

Environment Protection (Water Quality) Policy 2015 Review Discussion Paper

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ACKNOWLEDGEMENT

The Environment Protection Authority acknowledges and respects the Aboriginal peoples of South Australia as the First Peoples and Nations of this State. We recognise them as the traditional custodians of land and waters in South Australia and that their spiritual, social, cultural and economic beliefs are of ongoing importance today. We recognise that they have made, and continue to make, a unique and irreplaceable contribution to the State.

Artwork: 'Caring for Country', courtesy of Arrernte man Scott Rathman, for the EPA.

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Executive Summary

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 Authority (EPA) uses the Environment Protection (Water Quality) Policy 2015 (Water Quality Policy) as the primary Policy to regulate water quality as it provides the most specific and detailed protection of the state's surface, marine and underground waters (groundwater).

Since the Water Quality Policy commenced in January 2016, several areas of opportunity to enhance its ability to protect South Australia's waters and bring it into line with current science have been identified.

The purpose of this discussion paper is to engage with stakeholders on the opportunities to improve the Water Quality Policy. This will inform potential revision and the development of a regulatory impact statement and draft policy, which will be released for further consultation.

The EPA invites you to contribute to the review, through providing feedback on the specific discussion questions posed throughout this paper. A list of questions is provided in [Appendix 1](#), which can be used as a template for feedback.

For information on how to submit a feedback submission, please see section 2 'Invitation to comment'

1 Introduction

Water plays a fundamental role in our lives, used for drinking, supporting agriculture, industry, cultural and recreational uses, essential services, and in the production of food and beverages. Water provides these essential services for humans and provides habitat and drinking water for a myriad of life in wetland, river, and lake, underground, marine and estuarine ecosystems.

In South Australia the *Environment Protection Act 1993* (EP Act) provides the regulatory framework to protect waters from pollution. The EP Act imposes both statutory duties and penalties to prevent and minimise environmental harm, and licenses affecting activities to prevent or minimise environmental harm.

An environment protection policy (EPP) is one of a number of legislative tools provided for under the EP Act to address environment protection matters. An EPP can be made for any purpose and to secure the objects of the Act. This may include setting out requirements or mandatory provisions with penalties enforceable under the Act. To date, EPPs have been made to address specific environmental issues relating to air, noise, waste, resource recovery and water quality.

The purpose of the *Environment Protection (Water Quality) Policy 2015* is to:

- specify requirements to meet the general environmental duty (Part 4 of the EP Act) in relation to the impacts to waters
- provide specific context for what constitutes environmental harm to waters
- creates specific offences in relation to discharges into waters.

Purpose of review

Since the Water Quality Policy commenced in January 2016, several areas of opportunity to enhance the policy's ability to protect South Australia's waters have been identified. This has led to the commencement of a review of the policy.

There are five areas of improvement being considered as part of this review:

- 1 Improved protection of all underground (including saline) waters for future use
- 2 Update reference to current Australian and New Zealand Guidelines for Fresh and Marine Water Quality
- 3 Update the Water Quality Policy to refer to the Planning and Design Code requirement that development applications referred to the EPA in the Mount Lofty Ranges Water Supply Catchment are assessed to have a neutral or beneficial effect on water quality
- 4 Align the Water Quality Policy with the updated *Code of Practice for Vessel and Facility Management (Marine and Inland Waters)* 2019 (Vessel Management Code)
- 5 Updating schedules to ensure best practice, including:
 - Schedule 2 – Class 1 pollutants
 - Schedule 3 – Class 2 pollutants
 - Schedule 4 – Codes, standards, guidelines and other documents

The review provides opportunity for stakeholders to suggest other matters for consideration to improve the protection of waters in section 3.6.

2 Invitation to comment

The EPA is seeking your feedback on the potential areas of improvement discussed in this paper. Your feedback will enable the EPA to gain an in-depth understanding of the issues raised in the paper and will assist with identifying potential approaches to address them.

Questions for discussion have been posed throughout this paper to stimulate readers' feedback. A list of all questions can be found at Appendix 1 and can be used as a template for your submission. Please comment on the general issues under discussion. Providing reasons and evidence for your comments will assist in the consideration of your feedback.

How to submit your feedback

Emailed written submissions to the EPA are preferred. To have your say on this discussion paper, please email your submission to epainfo@sa.gov.au (mark subject as 'Water Quality Policy Review')

Alternatively, written submission can be posted to:

Water Quality Policy Review
Environment Protection Authority
GPO Box 2607
Adelaide SA 5001

Attn: Dr Clive Jenkins

Submissions close 9 December 2024

Important information about your submission

Submissions will be treated as public documents, unless received in confidence (subject to the requirements of the *Freedom of Information Act 1991*) and may be quoted in full or part in subsequent EPA reports. If you do not wish the public to read your submission, please write 'confidential' on your submission.

Next steps

The EPA will consider submissions received as part of this initial consultation period. The information and ideas contained in these submissions will help determine if any changes to the Water Quality Policy are required to improve the regulation of water quality in South Australia.

If changes are determined to be necessary, a regulatory impact statement and draft policy will be prepared. These documents will then be released for a second public consultation period. Submissions received on the regulatory impact statement and draft policy will inform any necessary changes to the draft policy before it is authorised.

Protecting water quality in SA



3 Proposed areas for improvement

3.1 Improved protection of all underground (including saline) waters for future use

Background

General environmental duty

The Water Quality Policy is subordinate legislation under Part 5 of the EP Act. One of the ways the Water Quality Policy protects underground water quality is through application of the general environmental duty which is a legislative obligation under section 25 of the EP Act¹.

Clause 9 of the policy states provisions that a person must comply with in taking all reasonable and practicable measures to prevent or minimise environmental harm resulting from undertaking an activity that pollutes or might pollute waters (to satisfy compliance with the obligations set out in the general environment duty under section 25 of the EP Act)².

Clause 9 clarifies the role of codes of practice and guidelines referenced in the policy.

Environmental values of water

Elements of the general environmental duty addressed by the policy are applied, in part, according to the environmental value(s) of water. Environmental values refer to the different types of uses and attributes of water bodies. In effect they declare why waters are important. Clause 6 of the Water Quality Policy sets out the types of environmental values waters may have in South Australia.

Environmental values currently under the Water Quality Policy include:

- ✓ aquatic ecosystems
- ✓ recreation and aesthetics
- ✓ drinking water for human consumption
- ✓ primary industry uses.

Clause 9 of the Water Quality Policy includes provisions which apply environmental values to relevant waters and outlines the requirements that must be taken as part of fulfilling the general environmental duty.

For example, if underground waters have an environmental value of 'primary industries – livestock drinking water', a person must avoid activating trigger values (currently in the 2000 Australian and New Zealand Guidelines for Fresh and Marine Water Quality – Chapter 4) when undertaking an activity that pollutes or may pollute this water³. If a person does not comply with that requirement, they have not fulfilled their general environmental duty obligation and the EPA may exercise power to secure compliance⁴.

