

Environmental Protection (Water and Wetland Biodiversity) Policy 2019

Explanatory notes for SL 2019 No. 156

made under the

Environmental Protection Act 1994

General Outline

Short title

Environmental Protection (Water and Wetland Biodiversity) Policy 2019

Authorising law

Sections 26 to 34 of the *Environmental Protection Act 1994*

Policy objectives and the reasons for them

The objective of the *Environmental Protection (Water and Wetland Biodiversity) Policy 2019* is to replace the *Environmental Protection (Water) Policy 2009* which is due to expire on 1 September 2019 in accordance with section 54 of the *Statutory Instruments Act 1992*.

A review of the *Environmental Protection (Water) Policy 2009* confirmed a need for continued regulatory action. The *Environmental Protection (Water and Wetland Biodiversity) Policy 2019* is required to provide for the effective operation of the *Environmental Protection Act 1994*. The purpose of the policy is to achieve the object of the *Environmental Protection Act 1994* in relation to Queensland waters and wetlands.

The *Environmental Protection (Water and Wetland Biodiversity) Policy 2019* is substantially similar to the existing legislation, with only minor amendments. There have been a number of amendments to the drafting style to ensure the legislation reflects current drafting practice. Some provisions have been renumbered as a result. Other amendments have been made to clarify the intent of provisions, and align the policy to best available knowledge and contemporary practice.

Minor amendments have been made to transfer wetland environmental values from the *Environmental Protection Regulation 2008* to the *Environmental Protection (Water and Wetland Biodiversity) Policy 2019*. This change was required to locate water and wetland

environmental values in a single policy and increase the efficiency of decision making under the *Environmental Protection Act 1994* and other statutory and non-statutory instruments. Minor amendments have been made to the wetland environmental values section to clarify the exclusive application of the wetland environmental values prescribed under this policy to wetland biodiversity. The wetland environmental values prescribed under the *Environmental Protection (Water and Wetland Biodiversity) Policy 2019* relate to the processes and components that support the biological integrity of wetland, the biological diversity within and between wetlands, and the biological diversity of wetland types. The 'Map of referable wetlands' has been relocated to the *Environmental Protection (Water and Wetland Biodiversity) Policy 2019* from the *Environmental Protection Regulation 2008*, and renamed 'Map of Queensland wetland environmental values'. There have been no changes to the boundaries of the relevant areas covered by the map.

To reflect the changes stated above, the short title of the policy has been changed to *Environmental Protection (Water and Wetland Biodiversity) Policy 2019*.

Achievement of policy objectives

The policy objective is achieved by making the *Environmental Protection (Water and Wetland Biodiversity) Policy 2019* which will replace the *Environmental Protection (Water) Policy 2009* on 1 September 2019.

The *Environmental Protection (Water and Wetland Biodiversity) Policy 2019* will provide for the same matters as the expiring legislation, with the addition of wetland environmental values which have been transferred across from the *Environmental Protection Regulation 2008*.

The purpose of the policy is achieved by:

- identifying environmental values for waters and wetlands to be enhanced or protected;
- identifying management goals for waters;
- stating water quality guidelines and water quality objectives for enhancing or protecting the environmental values of waters;
- providing a framework for making consistent, equitable and informed decisions about waters; and
- monitoring and reporting on the condition of waters.

Consistency with policy objectives of authorising law

The *Environmental Protection (Water and Wetland Biodiversity) Policy 2019* is consistent with the object of the *Environmental Protection Act 1994*, which 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 (ecologically sustainable development).

Inconsistency with policy objectives of other legislation

The *Environmental Protection (Water and Wetland Biodiversity) Policy 2019* is consistent with the policy objectives of other legislation.

Benefits and costs of implementation

The implementation of the *Environmental Protection (Water and Wetland Biodiversity) Policy 2019* is undertaken as part of the administration and enforcement of the *Environmental Protection Act 1994*.

Consistency with fundamental legislative principles

The *Environmental Protection (Water and Wetland Biodiversity) Policy 2019* is considered to be consistent with fundamental legislative principles as defined in section 4 of the *Legislative Standards Act 1992*.

Consultation

A draft of the *Environmental Protection (Water) Policy 2019* was emailed directly to key stakeholders, including industry peak bodies, environmental groups, technical consultants and local government, for comment. Broader public consultation was not undertaken because there are no significant policy changes from the *Environmental Protection (Water) Policy 2009*. All of the submissions received during consultation were considered, and where appropriate, changes were made to the policy.

