

General outline

Short title

Environmental Protection (Water) Policy 2009.

Authorising law

Chapter 2 of the *Environmental Protection Act 1994*.

Policy objectives of the legislation

The purpose of the *Environmental Protection (Water) Policy 2009* is to achieve the object of the *Environmental Protection Act 1994* in relation to Queensland waters.

The object of the *Environmental Protection Act 1994* is to protect Queensland's environment while allowing for development that improves the total quality of life, both now and in the future, in a way that maintains the ecological processes on which life depends.

How policy objectives will be achieved

This policy advances the achievement of the policy objectives by providing—

- statements of water quality for Queensland waters—expressed as environmental values and the water quality guidelines and objectives to enhance or protect the environmental values for waters;
- an objective basis for sound statutory decision making under the *Environmental Protection Act 1994* within a framework that promotes consistent, equitable and informed decisions about Queensland waters;
- information for land use planning and development under the *Integrated Planning Act 1997*, water resource planning under the *Water Act 2000* and for non-statutory natural resource management planning and decision making; and
- for community involvement, through consultation and promoting community awareness.

A legislative approach is a reasonable and appropriate response because the subordinate legislation—

- advances the achievement of the object of the *Environmental Protection Act 1994*; and
- provides an integrated approach to water quality management that encourages consistency in compliance and certainty to industry.

Consistency with authorising law and other legislation

This policy is consistent with the *Environmental Protection Act 1994* and the object of that Act.

The *Environmental Protection Act 1994* and the *Environmental Protection (Water) Policy 2009* form the primary legislative framework for the protection of Queensland waters.

There are no known inconsistencies with the policy objectives of other legislation.

Alternative ways of achieving the policy objectives

Alternative ways of achieving the policy objectives were considered, including—

- allowing expiry of the subordinate legislation; and
- adopting self-regulatory approaches and market-based instruments.

Allowing expiry of the *Environmental Protection (Water) Policy 1997* would not advance the achievement of the object of the *Environmental Protection Act 1994* in relation to Queensland waters.

Self-regulatory approaches and market-based instruments can provide important supporting mechanisms to regulatory approaches in the protection and enhancement of environmental values. However such approaches have not demonstrated effectiveness in achieving coordinated environmental outcomes and in isolation would not achieve the policy objectives.

Benefits and costs of implementation

The implementation of this policy will be undertaken primarily as part of the administration and enforcement of the *Environmental Protection Act 1994*. A regulatory impact statement was not required about the subordinate legislation, under the *Statutory Instruments Act 1992*.

Consistency with fundamental legislative principles

This policy is consistent with the fundamental legislative principles under section 4 of the *Legislative Standards Act 1992*. The policy has sufficient regard to the rights and liberties of individuals and the institution of Parliament.

The subordinate legislation—

- is within the power that, under the authorising law (the *Environmental Protection Act 1994*), allows the subordinate legislation to be made;
- is consistent with the policy objectives of the *Environmental Protection Act 1994*; and
- contains only matters appropriate to subordinate legislation.

Consultation

Information on the broad proposals for the remake of the *Environmental Protection (Water) Policy 1997* was released for public comment. The *Policy Statement on Environmental Protection Water Policy 2009 Consultation Draft May 2009* was released to key stakeholders including local government, industry and community groups. All submissions were considered and, where relevant, legislative amendments were incorporated into this policy. Some matters raised will be addressed during implementation and others were noted for further deliberation.

Notes on Provisions

Part 1 Preliminary

Short title

Clause 1 states that the short title of the policy is the *Environmental Protection (Water) Policy 2009*.

Definitions

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

Part 2 Application and purpose of policy

Section 28 of the *Environmental Protection Act 1994* states that an environmental protection policy must state that the policy applies to the environment generally or to an aspect or part of the environment specified in the policy.

This part identifies where this policy applies, the purpose of this policy and how the purpose is to be achieved.

Application of policy

Clause 3 states that the policy applies to Queensland waters¹.

Purpose of policy

Clause 4 states that the purpose of the policy is to achieve the object of the *Environmental Protection Act 1994* in relation to Queensland waters.

How the purpose of policy is to be achieved

Clause 5 states that the purpose is to be achieved by the provision of a framework for identifying environmental values for waters, deciding and stating water quality guidelines and water quality objectives to enhance or protect the environmental values, making consistent, transparent and equitable decisions about waters, and involving the community through consultation and awareness raising.