The environmental values of waters are declared in Schedule 1 of the Water Quality Policy. Environmental values are defined in the 2000 Australian and New Zealand Guidelines for Fresh and Marine Water Quality (section 2.1.3 as the *"particular values or uses of the environment that are important for a healthy ecosystem or for public benefit, welfare, safety or health and which require protection from the effects of pollution, waste discharges and deposits"*).

¹ Environment Protection Act 1993 section 25(1).

² Water Quality Policy clause 9.

³ Water Quality Policy clause 9(c).

⁴ Environment Protection Act 1993 section 25(4).



Groundwater species Dr. Remko Leijds, Honorary Research Associate, South Australian Museum

If a water body is not declared in the Policy to have an environmental value under Schedule 1, the Policy does not draw support from the Australian and New Zealand Guidelines for Fresh and Marine Water Quality, which is EPA's primary source of scientific information to support water quality management. Whilst the broader obligation under section 25 of the Act remains, the following issues may create doubt as to the application of the general environmental duty:

- Specific obligations of the Policy as part of demonstrating the general environmental duty are limited to application of the waste management hierarchy and compliance with the codes and guidelines referenced in Schedule 4.
- An assessment of environmental risk due to pollution may be interpreted as 'no risk' because the lack of environmental value implies there is no sensitive receptor that could be impacted or harmed.

Case for action

Appropriate management of our water resources is critical to the environment and to our economic growth, health and wellbeing. Climate change will lead to a more intense and parched climate, as illustrated by regional modelling, which will impact future water availability for the environment and for human use. We need to implement appropriate actions that will secure water for our community and maintain a healthy environment.

Groundwater is a vital water source for many people, industries and groundwater dependent ecosystems and is the largest inland water resource in South Australia. Approximately 70% of South Australian water use is for agriculture and 50% of that agricultural water is supplied from groundwater systems⁵. Reliance on groundwater is only expected to rise in the future due to the impacts of climate change⁶. A significant proportion of South Australian groundwater systems are saline which can currently restrict their use, although technologies and management practices are evolving to increasingly make the use of saline groundwater viable.

Schedule 1(3) of the Water Quality Policy declares underground waters to have environmental values only if the salinity (measured through total dissolved solids or TDS) is less than 13,000mg/L⁷. Underground waters with salinity levels greater than this threshold do not have any environmental values applied to them by the Policy. As outlined earlier, if a water body is not declared to have any environmental value(s) under the Policy there are limited tools available to assess and mitigate the water quality risks that may be related to activities that impact those waters.

⁵ <https://www.epa.sa.gov.au/soe-2018>

⁶ SOER-Summary-Report.pdf (epa.sa.gov.au)

⁷ Note that 13,000mg/L was nominated as it is the upper limit for (limited) livestock water supply.



Borewater and pump, outback farm

South Australia has vast expanses of underground waters with salinity in excess of 13,000 mg/L and the use of those saline waters may significantly increase in the future due to:



- climate change related modifications to rainfall and evaporation is reducing the availability of surface water for many South Australian activities. This will drive a future increase in access and use of saline underground water sources in regional areas.



- a decrease in cost of desalination making this form of treatment more economically attractive.



- a likely increase in mining and energy related industrial development (eg mining) with associated increases in demand for water, remote from current or proposed water supplies.

In these circumstances, the protection of waters regardless of salinity will ensure that the future sustainable use of South Australia's underground water will not be compromised by water affecting activities taking place now. Among the objects of the EP Act is to manage the environment in a way that 'will enable people and communities to provide for their economic, social and physical well-being and for their health and safety while sustaining the potential of this natural resource to meet the reasonably foreseeable needs of future generations'⁸. The protection of waters regardless of salinity would respond to this objective and provide intergenerational equity by sustaining all of South Australia's underground water resources for possible future use.

In addition, many underground waters in South Australia (with variable salinity) contain biologically diverse communities in many cases to be components of the aquatic ecosystems⁹ with stygofauna and microbiota. Protection of the ecosystem characteristics of saline underground water is relevant similarly to saline inland surface waters; they are natural aquatic systems. The National Water Quality Guidelines do not yet include criteria specifically relating to underground water ecosystems, which restricts the capacity to regulate potential polluting activities that may harm those ecosystems to maintain ecosystem values¹⁰.

⁸ Environment Protection Act 1993 s 10 (1)(a)(i)(A).

⁹ https://www.epa.sa.gov.au/files/7477_subsurface_groundwater_ecosystems.pdf

¹⁰ Note that 'groundwater dependant ecosystems' or GDEs that are open to the atmosphere are considered to be surface water ecosystems (e.g. mound springs in the Lake Eyre basin), which hydrologically rely on groundwater. Surface water GDEs are declared to have aquatic ecosystem environmental value by default in the Water Quality Policy. Underground water aquatic ecosystems (that are not open to the atmosphere) are not declared to have aquatic ecosystem environmental value.

However, other jurisdictions have developed legislative provisions with reference to saline underground water ecosystems. For example:

- Tasmanian legislation attaches 'ecosystem protection' as an environmental value applying to underground waters with a salinity greater than 13,000 mg/L¹¹.
- Victorian legislation has identified that groundwaters with a salinity (total dissolved solids) greater than 10,000 mg/L has the environmental value of 'water dependent ecosystems and species'.

Proposed option for consideration

Change the policy to declare that all underground waters have a 'future use' as a new environmental value under clause 6. This would ensure that all (including saline) underground waters are protected and require either assessment or management considerations with regard to the water's 'future use'.

To protect all underground waters for future generations the new 'future use' environmental value could require that, as far as reasonably practicable (ref s25 Act), the quality of underground waters must not be impacted with reference to their existing water quality characteristics. It is proposed that a person who pollutes or might pollute underground water would need to provide evidence of the baseline water quality and ensure that any activities are managed to prevent or at least minimise water quality deterioration as much as reasonably practicable with reference to those baseline water quality.

This differs from the current approach under the general environmental duty provision of clause 9 requiring reference to water quality guidelines. The reference to and use of water quality guidelines is a risk-based approach that effectively allows water quality impact from an activity to occur, so long as it does not cause particular environmental values to be exceeded. The proposed approach stems from the logic that water quality impact should be minimised regardless of the current ecosystem or human use values. It aims to minimise all pollution of underground waters as a reasonable and practicable requirement.

The key argument supporting the proposal to minimise the pollution of (including saline) underground waters as far as reasonably practicable is that those waters may be used in the future. The future use may be unknown, so the future water quality requirements will often also be unknown. On that basis, maintenance of unimpacted underground water quality with reference to the baseline water quality is consistent with the precautionary principle and intergenerational equity.

Causing impact to underground water quality will not be considered an offence if the general environmental duty (section 25) has been met¹².

The EPA acknowledges this option may cause concern to industry, particularly in the mining and waste sectors, and welcomes feedback to determine how to minimise potential impact to them.

Questions

- 1 Do you think it is problematic that environmental value(s) are not attached to underground waters with salinity levels greater than 13,000mg/L? Please explain your answer.
- 2 What is your view on declaring the environmental value 'future use' to all underground waters? In considering this question, note the implication that such a declaration would require reasonable and practicable measures to prevent or minimise harm. How would the proposed amendment impact you?
- 3 Do you have any further comments about the potential for improving the protection of high salinity underground water in the Water Quality Policy?