Industry representatives advised sediment erosion control infrastructure and private pipelines should be added to the list of water quality objectives to which the *Environmental Protection (Water and Wetland Biodiversity) Policy 2019* does not apply. This feedback was considered and changes were made to the policy to clarify that water quality objectives do not apply to water in a device used for erosion and sediment control, in a privately-owned dam, irrigation channel, pipeline or water tank.

A number of comments were made in relation to proposed changes to the management hierarchy for an activity that may affect waters. Industry representatives and environmental groups requested further clarity regarding the proposal to include offsets as part of the management hierarchy. Changes were made to directly respond to this feedback.

Industry representatives expressed concerns with changing the short title. The new short title reflects the inclusion of wetland environmental values and wetland mapping under the *Environmental Protection (Water and Wetland Biodiversity) Policy 2019*. The change to the short title to include the reference to wetland biodiversity is consistent with naming conventions that require the title to reflect the content of the policy.

In accordance with *The Queensland Government Guide to Better Regulation* (the Guidelines), the Office of Best Practice Regulation (OBPR) was consulted on the Department of Environment and Science's (the department) sunset review of the *Environmental Protection (Water) Policy 2009*. OBPR advised that it considered the department had satisfactorily met the objectives for sunset reviews as set out in the Guidelines. OBPR considered that no further regulatory impact analysis of the *Environmental Protection (Water) Policy 2009* was required prior to its remake.

Notes on Provisions

Part 1 Preliminary

Section 1 Short title

This section states the short title of the legislation is the *Environmental Protection (Water and Wetland Biodiversity) Policy 2019*.

The policy title has been changed to reflect the inclusion of wetland environmental values and wetland mapping under this policy. The wetland environmental values prescribed under this policy specifically relate to wetland biodiversity. The environmental values of wetlands listed under this policy are qualities of the wetland that support the biological integrity of the wetland, the biological diversity within and between wetlands and the biological diversity of wetland types. No 'human use' wetland environmental values have been prescribed (e.g. flood mitigation, water quality improvement or tourism).

Section 2 Commencement

This section states that the policy commences on 1 September 2019.

Section 3 Definitions

This section states that particular words in the policy are defined in the dictionary in schedule 2.

Part 2 Application and purpose of this policy

Section 4 Application

The policy applies to waters and wetlands.

Water is defined in the dictionary in schedule 4 of the *Environmental Protection Act 1994* as Queensland waters. This definition applies to this policy as well. In addition, as specified in the dictionary in schedule 2, without limiting the definition of Queensland waters in the *Acts Interpretation Act 1954*, water under this policy includes the bed and banks of waters, surface water and groundwater.

Wetland is defined in the dictionary in schedule 2 as an area shown as a wetland on the Map of Queensland wetland environmental values.

Section 5 Purpose

The purpose of the policy is to achieve the object of the *Environmental Protection Act 1994* in relation to the Queensland waters and wetlands. 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 (ecologically sustainable development).

The purpose of the policy is achieved by:

- identifying environmental values for waters and wetlands to be enhanced or protected
- identifying management goals for waters
- stating water quality guidelines and water quality objectives for enhancing or protecting the environmental values of waters
- providing a framework for making consistent, equitable and informed decisions about waters
- monitoring and reporting on the condition of waters.

Part 3 Basic concepts

Section 6 Environmental values of waters

An environmental value is defined in section 9 of the *Environmental Protection Act 1994* to be a quality or physical characteristic of the environment that is conducive to ecological health or public amenity or safety, or another quality of the environment identified and declared to be an environmental value under an environmental protection policy or regulation. 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 6 of the *Environmental Protection (Water and Wetland Biodiversity) Policy 2019* outlines the environmental values of the water to be enhanced or protected under the policy. The environmental values recognise the need for protection of the suitability of water for aquatic ecosystems, aquatic foods, aquaculture use, agricultural use, recreational use, drinking, industrial purposes, and cultural and spiritual values. The values are the same as the values in the *Environmental Protection (Water) Policy 2009* and were developed following research of national and international approaches to managing water quality.

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. Protection or enhancement of the aquatic ecosystem environmental value will provide support for human use environmental values, including for example suitability for drinking water.

For the *drinking water* environmental value, the intent is that the suitability of water for drinking water supply is maintained or improved, and that there is no additional burden arising from activities on water treatment for drinking water. The Australian Drinking Water Guidelines (ADWG), published on the National Health and Medical Research Council's website, provide more details on the appropriate approach to safe drinking water.