Part 3 Basic concepts

Section 28 of the *Environmental Protection Act 1994* states that an environmental protection policy must identify the environmental values to be enhanced or protected under the policy. Section 28 also states that an environmental protection policy may state the water quality objectives to be achieved and maintained under the policy.

1 Under the *Acts Interpretation Act 1954*, *Queensland waters* means all waters that are—

- (a) within the limits of the State; or
- (b) coastal waters of the State.

Waters includes the beds and banks of waters.

This part identifies the environmental values for waters to be enhanced or protected under this policy, the indicators for environmental values, the water quality guidelines for indicators for environmental values and the water quality objectives to enhance or protect the environmental values.

Environmental values of a water are particular values or uses of the water that are conducive to a healthy ecosystem or for public amenity, safety or health and that require protection from the effects of habitat alteration, waste releases, contaminated runoff and changed flows. Several environmental values may be designated for a particular water—see section 6 of this policy.

The environmental values and water quality objectives² for waters must be considered when complying with a regulatory requirement under the *Environmental Protection Act 1994*. The environmental values in this policy also inform whether environmental harm under the *Environmental Protection Act 1994* has been caused.

The *Environmental Protection Act 1994* defines a regulatory requirement as a requirement under a regulation for the administering authority to—

- (a) grant or refuse to grant, or follow stated procedures for evaluating, any of the following applications—
 - a development application for which the administering authority is the assessment manager or a referral agency under the *Integrated Planning Act 1997*;
 - an environmental authority application;
 - an application for approval of a transitional environmental program; and
- (b) impose, change or cancel a condition on a development approval for a chapter 4 activity, an environmental authority or an approval of a transitional environmental program.

2 See clause 10.

Chapter 4 of the *Environmental Protection Regulation 2008* prescribes the regulatory requirements with which the administering authority is required to comply for making environmental management decisions³.

Under section 51 of the *Environmental Protection Regulation 2008* the administering authority must consider each of the following under any relevant environmental protection policies—

- the management hierarchy;
- environmental values;
- quality objectives; and
- the management intent.

Under section 52 of the *Environmental Protection Regulation 2008* the administering authority must, for making an environmental management decision relating to an activity, consider whether to impose conditions about matters that include protecting environmental values and meeting (water) quality objectives.

Environmental values

Clause 6 states the environmental values of waters to be enhanced or protected under this policy.

The environmental value *aquatic ecosystem* to be enhanced or protected under this policy includes the attributes of the water's aquatic ecosystem; that is, its biota, physical form, riparian vegetation, flow and physicochemical water quality.

The environmental values apply to all Queensland waters.

Indicators and guidelines for environmental values

Clause 7 defines the term *indicator* for an environmental value and identifies the documents used to decide the indicators for an environmental value.

3 The *Environmental Protection Regulation 2008* defines an environmental management decision as a decision under the *Environmental Protection Act 1994* for which the administering authority making the decision is required to comply with regulatory requirements.

Clause 7 also defines the term *water quality guidelines* for indicators that protect a stated environmental value for a water, and identifies the documents used to decide the water quality guidelines for an environmental value.

The role of the Queensland water quality guidelines in establishing indicators is stated under this policy. The Queensland water quality guidelines are accessible on-line at the department's website at < www.derm.qld.gov.au >.

When environmental values are protected

Clause 8 states when the environmental values for a water are protected.

Part 4 Management goals for water quality objectives for waters

Management goals

Clause 9 states that the management goals for a water are the goals that may be stated in the document listed in schedule 1 column 2 for the water listed in column 1.

Management goals are quantitative measures or narrative statements that may be used to assess whether environmental values are maintained. They reflect the desired levels of protection for the aquatic ecosystem and focus management on the relevant water quality objectives.

Water quality objectives

Clause 10 states how water quality objectives for a water are determined and where they do not apply.

Water quality objectives are the quantitative measures or narrative statements established to protect the environmental values of waters. Water quality objectives are based on water quality guidelines, primarily the Queensland and Australian water quality guidelines, but may be modified by social and economic inputs under section 11 of this policy.

Water quality objectives are not individual point source emission objectives but the receiving water quality objectives.

The water quality objectives for a water are stated in the document opposite the water in schedule 1, column 2—or if not stated, the set of water quality guidelines (the Queensland and Australian water quality guidelines) for all indicators that will protect all environmental values for the water.