¹¹ State Policy on Water Quality Management 1997 at clause 10.2.

¹² Environment Protection Act 1993 section 25

3.2 Update reference to current Australian and New Zealand Guidelines for Fresh and Marine Water Quality

Background

The Water Quality Policy currently refers to the *Australian and New Zealand Guidelines for Fresh and Marine Water Quality 2000* (ANZG 2000) to specify the water quality characteristics that represent healthy conditions for various environmental values. These guidelines are fundamental to the Water Quality Policy because they provide the national scientific framework for the assessment and sustainable management of aquatic environments.

The Australian and New Zealand Governments collaborated to update the ANZG 2000 and re-released them in 2018, citing them as the *Australian and New Zealand Guidelines for Fresh and Marine Water Quality 2018* (ANZG 2018).

While the previous ANZG 2000 were static and only available as PDF documents, the ANZG 2018 were released via a website: waterquality.gov.au/anz-guidelines. This web-based format enables the guidelines to be periodically amended if and when new scientific data becomes available (such as new toxicant pollutants being added and/or changes to information relating to existing toxicant pollutants), with any changes recorded in a website change log.

Case for action

The Water Quality Policy refers to the ANZG 2000 ‘as in force at the commencement of this policy’¹³, so it does not allow reference to the updated water quality guidance provided in ANZG 2018. The policy must have a sound and current water quality science basis and that is represented in Australia by the ANZG 2018. It follows that the policy needs to be updated to reflect that requirement.

As with the previous ANZG 2000, ANZG 2018 includes guidance regarding appropriate water quality criteria for ‘toxicants’ and ‘stressors’ and also provides useful guidance with respect to their assessment.

If the Water Quality Policy were to reference the ANZG 2018, this would allow the application and consideration of:

- recently updated (and new) toxicant guideline values
- on-going toxicant guideline updates into the future
- updated South Australian physical and chemical stressor guideline values
- updated guidance with respect to the ‘weight of evidence’ approach to aquatic ecosystem assessment
- use of current terminology.
- cultural and spiritual values

¹³ Water Quality Policy clause 3



Coorong National Park - sand dunes and water and seagulls

For the first time, the ANZG 2018 recognise ‘cultural and spiritual values’ as a type of environmental value that can be attached to water, including statements such as:

“Water is core to life for Aboriginal and Torres Strait Islander peoples. Protecting and managing water is a custodial and intergenerational responsibility. If the cultural and spiritual values of water are sustained by providing water that is sufficient in both quantity and quality, then many other components of Indigenous life will be healthy.”

and

“Cultural and spiritual values may relate to a range of uses including, spiritual relationships, language, song lines, stories, sacred places, customary use, the plants and animals associated with water, drinking water and recreational or commercial activities.”¹⁴

The ANZG 2018 do not specify particular water quality criteria for cultural and spiritual values as such, although they do provide guidance on how to identify the appropriate water quality guideline values that relate to different aspects of the cultural and spiritual values of waters. The EPA proposes to adopt this approach with reference to the ANZG 2018.

The EPA is not yet in a position and nor is it appropriate to specify how this will be reflected in the Policy at this time. The emphasis is for the Policy to acknowledge that waters in South Australia have significance to First Nations Peoples that goes beyond primary industry uses, drinking water uses and aquatic ecosystems. How this recognition and acknowledgement will be reflected in a revised policy will be considered following consideration of consultation submissions on this document and will require further dialogue when a draft policy is consulted on.

This approach will support clause 22 (3)(b)(ii) of the Water Quality Policy which requires the Minister responsible for the administration of the Aboriginal Heritage Act 1988 to be consulted as to whether an amendment of Schedule 1 as to whether the waters have spiritual or cultural significance to a particular indigenous community.

¹⁴ <https://www.waterquality.gov.au/anz-guidelines/guideline-values/derive/cultural-values>



Jack Point Observatory Deck. Coorong National Park. Pelican flock.

Proposed options for consideration

Update references to the ANZG 2018

It is proposed reference to the ANZG 2000 in the Water Quality Policy is replaced with the ANZG 2018. The intention of this update would be that the guidelines continue to be considered within the context of the general environmental duty provision outlined in clause 9 of the Water Quality Policy subordinate to section 25 of the Act.

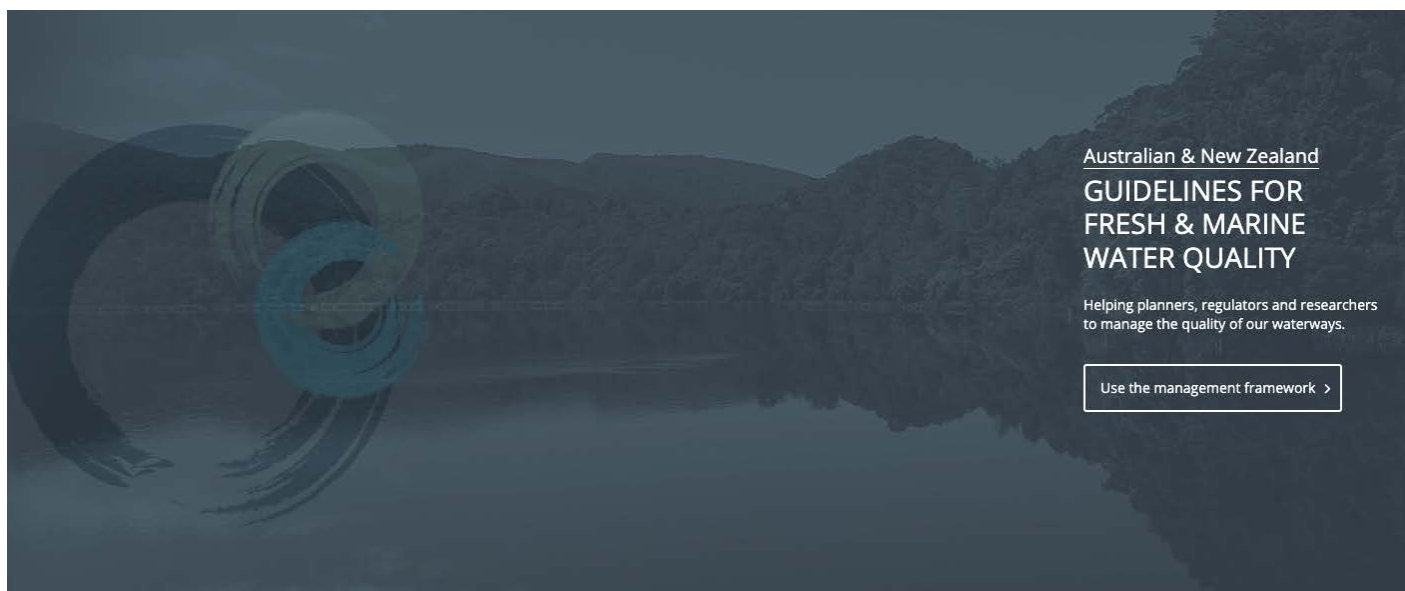
Consideration needs to be given as to how reference to the ANZG 2018 would be achieved in a revised Water Quality Policy as the structure and format of the guideline has changed along with some terminology.