There are minor changes to the wording of human consumption environmental value, primary recreational use environmental value, secondary recreational use environmental value and visual recreational environmental value to clarify policy intent and to align to national guidelines.

The environmental values apply to all Queensland waters.

The policy informs assessment of environmental authorities, planning decisions, environmental impact assessment, and compliance purposes to protect and enhance water quality. The environmental values also inform whether environmental harm under the *Environmental Protection Act 1994* has been caused, as environmental harm is an adverse impact on an environmental value. They are considered as part of the regulatory requirements for particular decisions under the *Environmental Protection Act 1994*.

Section 7 Environmental values of wetlands

Section 7 of the *Environmental Protection (Water and Wetland Biodiversity) Policy 2019* outlines the environmental values of the wetlands to be enhanced or protected under the policy.

This section has been transferred from the *Environmental Protection Regulation 2008* to the *Environmental Protection (Water and Wetland Biodiversity) Policy 2019*, to locate wetland and water environmental values in a single policy and increase the efficiency of decision making under the *Environmental Protection Act 1994* and other statutory and non-statutory instruments. Minor amendments to this section have been made to clarify that the wetland environmental values prescribed under this policy relate specifically to wetland biodiversity. No 'human use' wetland environmental values have been prescribed (e. g. flood mitigation, water quality improvement or tourism).

Wetland environmental values listed under this policy are qualities of the wetland that support the biodiversity of the wetland, including:

- the health of the wetland's ecosystems;
- the wetland's natural state and biological integrity;
- the presence of distinct or unique features, endemic plants or animals and their habitats;
- the wetland's natural hydrological cycle;
- the natural interaction of the wetland with other ecosystems, including other wetlands.

The environmental values of wetlands apply to areas mapped as wetlands in the Map of Queensland wetland environmental values.

The environmental values inform a range of decisions including whether environmental harm under the *Environmental Protection Act 1994* has been caused, as environmental harm is an

adverse impact on an environmental value. They are considered as part of the regulatory requirements for particular decisions under the *Environmental Protection Act 1994*.

Section 8 Indicators and water quality guidelines for environmental values for waters

Section 8 of the *Environmental Protection (Water and Wetland Biodiversity) Policy 2019* defines the term *indicator* for an environmental value and identifies the documents used to decide the indicators for an environmental value. Temperature has been added as an example of a physical indicator.

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

Sustainable load measure has been amended to *load*, to simplify this section and increase readability. Load is defined as mass of a contaminant over a period of time, for example tonnes of sediment per year. This definition more accurately reflects current practices used to establish nutrient and sediment load targets.

The list of documents to be used to establish indicators and water quality guidelines has been amended to include up to date publications and additional national guidelines regarding drinking water and recreational waters.

Section 9 When environmental values of water are protected

Section 9 of the *Environmental Protection (Water and Wetland Biodiversity) Policy 2019* states when the environmental values of water are protected.

Part 4 Management goals and water quality objectives for waters

Section 10 Management goals for waters

Section 10 of the *Environmental Protection (Water and Wetland Biodiversity) Policy 2019* 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.

Section 11 Water quality objectives for waters

The *Environmental Protection Act 1994* states that an environmental protection policy may state the objectives to be achieved and maintained under the policy.

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 water quality guidelines and Australian water quality guidelines, but may be modified by social and economic inputs under section 12 of this policy.

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

The water quality objectives for 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
- used to inform decisions when identifying environmental harm under the *Environmental Protection Act 1994*; and
- used to inform other statutory and non-statutory decisions.

The objectives assist in identifying whether the environmental values are protected.

This section has been amended to clarify that water quality objectives do not apply to water in a device used for erosion and sediment control, in a privately-owned dam, irrigation channel, pipeline or water tank.

Section 12 Identifying environmental values etc. for waters

Section 12 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).

Level of protection means the degree of protection afforded to waters based on the ecosystem condition required to protect environmental values.

This section has been amended to remove the words 'in cooperation with the Chief Executive (fisheries)', to simplify the provision and increase the efficiency and effectiveness of the development and finalisation of environmental values. The department engages with the Department of Agriculture and Fisheries and a range of other agencies throughout the development of environmental values.

Section 13 Amending waters in schedule 1

Section 13 states the considerations for amendment of existing schedule 1 content—including amendments of a minor or stated nature.

Part 5 Management of activities

Section 14 Management hierarchy for surface and groundwater

Section 14 states the management hierarchy for an activity that may affect a water.

The management hierarchy is referred to in the *Environmental Protection Regulation 2019* as a matter that must be considered by the administering authority when making an environmental management decision. The management hierarchy will also be considered in a range of other decision making.