Water quality objectives are—

- considered when complying with regulatory requirements including when assessing environmentally relevant activities, and
- to inform decisions when identifying environmental harm under the *Environmental Protection Act 1994*; and
- to inform other statutory and non-statutory decisions.

The water quality objectives for a water must be considered in assessment processes and inform decisions, including any conditions that may be placed on approvals for environmentally relevant activities. The water quality objectives assist in identifying whether the environmental values are protected.

Identifying environmental values and water quality objectives for waters

Clause 11 allows the Chief Executive to decide the environmental values or water quality objectives or ways to improve the quality of a water. It states the requirements and considerations to be made in decision-making and permits the Chief Executive to develop documents for inclusion in schedule 1 (environmental values and water quality objectives for waters).

Amending waters in sch 1

Clause 12 states the considerations for amendment of existing schedule 1 content—including amendments of a minor or stated nature.

Part 5 Management of activities

This part sets out the management hierarchy and management intent for an activity releasing waste water or contaminants to Queensland waters.

The management hierarchy and management intent for an activity are addressed in section 51 of the *Environmental Protection Regulation 2008* as matters that must be considered by the administering authority when making an environmental management decision.

Management hierarchy for a surface or ground water

Clause 13 states the management hierarchy for an activity that may affect a water.

The management hierarchy establishes an approach to managing waste water or contaminant release to waters that must be dealt with, to the extent it is reasonable to do so, in the stated order of preference.

The purpose of the management hierarchy is to—

- provide a framework for the prioritisation of management practices in the context of protecting the environment and promoting the achievement of ecologically sustainable development;
- provide principles to guide decision making;
- describe preferred pathways in decision making to—
 - enhance the environment;
 - protect the environment; and
 - minimise harm to the environment.

The management hierarchy has elements which are sequential and each step builds on the mechanisms implemented to achieve the preceding step. The preferred option is avoidance and the least preferred option is release to surface or groundwater.

The management hierarchy applies to all forms of waste water or contaminant releases to waters.

Management intent for waters

Clause 14 states the management intent for waters that are subject to an activity that involves the release of waste water or contaminants to the water.

The management intent is stated for the different levels of aquatic ecosystems protection that apply under this policy—that is for high ecological value waters, slightly disturbed waters, moderately disturbed waters and highly disturbed waters.

Part 6 Environmental planning

This policy recognises that environmental planning about urban stormwater management, sewage management and trade waste management are key water policy, environmental management and investment areas.

The development and implementation of environmental plans under this policy is required by local government to address the potentially significant diffuse and point source pollution of Queensland waters originating from the above-mentioned activities.

The intent is that in accordance with the guidelines published by the department, where required a local government should develop and implement total water cycle management plans addressing urban stormwater, sewage management and trade waste in whole of system approaches to the management of water—whilst enhancing or protecting the environmental values of receiving waters.

Division 1 Preliminary

Purpose of policy

Clause 15 requires a local government or sewerage service provider to consider the purpose of this policy and how the purpose is to be achieved when developing and implementing an environmental plan under this policy.

Development and implementation of environmental plans

Clause 16 states the period for developing and implementing environmental plans for each matter developed under this part.

Reporting and review of environmental plans

Clause 17 states the reporting and review requirements, including that the Chief Executive may require a local government to review and amend an environmental plan.

Compliance with part

Clause 18 states that equivalent plans may comply, notwithstanding the preparation was not under this policy.

Division 2 Local government environmental plans

Total water cycle management—general

Clause 19 states that if a local government area has a population of at least 10000 persons, the local government for the area must develop and implement an environmental plan about total water cycle management for the area, including the collection, treatment and recycling of waste water and stormwater, other water sources and whole of local government area integration of water use.

The Chief Executive may require another local government to comply with this part.

Total water cycle management—sewage management

Clause 20 requires that total water cycle management planning include a sewage management part that addresses provisions about the following, for each waste water treatment plant in the area—

- (a) effluent management;
- (b) waste water recycling;

- (c) sewerage system overflows; and
- (d) biosolids management.

The intent is that integrated water cycle management planning includes a sewage management part that addresses sewage collection, treatment and effluent recycling and disposal within an integrated framework that includes the other key components of the water cycle.

Total water cycle management—urban stormwater quality management

Clause 21 requires that total water cycle management planning includes an urban stormwater part that addresses stormwater collection, treatment, recycling/reuse and disposal for new and existing development.