Proposed term updates

If the policy is updated to refer to the ANZG 2018, it is proposed the Water Quality Policy would be further amended to use the new naming conventions used in this updated guidance. These are the use of 'community values' rather than 'environmental values' and 'default guideline values' rather than 'trigger values'. This will improve South Australia's consistency with the national framework and the meaning of each term will remain the same for each respective value.

How the structure and format of the updated ANZG 2018 guidelines has changed

As mentioned above, whilst the ANZG 2000 were static and only available as PDF documents, the ANZG 2018 were released via an online only website format: waterquality.gov.au/anz-guidelines. This format means adjustments can be made to ANZG 2018 on an ongoing basis, with any changes recorded in a website change log.



The Water Quality Policy references the ANZG 2000 under clause 3 as stated below:

“Water Quality Guidelines means the Australian and New Zealand Guidelines for Fresh and Marine Water Quality 2000 prepared by ANZECC and ARMCANZ, as in force at the commencement of this policy”

For the Water Quality Policy to refer to the ANZG 2018, consideration is needed for how to embed reference to the website format of the updated guidelines in the Water Quality Policy. One proposed option is to change the definition of ‘Water Quality Guidelines’ in clause 3 to:

“Water Quality Guidelines means the Australian and New Zealand Guidelines for Fresh and Marine Water Quality 2018, published by the Australian and New Zealand Governments and State and Territory Governments, as in force from time to time”

New South Wales and Victoria use this phrase in their legislation when referring to the ANZG 2018 and it is an option to consider in the Water Quality Policy¹⁵.

Finally, to adopt the updated ANZG 2018, it is proposed that clause 7 is updated to remove specific ‘Chapter’ references as the different environmental value references will be now part of the webpage.

It is noted the EPA would need to communicate any changes to future ANZG guidance with stakeholders

¹⁵ Victoria – r 10(4) of the Environment Protection Regulations 2021; NSW – dictionary section of Protection of the Environment Operations Act 1997.

Other proposed changes to environmental values and waters

Other proposed changes include:

- removing the following environmental values from the Water Quality Policy:
 - Primary industries – irrigation and general water uses
 - Primary industries – livestock drinking water
 - Primary industries – aquaculture and human consumption of aquatic foods

The justification for these changes is:

1. The aquatic ecosystem environmental value applies to all inland surface waters and marine waters by default. The default guideline values (trigger values) for aquatic ecosystems are more stringent (i.e., more protective) than those for primary industries, so the protection of inland surface waters and marine waters for primary industry uses is effectively provided by aquatic ecosystem protection.
 2. The proposed change to the protection of underground water quality (see section 3.1) introduces the 'future use' value of underground water. That would effectively mean all reasonable and practicable measures must be taken to avoid polluting any underground water systems. By doing so, underground water quality relating to primary industry uses would be protected.
- removing the following waters from Schedule 1
 - Lake Albert and Lake Alexandria
 - Lake Bonney (South East) and tributaries
 - Public stormwater systems

The justification for these changes is that Schedule 1 Clause 2 (Environmental values of waters – default values) includes 'aquatic ecosystem' and 'recreation and aesthetics' being declared for all marine waters and inland surface waters. So there is no need to specifically declare these values for Lake Albert and Lake Alexandria, Lake Bonney (South East) and tributaries, and Public stormwater systems. The above-mentioned proposal to remove primary industry values negates the need to include those values in Schedule 1 Clause 3 (Environmental values of particular waters).

It should be noted the proposed amendments in section 3.1 'Protecting high salinity groundwater' and 3.2 'Recognition of cultural and spiritual values of water' could result in consequential changes to Schedule 1.

Questions

1. How would updating the Water Quality Policy to refer to the ANZG 2018 impact you?
2. Do you anticipate any issues arising from referring to the ANZG 2018 in its changeable web-based form? If so, please explain why.
3. Do you think there is benefit in updating the terminology in the Water Quality Policy to match the phrases used in ANZG 2018? Note that there has been no change in the meaning of the updated terms. Please explain your answer.
4. Do you have any comment on including the ANZG 2018 guidance on how to identify the appropriate water quality guideline values that relate to different aspects of the cultural and spiritual values of waters in the policy?
5. How could the EPA best communicate the changes in the updated ANZG 2018? Would a fact sheet be beneficial?



Mount Lofty Ranges and water (Tourism Australia / South Australian Tourism Commission)

3.3 Align the Water Quality Policy with the Planning and Design Code requirement that development applications referred to the EPA in the Mount Lofty Ranges Water Supply Catchment are assessed to have a neutral or beneficial effect on water quality

Background

Certain development applications are referred to the EPA in accordance with the *Planning, Development and Infrastructure Act 2016* (PDI Act), *Planning, Development and Infrastructure (General) Regulations 2017* and associated Planning and Design Code. The purpose of referring development applications to the EPA as stated in the Planning and Design Code (P&D Code) is to:

... provide expert technical assessment and direction to the relevant authority on the assessment of the potential harm from pollution and waste aspects arising from activities of environmental significance and other activities that have the potential to cause serious environmental harm.

However, the purpose of development applications being referred to the EPA as specified in the P&D Code for both the Mount Lofty Ranges Water Supply Catchment (Area 1 and 2) Overlays is to:

... provide expert technical assessment and direction to the relevant authority on whether a proposed development will have a neutral or beneficial impact on water quality.

Land in these Overlays contain a system of reservoirs and diversion weirs that provide public water supply, including drinking water to Greater Adelaide and is proclaimed as a water protection area under the EP Act.

Development in the catchment areas covered by the Overlays has the potential to generate pollutants such as pathogens, nutrients, sediments, pesticides and chemicals that can be discharged into surface and underground waters, and detrimentally affect water quality.

Since commencement of the P&D Code in 2021, the EPA has been responsible for assessing whether referred developments in the Mount Lofty Ranges Water Supply Catchment (MLRWSC) will result in a neutral or beneficial effect on water quality.

Case for action

Clause 21 of the Water Quality Policy provides the matters the EPA must consider when determining development authorisations under Part 6 of the EP Act in relation to water quality. Currently, the Policy does not state the EPA must consider whether a proposed development in the MLRWSC will have, or is likely to have, a neutral or beneficial impact of water quality. There is a need for the Water Quality Policy to align with the P&D Code and provide guidance on assessment regarding neutral or beneficial impacts. Alignment will provide certainty for matters required to be considered by the EPA and will improve the current administration of the EPA's assessment functions.

Proposed option for consideration

The option is to include a new provision in clause 21 'Matters relating to Part 6 of Act' of the policy which states the EPA as the Authority must consider whether development authorisations proposed inside the MLRWSC as defined in the P&D Code have a neutral or beneficial effect on water quality. This amendment could also include provisions that defines what the EPA considers to be neutral or beneficial effects on water quality. If supported at the discussion paper stage of the policy review further consultation would be undertaken on possible content. This amendment would be limited to assessments for neutral or beneficial use in the MLRWSC as already required by the P&D Code.

