



## Environment Victoria submission to the Draft State Environment Protection Policy (Waters)

Environment Victoria is the state's peak non-government, not-for-profit environment organisation. Our Healthy Rivers Campaign is dedicated to working with government, business and communities for the restoration and protection of our state's great river systems. Our vision is for a future where healthy rivers sustain abundant life and prosperous communities, providing us with good food, clean water and places to love and enjoy.

We welcome the opportunity to comment on the draft SEPP (Water) and appreciate the need for reform to make the policy more effective and efficient. The SEPP has an absolutely key role to play in setting water quality standards to protect environmental values and in setting out responsibility for achieving those standards. The draft policy represents an advance on the previous version. However some gaps remain and there is still considerable leeway for regulators to exercise discretion and for polluters to avoid taking responsibility for their actions, particularly with respect to how the waste avoidance hierarchy is applied. There is a significant omission in how the schedules of the SEPP apply to toxicants. We explore these gaps and make suggestions for improvement to individual clauses in the body of this submission.

### Clause 2 Purpose

Clause 2 sets out the purpose of the policy and needs to be crystal clear in its intent. It needs to make explicit reference to the waste hierarchy as the guiding principle for protecting beneficial uses. We suggest the following wording for the clause:

'The purpose of this Policy is to protect and restore the quality of Victoria's waters.

'Protective measures include (but are not limited to) the application of the wastes hierarchy<sup>1</sup> to conduct or action that will or may have adverse impacts on the beneficial uses of waters. Under that hierarchy priority is given to avoidance or prevention of harm or adverse impacts on beneficial uses'.

### Clause 6 Definitions

Clause 6 should include a definition of the wastes hierarchy and the concept of avoidance.

### Clause 12 Assessing practicability

This is a key clause as it determines the degree of effort polluters must make to control their actions. It is referred to repeatedly in subsequent clauses. It requires strengthening so that polluters must use best practice and must seek to innovate and improve. We suggest the following wording:

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<sup>1</sup> as defined in the Environment Protection Act (1970) s11

(1) Where this Policy requires actions or management practices to minimise risks to and impacts on beneficial uses so far as practicable, this means actions or management practices must:

- (a) reduce to the maximum extent practicable the impact of any activity or waste on beneficial uses; and
  - (b) implement best practice; and
  - (c) pursue innovation and continuous improvement.
- (2) In assessing practicability, regard must be given to the:
- (a) threats to existing and potential beneficial uses; and
  - (b) availability and suitability of actions or management practices, including best practice, to eliminate or reduce threats identified in subclause (2)(a); and
  - (c) proportionality of actions or management practices identified in subclause (2)(b) to threats identified in subclause (2)(a).'

### Clause 13 Objectives

A clear statement of the over-arching objective of the policy is required, to match the purpose outlined in Clause 2. We suggest including an overall objective to 'prevent the pollution of, and contribute to the restoration and protection of the ecological integrity of, waters of Victoria' and a subsidiary objective to 'achieve the level of environmental quality required to sustain the beneficial uses of waters'.

### Clause 18 Target setting

For the use of interim targets to be effective in achieving water quality improvements, there needs to be a time frame for their achievement. We suggest including under subsection (1):

'waterway managers must establish interim regional targets to drive the progressive rehabilitation of environmental quality in a measureable manner and over a fixed timeframe'.

### Clause 20 Management of discharges to surface waters

This is a great clause, clear and succinct, that spells out the application of the waste hierarchy. It should apply equally to groundwater.

### Clause 24 Offset measures.

This clause lacks an adequate definition of an offset measure. There is considerable doubt about the ability of biodiversity offset measures to achieve 'no net loss'<sup>2</sup>, so the definition needs to be ambitious and anticipate equivalent or greater benefits. We suggest including the following:

'Any offset measure proposed must be assessed and shown to achieve, in a full and effective manner, protection to an equivalent or greater standard of any specific beneficial use proposed to be adversely affected by a wastewater discharge.'

### Clause 34 Urban stormwater

This clause needs strengthening so that there is greater emphasis on avoiding the impacts of stormwater on receiving waters, particularly urban rivers and wetlands, rather than just minimizing

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<sup>2</sup> See for example <https://theconversation.com/biodiversity-offsets-could-be-locking-in-species-decline-14177>; <https://theconversation.com/an-amphibian-eye-view-of-environmental-offsetting-20290>

them. We suggest that whenever the clause uses the word 'minimise' it is replaced by the wording 'avoid, or if avoidance is not demonstrably possible, minimise'. In addition in sub-clause 4, Councils should be required to identify concrete measures as well as options for reducing and re-suing stormwater.

#### Clause 36 Irrigation drains

This clause requires greater emphasis on avoidance, similar to Clause 34. Again we suggest replacing the word 'minimise' with the wording 'avoid, or if avoidance is not demonstrably possible, minimise'.

#### Clause 38 Recreational uses

It is not clear if this clause applies to informal recreational uses and how it can be used to control the activities of individuals. For example, water skiers and wakeboarders are causing considerable erosion in the Dimboola weir pool on the Wimmera River. These activities are not part of any formal club or organization, so it is hard to see how a planning scheme amendment would apply. The clause must apply to all recreational uses that impact on beneficial uses, whether or not they are subject to a planning application.