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.

When release of waste water or contaminant to waters is demonstrated to be the only available option within the last step of the hierarchy, the waste water or contaminant must be appropriately treated before release. Section 14 has been amended to include water quality offsets as an option for *appropriate treatment* of waste water or contaminant for release to surface waters and groundwater. The release may be offset, in a way approved by the administering authority, by undertaking an activity that counterbalances the impacts of releasing waste water or contaminants. Offsets under this section are other than those to which the *Environmental Offsets Act 2014* applies.

Section 15 Management intent for waters

This section 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 Healthy waters management plans

Section 16 Healthy waters management plans

This section states that the Chief Executive 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*.

Section 16 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.

This section has been amended to remove the words ‘in cooperation with the Chief Executive (fisheries)’, to simplify the provision and increase the efficiency and effectiveness of the development and finalisation of Healthy Waters Management Plans. The department engages with the Department of Agriculture and Fisheries and a range of other agencies throughout the development of Healthy Waters Management Plans.

Part 7 Functions of chief executive

Section 17 Community awareness and involvement

Section 17 states matters the chief executive must consider if the chief executive decides 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 section 17, section 12 requires consultation in the development of environmental values and water quality objectives for waters and section 18 states the requirement for online access to monitoring information that will increase community awareness of the condition and trend of Queensland waters.

Section 18 Ambient monitoring

This section 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.

Section 18 requires that the *Monitoring and Sampling Manual 2018* be used by persons required to conduct monitoring. The *Monitoring and Sampling Manual 2018* provides 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.

This section has been amended to refer to the new *Australian and New Zealand guidelines for fresh and marine water quality*, published in October 2018. These guidelines were previously referred to as the 'AWQ guidelines'.

Section 18 allows for a measure of an indicator that does not comply with the set water quality objectives, to be taken to comply with the water quality objectives, if the non-compliance is due to a natural property of the water. In accordance with best practice, this section has been amended to state that the non-compliant measure must also be within the natural background level for that indicator. The natural background is the level or ranges of levels of an indicator in waters outside the influence of any waste or contaminant. The background level for the indicator is to be defined at the time of the sampling of the monitoring program.

Section 19 Amendment of Map of Queensland wetland environmental values

This section allows for the amendment of the Map of Queensland wetland environmental values, if more accurate information on the wetland becomes available, or if the ecological significance of the wetland has changed.

The Map of Queensland wetland environmental values specially identifies the wetland areas that this policy applies to. The environmental values of wetlands listed in section 7 apply to all areas mapped as wetlands under the Map of Queensland wetland environmental values. This map also classifies wetlands as having either high ecological significance or general ecological significance. The ecological significance score is assigned based on information obtained through the Aquatic Biodiversity Assessment and Mapping Method (AquaBAMM), published on the department's website.

Part 8 Miscellaneous

Section 20 Operation of sch 1

This section clarifies what are the boundaries of water mentioned in schedule 1.

Part 9 Repeal

Section 21 Repeal

This section repeals the *Environmental Protection (Water) Policy 2009*.

Schedule 1 Environmental values and water quality objectives of waters

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 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 groundwater.

The documents are published on the department's website.

This schedule has been changed from alphabetical listing to regional grouping listing (regions and documents listed alphabetically). The aim of this change is to make navigating the schedule easier. This reflects the format on the department's website.

Schedule 2 Dictionary

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

The definition of AWQ guidelines has been removed from the dictionary as AWQ guidelines has been replaced in section 8 and 18 by the *Australian and New Zealand guidelines for fresh and marine water quality*, published in October 2018. These are the latest national guidelines in relation to fresh and marine water quality.

The definition of 'Queensland regional NRM body' has been amended to reflect current funding programs at national and state level.

The definition of recognised entity has been amended to:

- include an agency of a foreign country, to allow for consideration of international agencies under section 8 and section 16
- include a research centre completely or partly funded by the Queensland government, to allow for consideration of Queensland government funded research centres under section 8 and section 16
- remove 'Healthy Waterways Limited' as the company has merged to become Healthy Land and Water, which is a 'Queensland regional NRM body'.

The definition of waters has been amended to clarify that waters under this policy include surface water and groundwater.

The definition of 'Map of Queensland wetland environmental values' (previously the 'Map of Referable Wetlands' in the *Environmental Protection Regulation 2008*) and the definition of wetland have been inserted to assist with the new wetland sections. These definitions have been drafted from the *Environmental Protection Regulation 2008* definitions.