Questions

1. How would the proposed option to add new provisions to clause 21 to require developments in the MLRWSC to have a neutral or beneficial effect on water quality impact you? Note: this is already a requirement under the P&D Code.



River Murray

3.4 Align with Code of Practice for Vessel and Facility Management

Background

Clause 18 of the Water Quality Policy details requirements for vessel waste management and provides offences for non-compliance. Clause 18(4) provides the requirements for when greywater may be discharged from a vessel. Greywater is wastewater that has been used for washing, laundering, bathing or showering.

The Code of Practice for Vessel and Facility Management (Marine and Inland Waters) was first published in 2008¹⁶ (2008 VM Code). The code provides guidance on reasonable and practicable measures for prevention of pollution which may arise from the construction, use and maintenance of vessels and related facilities.

The VM Code was revised in March 2019. During this revision, feedback was received that the requirements on the discharge of greywater from vessels contained in clause 18 were not reasonable or practicable. Specifically, the requirement in clause 18(4)(b)(ii)(B) to only discharge greywater when further than 1 nautical mile from any person in the waters is not likely to be complied with in all circumstances (such as along the River Murray).

As a result of this consultation and in collaboration with the boating industry, the revised 2019 VM Code was released and included new information on circumstances when greywater discharge is permitted. This included allowances for greywater discharge in certain circumstances where the vessel is located less than 1 nautical mile from a person in the waters (see [Attachment 1](#) for greywater management flowchart for inland waters).

The management principles presented in the 2019 VM Code and the Water Quality Policy's requirements in relation to waste from vessels under clause 18 differ in relation to greywater.

Case for action

Codes of practice are designed to assist in compliance with the general environmental duty as well as other obligations under the EP Act and associated EPPs. Codes and EPPs must be consistent to provide the basis for effective regulation. In this case, the 2019 VM Code and the Water Quality Policy need to align to effectively regulate greywater waste from vessels and to provide certainty to the boating industry about expected practices.

As the 2019 VM Code has been revised more recently than the policy, this code reflects a current understanding of the expected vessel greywater management practices required to fulfil the general environmental duty for waste from vessels however this is contrary to the policy.

To ensure there is consistency between the two regulatory instruments, it is proposed the Water Quality Policy is updated to reflect the greywater management principles in the 2019 VM Code.

¹⁶ https://www.epa.sa.gov.au/files/47792_vessels.pdf



Sailing boats in the Port of Pelican, American River. Kangaroo Island, South Australia

Proposed option for consideration

Remove provisions under clause 18 which refer to greywater to align the Water Quality Policy with the 2019 Vessel Management Code

As discussed, currently, the Water Quality Policy and 2019 VM Code present different requirements for the management of greywater on vessels. An option to align these instruments which will provide regulatory certainty is to remove provisions under clause 18 of the Water Quality Policy that refer to greywater.

This would mean greywater from vessels would be regulated through the requirements of the general environmental duty as detailed in clause 9 of the Water Quality Policy by updating the reference to the VM Code in Schedule 4 to the 2019 version, instead of through clause 18. It is proposed to meet the general environmental duty with respect to greywater, when a person operates a vessel or vessel facility, they must have regard to the 2019 VM Code's recommendations and comply with its mandatory elements¹⁷.

This option proposes to remove the following subclauses under clause 18 referring to greywater:

- Subclause (3) – Mandatory provision: Category B offence – details circumstances whereby greywater must be stored on the vessel in a container where it cannot escape.
- Subclause (4) – States circumstances when greywater may be discharged from a vessel.
- Subclause (7) – Details requirements which must be met for greywater to be deemed 'treated'.

Regulatory enforcement with respect to greywater would be through issuing an environment protection order (under section 93 of the EP Act) if there is a breach of the general environmental duty provisions in clause 9¹⁸.

It should be noted there are no changes proposed to blackwater (waste from toilets or urinals) provisions in clause 18. The management principles relating to blackwater are consistent with the 2019 Vessels Management Code.

Question

1. Do you have any further comments on the alignment of the Water Quality Policy and the 2019 VM Code?

¹⁷ See Water Quality policy cl 9(f), cl 10 (1) and Schedule 4 at 'Operating a vessel or vessel facility'.

¹⁸ *Environment Protection Act 1993* s 25(4).

3.5 Potential updates to Schedules 2, 3 and 4

Background

Schedules 2, 3 and 4 of the Water Quality Policy inform the operation of specific clauses and were established to be periodically updated.

Schedules 2 and 3 are the Classes 1 and 2 pollutants, which support the operation of the offences for discharging these pollutants (clauses 10 and 11).

Schedule 4 contains the codes, standards, guidelines and other documents that must be complied with or have regard to in order to uphold the general environmental duty provision (clause 9) without limiting other obligations under the general environmental duty.

Case for action

The EPA has identified a number of potential minor updates needed to the Classes 1 and 2 pollutants listed in Schedules 2 and 3 along with proposed updates to documents listed in Schedule 4. These updates will reflect best practice guidance and current scientific understanding.

It is important that Schedules 2 and 3 remain current and relevant due to their link to the mandatory provisions making it an offence to discharge these pollutants¹⁹. Schedule 4 also should remain up to date for people to reference the correct codes, standards and guidelines to comply with the general environmental duty.

The Water Quality Policy allows for Schedules 2, 3 and 4 to be amended outside a formal review process, by the Minister by notice in the Government Gazette²⁰. In this case, the potential minor amendments to these Schedules have been included as part of the review to streamline process.

Proposed options for consideration

Schedules 2 Class 1 pollutant proposed changes

Under clause 10(1) of the Water Quality Policy:

“A person must not discharge a class 1 pollutant into any waters or onto land in a place from which it is reasonably likely to enter any waters (including by processes such as seepage or infiltration or carriage by wind, rain, sea spray or stormwater or by the rising of the water table).”

The EPA has identified additional Class 1 pollutants that could be added to the lists in Schedule 2 (see Table 1 below) along with clarification changes. These have been proposed to clarify the existing pollutants and ensure pollutants that have emerged as an issue since the Water Quality Policy commenced are included.

¹⁹ Water Quality Policy clauses 10 and cl 11 respectively.

²⁰ Water Quality Policy clause 22.