#### Clause 39 Agricultural activities

Agriculture is a major source of diffuse pollution in Victoria and this clause is the main tool for reducing its impact. We therefore suggest deleting the 'as far as practical' qualifier from sub-clause (1) so that the clause states 'An occupier of premises used for agricultural activities must implement measures to minimise runoff of pollutants from that premises to waters.' The concept of 'minimise' already includes an as far as practical qualifier.

We further suggest substituting 'limiting' for 'managing' stock access to surface waters in sub-clause 2(a)ii.

#### Clause 40 Works affecting water dependent ecosystems and species

Works on waterways pose significant risks to beneficial uses, particularly to environmental values. These risks are compounded when rare or threatened species or communities are present in areas where the works are to occur. The clause needs to reflect this elevated level of risk, and to accurately reflect the waste avoidance hierarchy. We therefore suggest the following wording:

(1) Works in, on or adjacent to surface waters must be designed and managed so as to prevent environmental harm to beneficial uses.

(2) Protection agencies must ensure that works in, on, or adjacent to surface waters, are designed and managed so as to prevent environmental harm to beneficial uses, including ensuring that works do not pose a barrier to fish movement, and that sediment re-suspension and risks to water dependent ecosystems and species are avoided.

(3) The obligations in (1) and (2) apply in a manner that, as relevant, have regard to the conservation status of ecological communities or species affecting by works or proposed to be affected by them.

#### Clauses 41 Potentially polluting chemicals

This clause contains an 'as far as practicable' qualifier which should be deleted. Clause 41 covers the management of potentially polluting chemicals that should not under any circumstance be allowed to enter receiving waters. There are already a multitude of legacy issues in mines, waste dumps, petrol stations and elsewhere where chemicals have entered receiving waters, PFAS chemicals

being the latest in a long line to hit the headlines<sup>3</sup>. This clause should be a 'must' without qualification.

#### Clause 43 Management of groundwater risks to surface waters

This is a really important clause as it recognizes the risks of groundwater extraction to river flows and the potential for contamination of surface waters. It could be strengthened by using more direct language such as:

'The activities of water corporations, including licensing decisions, must not pose a risk to or compromise surface water beneficial uses, particularly through the excessive extraction of groundwater and the subsequent prevention of surface water environmental flows, and through reducing the quality of adjoining surface waters.'

#### Clause 44 Commitment to water conservation

This is an important commitment but it should extend to agriculture, irrigation and rural water use in addition to urban water use. About 75% of Victoria's water use is agricultural use outside of cities<sup>4</sup> so excluding the largest user from the commitment makes no sense. Water conservation should apply to all sectors.

#### Clause 45 Native vegetation

This clause should be amended so that 'the responsible authority *must* consider the impact on water quality from the proposed removal'.

#### Clauses 46 to 48

These clauses requires greater emphasis on avoidance, similar to Clause 34. Again we suggest replacing the word 'minimise' with the wording 'avoid, or if avoidance is not demonstrably possible, minimise', in accordance with the waste avoidance hierarchy.

#### Clause 49 Releases from water storages

Water storages have had, and continue to have, a major detrimental impact on river health in Victoria. They are responsible for radical alterations to flow regimes and for major disturbance in water temperature profiles. For example the reduction in water temperature below Eildon weir makes the Goulburn River uninhabitable for large-bodied native fish species over many kilometers. Mitigation of their impacts is therefore really important.

Clause 49 needs strengthening so that in sub-clauses 1, 2 and 3 storage managers and other relevant authorities 'must have regard to and to the maximum practicable degree avoid the risks that releases from water storages pose to downstream beneficial uses'.

#### Clause 53 Prevention of groundwater pollution

This clause can be reduced to a really simple statement 'A person must not pollute groundwater'. The 'as far as practicable' qualifier is not required.

#### Schedule 3 Environmental quality indicators and objectives

We find the treatment of toxicants in the schedule extremely confusing and difficult to interpret. There is no clear list of toxicants that are covered by the schedules or what acceptable or safe levels

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<sup>3</sup> See for example <https://www.smh.com.au/national/nsw/toxic-secrets-where-the-sites-with-pfas-contamination-are-near-you-20180616-p4zlx.html>

<sup>4</sup> Successive Victorian Water Accounts

of these toxicants are. Presumably these details are contained in the ANZECC documents that support the SEPP but it would be highly desirable, in fact essential in terms of public understanding and interpretation of the SEPP, to include them in the document itself. It would also enable public scrutiny of discharge licensing decisions made by the EPA.

#### Schedule 4 Pollutant load reduction targets

This schedule includes load reduction targets for Lake Wellington but not for other segments of the Gippsland Lakes, even though the entire site is listed as internationally significant under the Ramsar convention. No rationale is provided for this distinction. In our opinion load reduction targets should be applied as appropriate to all Gippsland lake segments, in addition to Lake Wellington.

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