With increasing development and urbanization, urban stormwater is a major source of diffuse pollution of waters. Water sensitive urban design approaches to the planning and design of both the construction and permanent phases of new urban development, and existing development, should minimise impacts on the natural water cycle, avoid or minimise off-site contaminant discharge and protect the environmental values of receiving waters.

Development and its construction should achieve the stated stormwater design objectives for Queensland regions.

Trade waste management

Clause 22 requires that a local government or service provider that operates a sewerage system must develop a trade waste management plan for each system. It also states matters that must be considered in developing the plan. The intent is to ensure that the requirements of this policy are considered in planning or making a decision about trade waste management to may affect a water.

Certification of plans

Clause 23 requires that environmental plans must be certified by a registered professional engineer.

Division 3 Other environmental plans

Healthy Waters Management Plans

Clause 24 states that the Chief Executive, in cooperation with the Chief Executive (fisheries) may develop and implement environmental plans about waters, *Healthy Waters Management Plans*, which contain programs to establish and achieve the stated objectives of this policy, pursuant to section 11 of this policy and section 28 of the *Environmental Protection Act 1994*.

Clause 24 also states that a recognised entity, in cooperation with the Chief Executive, may develop and implement a Healthy Waters Management Plan.

Healthy Waters Management Plans must be in the approved form and address the stated content.

Part 7 Functions of Chief Executive

Community awareness and involvement

Clause 25 requires the Chief Executive to develop a plan addressing community involvement, through consultation and promoting community awareness, in support of the achievement of the purpose of this policy.

In support of clause 25, clause 11 requires consultation in the development of environmental values and water quality objectives for waters and clause 28 states the requirement for on-line access to monitoring information that will increase community awareness of the condition and trend of Queensland waters.

Ambient monitoring

Clause 26 requires the Chief Executive to report the results of any ambient monitoring program to assess the condition and trend of Queensland waters.

The intent is that the ambient monitoring should reflect monitoring frameworks based on the processes influencing aquatic ecosystems health

of Queensland waters, and that the reporting and publication requirements for the results of monitoring are identified, in addition to the actions that may be taken when environmental values are not met.

Clause 26 requires that the *Monitoring and Sampling Manual 2009* be used by persons required to conduct monitoring—providing the common methods and data standards for sample collection, handling, laboratory analysis, quality assurance/quality control, data verification and storage. Its use by other persons conducting monitoring under community programs is encouraged. The document is available on-line through the department's web site.

Clause 26 requires the on-line publication of the results of monitoring, to ensure availability to all persons.

Part 8 Miscellaneous

Operation of schedule 1

Clause 27 states the operation of schedule 1, environmental values and water quality objectives for waters and the corresponding documents.

Schedule 1 identifies the waters for which environmental values and water quality objectives have been established under this policy and the documents that contain the environmental values and water quality objectives for the waters and the associated spatial data—including the boundaries of the water types and the levels of aquatic ecosystem protection. Management goals may also be stated in the documents. The documents are available on-line through the department's web site.

The water types under this policy are defined under the Queensland water quality guidelines and include—freshwaters (upland, lowland and storages), estuarine waters (upper, middle and lower), coastal waters (enclosed and open), tidal canals, constructed estuaries, marinas and boat harbours, wetlands and ground waters.

Part 9 **Repeal and transitional provisions**

Division 1 **Repeal provision**

Repeal

Clause 28 repeals the *Environmental Protection (Water) Policy 1997*.

Division 2 **Transitional provisions**

Definitions for division 2

Clause 29 states the definitions for division 2.

Effect of particular environmental plans

Clause 30 states the requirements for plans developed about sewage management and stormwater quality management under the repealed policy, complying with total water cycle management plans under this policy.

Effect of trade waste management plan

Clause 31 states the requirements for a plan developed about trade waste management under the repealed policy, complying with a corresponding plan under this policy.

Application of sections 16 and 17 to particular local governments

Clause 32 states the particular application of clauses 16 and 17 to local governments advised by the Chief Executive that clause 19 is applicable.

Reference to repealed policy

Clause 33 states that a reference to a document in the repealed policy may, in context, be taken to be a reference to this policy.

Schedule 1 Environmental values and water quality objectives for waters

Schedule 1 identifies the waters, and the corresponding documents, for which environmental values and water quality objectives have been established under this policy. The documents are published at the department's website.

Schedule 2 Dictionary

Schedule 2 defines certain terms for the purposes of this policy.

ENDNOTES

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

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