Table 1 Proposed changes to Schedule 2

Proposed amendment	Reason for proposed change
Class 1 pollutant	
Add 'Commercial and Industrial Waste'	Both 'Construction and Demolition Waste' and 'Domestic Waste' are included in Schedule 2. Therefore, it is proposed Commercial and Industrial Waste is added for consistency and completeness.
Add 'pool and spa water'	The EPA has had reports of pool and spa water being emptied into the stormwater network. This addition is proposed to make it explicit that both pool and spa water are pollutants and should not be emptied into waterways.
Add 'spa backwash water'	Currently, "pool backwash water" is included in the Class 1 pollutants list. This addition ensures both pool and spa backwash water are Class 1 pollutants.
Add 'listed wastes' from Part B, Schedule 1 of the EP Act to Schedule 2	Listed wastes are those listed under Part B, Schedule 1 of the EP Act (see Attachment 2). Listed wastes are prohibited from being disposed of except in certain circumstances under clause 10 of the Environment Protection (Waste to Resources) Policy 2010 (Waste to Resources Policy). This means that the disposal of listed wastes into waterways is already prohibited. Inclusion of listed wastes provided in Part B, Schedule 1 of the EP Act under Schedule 1 is not essential because these wastes are effectively represented under the definition of hazardous waste (in terms of substance characteristics). The addition of listed wastes to the list of pollutants in Schedule 2 of the Water Quality Policy would mean the policy contains a wider list of pollutants that must not be disposed into waters or onto land in a place from which it is reasonably likely to enter waters.
Add 'abrasive blasting wastes, including but not limited to steel shot, abrasive garnet and wet abrasive blasting wastewaters'	To capture waste generated by abrasive blasting activities as a Class 1 pollutant.
Add 'septic tank septage'	To capture waste removed from septic tanks as a Class 1 pollutant

Proposed amendment	Reason for proposed change
Class 1 pollutant	
Change of term: Change Class 1 pollutant 'brick, bitumen or concrete cutting wastewater' to Proposed new term 'brick, bitumen or concrete cutting or tile cutting wastewater'	To include 'tile cutting wastewater' as a Class 1 pollutant.

Schedules 3 Class 2 pollutant proposed changes

Under clause 11(1) of the Water Quality Policy:

“A person must not discharge a class 2 pollutant into any waters or a cavity in land.”

The EPA has identified one proposed change to a Class 2 pollutant in Schedule 3 to clarify the intent of the existing pollutant (see Table 2 below).

Table 2 Proposed changes to Schedule 3

Proposed amendment	Reason for proposed change
Class 2 pollutant	
Change ‘Green waste (for example, lawn clippings, leaves and pruning’s)’ to also include ‘mulch’ in the parentheses	Including ‘mulch’ as an example provides clarity regarding the types of green waste that should be classified as a Class 2 pollutant.

Proposed changes to Schedule 4 – codes, standards, guidelines and other documents

Table 3 and 4 list proposed changes with amendments include both updating reference and adding new additions to Schedule 4.

It is proposed that the references to codes, standards, guidelines and other documents would be written such that they allow for consideration of the most current version of the document.

Table 3 Proposed changes to Schedule 4

Subject	Action	Current reference	Proposed change
Anti-foulants	Update to current version	<i>Anti-fouling and In-water Cleaning Guidelines 2013</i> , published by the Australian Government Department of Agriculture, Fisheries and Forestry and Department of Sustainability, Environment, Water, Population and Communities, as in force from time to time	Update to <i>Anti-fouling and In-water Cleaning Guidelines 2015</i> , published by the Australian Government Department of Agriculture, Fisheries and Forestry.
Building or construction	Replace code of practice	<i>Stormwater Pollution Prevention Code of Practice for the Building and Construction Industry 1999</i> (EPA)	Replace with <i>Best Practice Erosion and Sediment Control (BPESC) 2008 and includes Field Guides 2012</i> , published by International Erosion Control Association Australasia (IECA) <i>Current code is outdated and should be replaced.</i>
Cattle feedlot	Update to current version and add additional guideline	<i>Guidelines for the Establishment and Operation of Cattle Feedlots in South Australia</i> Second Edition February 2006 prepared by the EPA, Local Government Association of South Australia and Primary Industries and Resources SA	Update to <i>Guidelines for the Establishment and Operation of Cattle Feedlots in South Australia</i> September 2017 prepared by the EPA, the Local Government Association of South Australia and Primary Industries and Resources SA. And include: <i>National Guidelines for Beef Cattle Feedlots in Australia</i> 3rd edition 2012, prepared by Meat & Livestock Australia To include national guidelines which complement the state guidelines.
Managed Aquifer Recharge (MAR) schemes	Replace code of practice	Code of Practice for <i>Aquifer Storage and Recovery</i> 2004 (EPA)	Replace with <i>The Australian Guidelines for Water Recycling: Managing Health and Environmental risks (Phase 2) – Manage Aquifer Recharge</i> July 2019
Milking sheds	Update to current version	Code of Practice for Milking Shed Effluent 2003 (EPA)	Update to <i>Code of Practice for Milking Shed Effluent</i> 2019 (EPA)
Piggeries	Update to current version and add additional guideline	<i>Australian Pork Limited National Environmental Guidelines for Piggeries Second Edition</i> 2010, prepared by Australian Pork Limited	Update to <i>National Environmental Guidelines for Indoor Piggeries</i> 2018 prepared by Australian Pork Limited And include: <i>National Environmental Guidelines for Rotational Outdoor Piggeries</i> 2015, prepared by Australian Pork Limited There are now separate guidelines for indoor and outdoor piggeries.

Subject	Action	Current reference	Proposed change
Roads and public stormwater systems	Replace code of practice	<i>Stormwater Pollution Prevention Code of Practice for Local, State and Federal Government</i> 1998 (EPA)	Replace with: <u><i>Best Practice Erosion and Sediment Control</i></u> (BPESC) November 2008 and include Field Guides 2012 published by International Erosion Control Association Australasia (IECA) Purpose: To refer to updated national guidance.
Septic systems	Update to current version and add additional guideline	<i>South Australian Biosolids Guidelines for the Safe Handling, Reuse or Disposal of Biosolids</i> 1997 (EPA)	Update to: <u><i>Guidelines for the Safe Handling and Reuse of Biosolids in South Australia</i></u> 2020 (EPA) and include: Septage management, 2020 (EPA) Purpose: Septage is now regulated in a separate management document by the EPA
Sewerage infrastructure	Update to current version	<i>Code of Practice for Wastewater Overflow Management</i> 2008 (EPA)	Update to: <u><i>Code of Practice for Wastewater Overflow Management</i></u> , April 2017 (EPA)
	Update to current version	<i>South Australian Biosolids Guidelines for the Safe Handling, Reuse or Disposal of Biosolids</i> 1997 (EPA)	Update to: <u><i>Guidelines for the Safe Handling and Reuse of Biosolids in South Australia</i></u> 2020 (EPA)
Vessels and vessel facilities	Update to current version	<i>Code of Practice for vessel and facility management (marine and inland waters)</i> 2008 (EPA)	Update to: <u><i>Code of Practice for vessel and facility management (marine and inland waters)</i></u> 2019 (EPA)
Waste depot	Update to current version and add additional guideline	<i>Environmental management of landfill facilities (municipal solid waste and commercial and industrial general waste)</i> 2007 (EPA)	Update to <u><i>Environmental management of landfill facilities (solid waste disposal)</i></u> 2019 (EPA) And include: <u><i>Guidelines for Resource Recovery and Waste Transfer Depots</i></u> 2001 (EPA) Purpose: To clarify that transfer stations are considered waste depots
Wastewater lagoons	Update to current version	<i>Wastewater Lagoon Construction</i> 2014 (EPA)	Update to: <u><i>Wastewater Lagoon Construction – updated</i></u> 2019 (EPA)

Table 4 Proposed new activities to be included in Schedule 4

New subject	Proposed new activity	New code, standard or guideline	Reason for proposed change
Abrasive Blasting	Abrasive blast cleaning	<u><i>Air and Noise Guidelines - Abrasive blast cleaning</i></u> 2011 (EPA)	Wet abrasive blasting can generate wastewaters and solid wastes which can be contaminated with lead, paint, particulates, and other metals and therefore must be regulated.
Dewatering	Managing the removal of any water that accumulates in construction earthwork excavations or below ground structures	<u><i>Environmental management of dewatering during construction activities</i></u> 2021 (EPA)	To advise proponents who may undertake dewatering during construction activities (including site owners, developers, and their professional consultants and contractors)
Dredging	Dredging activities	<u><i>Dredge Guideline</i></u> 2020 or any revised version of the guidelines, published by the EPA	Dredging activities involve risks to marine and inland waters, particularly spoil management and discharge to waters. This guideline contains comprehensive information on the management of these wastes are wastewaters
Liquid storage	Activities that use or store liquids above ground (excluding rainwater)	<u><i>Liquid Storage – Bunding and Spill management guidelines</i></u> 2016 (EPA)	This guideline is used as a measure to assess general environmental duty, and licence compliance, for any site containing any kind of liquid (paints, chemicals, fuels, oils, wash water, wastewater, etc)
Spray painting and powder coating	Powder coating	<u><i>Environmental Assessment Guidelines: Assessment of surface coating – spray painting and powder coating – updated September</i></u> 2017 (EPA)	To include guidelines for the assessment of spray painting and surface coating which can generate wastewater containing thinners, paint solvent and paint chips for example
Wastewater assessment and management at wineries and distilleries	Wineries and Distilleries	<u><i>EPA Guidelines for Wineries and Distilleries</i></u> 2017 (EPA)	Contains guidance (including must and should statements) for how wineries should monitor, assess, manage wastewater production, storage, treatment and disposal.

Table 5 Activity proposed to be removed from Schedule 4

Activity	Subject	Relevant code, standard or guideline	Reason for proposing removal of activity
Fire protection systems in buildings	Undertaking the construction, maintenance or management of a fire protection system	<u>Guidelines for fire protection services pipework systems – wastewater removal</u> 2003 (EPA)	The guidelines are no longer relevant.

Questions

1. Do you have any comments on the proposed changes to Schedules 2, 3 and 4 of the Water Quality Policy?
2. In your opinion should there be further changes to Schedules 2, 3 and 4 of the Water Quality Policy? If yes, please explain your answer.

3.6 Other comments

Thank you for taking the time to review this discussion paper and the proposed improvements to the Water Quality Policy as part of this review.

The EPA is considering whether a new guideline for ‘how to use the policy would’ be of benefit to policy users. A proposed guideline could provide a clause-by-clause description of how the policy and its provisions should operate. This could further clarify the intent of the provisions and provide working examples.

Questions

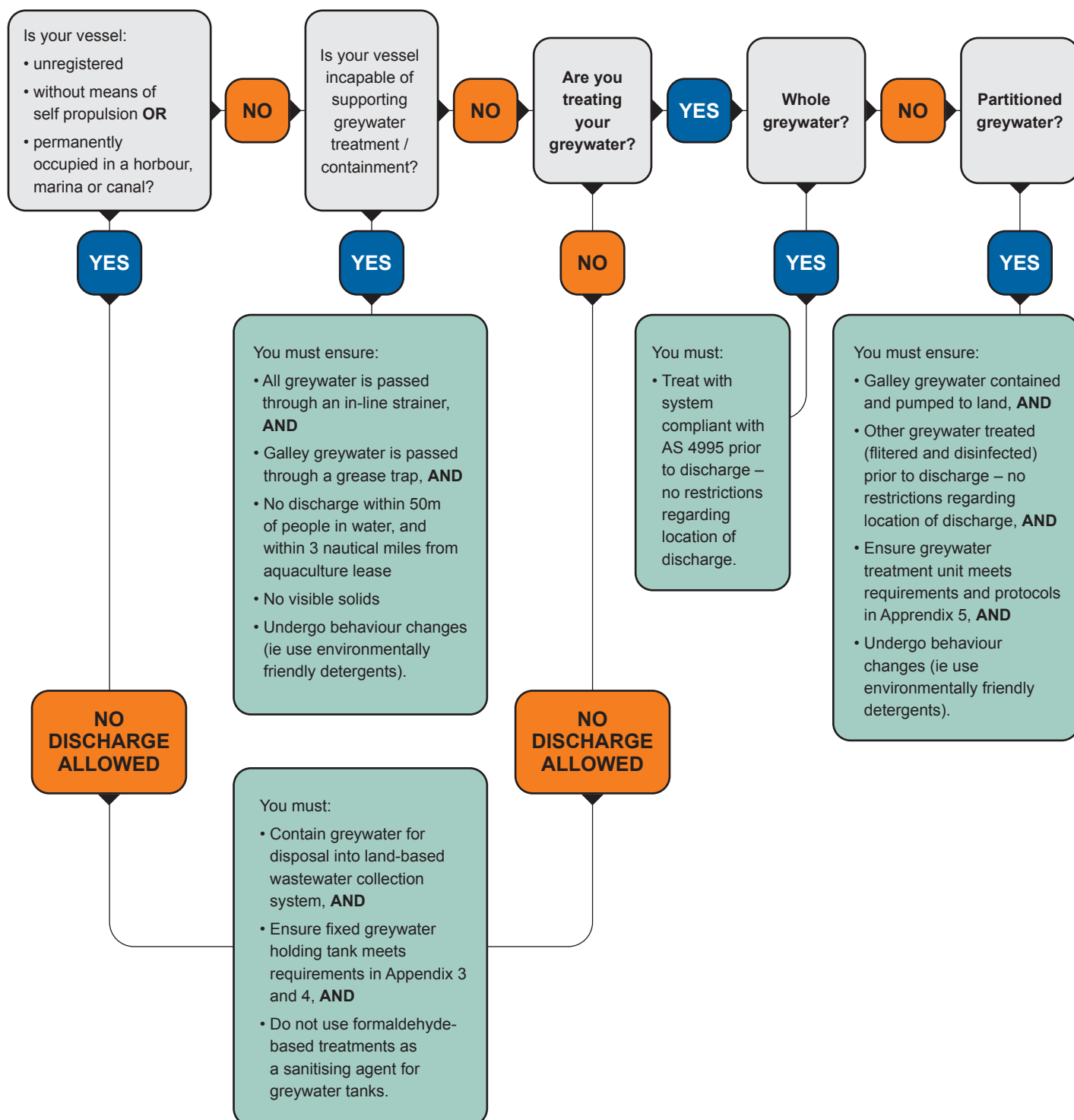
1. Should the EPA create a guideline for how to use the policy? If you agree, is there particular information you would like to see included in this guideline?
2. Do you have any other comments you would like to make to contribute to the review of the Water Quality Policy more generally?

Glossary and key terms

ANZG 2000	<i>Australian and New Zealand Guidelines for Fresh and Marine Water Quality 2000 Guidelines</i>
ANZG 2018	<i>Australian and New Zealand Guidelines for Fresh and Marine Water Quality 2018 Guidelines</i>
EPA	South Australian Environment Protection Authority
EP Act	<i>Environment Protection Act 1993</i>
EPP	environment protection policy
General environmental duty	Refer to section 25 of the EP Act and clause 9 of the Water Quality Policy. This duty is to take all reasonable and practicable measures to prevent or minimise environmental harm resulting from undertaking an activity that pollutes or might pollute waters. A breach of clause 9 is not an offence, but it invokes section 25(4) of the EP Act, which provides the power to issue a clean-up order or environment protection order
MLR WPA	Mount Lofty Ranges Water Protection Area
NorBI	‘Neutral or Beneficial Impact’ on water quality. Refers to a type of water quality assessment completed by the EPA when certain development applications in the MLR WPA are referred to the EPA
PDI Act	<i>Planning, Development and Infrastructure Act 2016</i>
P&D Code	The Planning and Design Code, implements the requirements of section 66 of the PDI Act.
sensitive receptor	An entity (person or ecological) that is exposed or might be exposed to pollution.
TDS	Total dissolved solids
underground water	Defined in the Water Quality Policy as ‘water occurring naturally under the ground or introduced to an aquifer or other area under the ground’. Also referred to as ‘groundwater’.
VM Code	<i>Code of Practice for Vessel and Facility Management (Marine and Inland Waters) 2019</i> published by the EPA
Water Protection Areas	Areas in South Australia declared for special protection of public water supply catchments and/or protection of significant aquatic ecosystems (sections 61 and 61A in the EP Act). Refer to Location SA for an online map of water protection areas in South Australia .
Water Quality Policy	<i>Environment Protection (Water Quality) Policy 2015</i> , Clause 9 establishes the newly specified general environmental duty provisions in the WQ EPP 2015 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.
waters	Refer to clause 8 in the Water Quality Policy. All surface and underground waters (whether or not on or below private land) including the water within a public stormwater system or an irrigation drainage channel, but excluding— • water within the pipes and closed tanks of a water reticulation system or salt interception scheme; and • water within sewerage infrastructure or any other wastewater management system; and • water within a closed tank constructed of or lined with material impervious to water; and • water within a private or public swimming pool.

Attachment 1

Vessels Management Code: Greywater flowchart for inland waters



Attachment 2

Listed Wastes under Part B of the EP Act

Acids and acidic solutions	Medical waste
Adhesives (excluding solid inert polymeric materials)	Mercaptans
Alkali metals and alkaline earth metals	Mercury compounds and equipment containing mercury
Alkalis and alkaline solutions	Nickel compounds and solutions
Antimony and antimony compounds and solutions	Nitrates
Arsenic and arsenic compounds and solutions	Organic halogen compounds (excluding solid inert polymeric materials)
Asbestos	Organic phosphates
Barium compounds and solutions	Organic solvents
Beryllium and beryllium compounds	Organometallic residues
Boron and boron compounds	Oxidising agents
Cadmium and cadmium compounds and solutions	Paint sludges and residues
Calcium carbide	Perchlorates
Carbon disulphide	Peroxides
Carcinogens teratogens and mutagens	Pesticides (including herbicides and fungicides)
Chlorates	Pharmaceutical wastes and residues
Chromium compounds and solutions	Phenolic compounds (excluding solid inert polymeric materials)
Copper compounds and solutions	Phosphorus and its compounds
Cyanides or cyanide solutions and cyanide complexes	Polychlorinated biphenyls
Cytotoxic wastes	<i>Poisons within the meaning of the Controlled Substances Act 1984</i>
<i>Dangerous substances within the meaning of the Dangerous Substances Act 1979</i>	Reactive chemicals
Distillation residues	Reducing agents
Fluoride compounds	Selenium and selenium compounds and solutions
Halogens	Silver compounds and solutions
Heterocyclic organic compounds containing oxygen, nitrogen or sulphur	Solvent recovery residues
Hydrocarbons and their oxygen, nitrogen and sulphur compounds (including oils)	Sulphides and sulphide solutions
Isocyanate compounds (excluding solid inert polymeric materials)	Surfactants
Laboratory chemicals	Thallium and thallium compounds and solutions
Lead compounds and solutions	Vanadium compounds
Lime sludges or slurries	Zinc compounds and solutions
Manganese compounds	

Appendix 1

Aggregated list of questions for public feedback

Improved protection of all underground (including saline) waters for future use

Do you think it is problematic that environmental value/s are not attached to underground waters with salinity levels greater than 13,000mg/L? Please explain your answer.

What is your view on declaring the environmental value 'future use' to all underground waters? In considering this question, note the implication that such a declaration would require reasonable and practicable measures to prevent or minimise harm. How would the proposed amendment impact you?

Do you have any further comments about the potential for improving the protection of high salinity underground water in the Water Quality Policy?

Update reference to current Australian and New Zealand Guidelines for Fresh and Marine Water Quality

How would updating the Water Quality Policy to refer to the ANZG 2018 impact you?

Do you anticipate any issues arising from referring to the ANZG 2018 in its changeable web-based form? If so, please explain why.

Do you think there is benefit in updating the terminology in the Water Quality Policy to match the phrases used in ANZG 2018? Note that there has been no change in the meaning of the updated terms. Please explain your answer.

Do you have any comment on including the ANZG 2018 guidance on how to identify the appropriate water quality guideline values that relate to different aspects of the cultural and spiritual values of waters in the policy?

How could the EPA best communicate the changes in the updated ANZG 2018? Would a fact sheet be beneficial?

Align the Water Quality Policy with the Planning and Design Code requirement that development applications referred to the EPA in the Mount Lofty Ranges Water Supply Catchment are assessed to have a neutral or beneficial effect on water quality

How would the proposed option to add new provisions to clause 21 to require developments in the MLRWSC to have a neutral or beneficial effect on water quality impact you? Note: this is already a requirement under the P&D Code.

Align with Code of Practice for Vessel and Facility Management

Do you have any further comments on the alignment of the Water Quality Policy and the 2019 VM Code?

**Potential updates to
Schedules 2, 3 and 4**

Do you have any comments on the proposed changes to Schedules 2, 3 and 4 of the Water Quality Policy?

In your opinion should there be further changes to Schedules 2, 3 and 4 of the Water Quality Policy? If yes, please explain your answer.

Other comments

Should the EPA create a guideline for how to use the policy? If you agree, is there particular information you would like to see included in this guideline?

Do you have any other comments you would like to make to contribute to the review of the Water Quality Policy more generally?

Water Protection Areas South Australia





A BETTER
ENVIRONMENT *FOR THE*
HEALTH, WELLBEING
AND PROSPERITY
OF ALL SOUTH
AUSTRALIANS