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131 Macquarie Street
Hobart TAS 7000

tel: (03) 6223 2770
fax: (03) 6223 2074
email: edotas@edo.org.au

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General Manager
DEPHA – Environment Division
GPO Box 1751
Hobart TAS 7001

By email: EnvironmentEnquiries@environment.tas.gov.au

Dear Sir

Review of the State Policy on Water Quality Management

The Environmental Defenders Office (**EDO**) is a non-profit, community based legal service specialising in environmental and planning law.

We thank you for the opportunity to comment on the discussion paper regarding the review of the State Policy on Water Quality Management (**SPWQM**), and for agreeing to the extension of time for making a submission.

SUMMARY OF COMMENTS

- Strongly support work to develop WQOs and water quality guidelines.
- Support use of ANZECC guidelines, Australian and Tasmanian Drinking Water guidelines and NRM water quality targets as default water quality objectives in the interim.
- WQOs which provide less protection of PEVs than the guidelines recommend should **only** be adopted where there are serious social and economic implications of adopting more stringent WQOs, and where the WQO still improves the current situation.
- WQOs and water quality guidelines should be compiled as a separate, technical document to the SPWQM. However, the SPWQM should explicitly refer to the WQO document.
- Integrated catchment management continues to be hampered by lack of information on groundwater – surface water interactions, and inadequate data on environmental flows.
- A broad SPWQM should be retained, outlining the basic concepts of the water management framework and requiring water management issues to be assessed by regulatory authorities.

- More detailed provisions in relation to WQOs and point and diffuse sources of pollution should be converted into an Environmental Protection Policy under EMPCA.
- The PEV categories should be amended to reflect the ANZECC 2000 guidelines. We support inclusion of cultural values and a primary industry value to include agriculture, aquaculture and forestry activities.
- The SPWQM should apply to all waters, including artificial water bodies and natural water bodies on private land.
- Further guidance should be provided in relation to septic tanks, and the assessment of developments which rely on on-site wastewater treatment.
- Existing activities which do not comply with emission guidelines should be required to progressively improve compliance.
- Further assistance should be given to local councils to assess the potential impact of wastewater irrigation schemes and small greywater reuse systems.
- Water quality monitoring and the availability of data are commendable and should be continued. Monitoring should be expanded to include groundwater resources.
- Where a river has been identified as having poor water quality, investigations should be funded into the impact of land uses in the area.
- Wherever practicable, landowners should be required to adopt land and water management plans for agricultural and forestry activities that have the potential to degrade water quality in the catchment area.
- Clearer protocols should be established in relation to notification and investigation of incidents with the potential to impact on water quality.

WATER QUALITY GUIDELINES AND OBJECTIVES

We agree with all the comments in the discussion paper regarding the need to develop water quality guidelines and objectives as indicators of how PEVs are to be achieved. Full integration of water quality and quantity management relies on the development of water quality objectives.

It is therefore critical for resources to be devoted to consolidating all the available information and developing these indicators as soon as possible. As outlined in the discussion paper, significant work has been done under various projects to gather data to allow guidelines to be developed. The work done to support the NRM strategies is particularly valuable in identifying water quality targets for Tasmanian waters. We also endorse the process for development of WQOs trialled in the Mersey River Catchment to progress the task of developing WQOs. Once established, WQOs should be reflected in NRM strategies.

To facilitate the timely identification of appropriate indicators, we also support the adoption of indicators already identified in national or State documents such as the Drinking Water Guidelines and the NRM strategies. One way to approach the task of identifying appropriate WQOs would be to

recognise a hierarchy of indicators to be applied, as is done in clause 8(2) of the Qld EPP (Water).

For example, the SPWQM (or EPP, if converted), could state that where no WQOs are identified for a water body, the default position is that the WQOs are the water quality guidelines which will protect the relevant PEVs (see clause 11, Qld EPP (Water)). In relation to default guidelines, the SPWQM could provide:

The following documents are used to decide the water quality guidelines for an environmental value for a water—

- (a) site specific documents;
- (b) the Tasmanian Drinking Water Guidelines;
- (c) the AWQ guidelines;
- (d) NRM water quality targets;
- (e) other documents published by a recognised entity.

To the extent of any inconsistency between the documents for a particular water quality guideline, the documents are to be used in the order in which they are listed above.

The SPWQM should also provide that WQOs which provide less protection for PEVs than those identified by the water quality guidelines will **only** be adopted if:

- the adoption of the water quality guidelines would involve unacceptable economic or social impacts; and
- the water quality objectives are an improvement on existing water quality (see cl 12(5) of the Qld EPP (Water)).

Any WQOs which provide less protection than the WQ guidelines recommend should also be periodically reviewed.

We support WQOs being included in a separate, technical document, rather than as a schedule of the SPWQM / EPP. However, sufficient resources must be available to ensure that the technical document is reviewed and updated as necessary.

As discussed below, we believe that supporting information and implementation guidelines are the best way to clarify the application of WQOs and guidelines, rather than through amendment to the text of the SPWQM itself.

INTEGRATED CATCHMENT MANAGEMENT

A number of significant hurdles continue to hamper the effective implementation of integrated catchment management:

- different management regimes for groundwater and surface water.

There needs to be greater recognition of the interdependence of these systems. In our view, groundwater **always** needs to be managed in a fully coordinated way with surface water – complete catchment management requires an understanding of subsurface water resources.

Better management of groundwater-surface water interactions was recognised as a key issue to be addressed in the short to medium term during the review of the *Water Management Act 1999*.

- prioritising extractive uses over environmental flows.

Adequate environmental flows enable the proper functioning of ecosystems, and can dilute toxicants and algae. Therefore, maintenance of flows has a critical impact on water quality.

The low number of water management plans finalised to date, the essentially nominal provision for environmental flows under *Water Management Act 1999* licences and the limited information available in relation to groundwater are still impediments to integrated catchment management.

Given that water scarcity and quality issues are becoming more prevalent in Tasmania, more integrated management approaches are essential. The SPWQM should provide a policy statement regarding the importance of integrated management of quality and quantity issues for all water sources. More critically, resources must be devoted to finalising water management plans for all catchments in Tasmania as soon as possible. Without the basic quantity, source and flow data available in a water management plan, water quality management is very difficult.

Quality and quantity of groundwater supplies should also be monitored in conjunction with other surface water monitoring and data collection programs.

SUITABILITY OF THE 'STATE POLICY' INSTRUMENT

We note the important role of voluntary monitoring and educational programmes, and acknowledge that informal (and therefore flexible) water management approaches have worked in other jurisdictions. However, we do not support reliance solely on these mechanisms to implement the National Water Quality Management Strategy in Tasmania. In our view, it is important to maintain a statutory basis for water quality management to ensure the achievement of NWQMS objectives and to provide for consistent and sustainable decision-making.

We agree that the achievement of water quality management objectives is not necessarily conducive to strict regulation, and should maintain a degree of adaptive management. This is particularly the case in relation to monitoring, information sharing and adoption of best practice environmental strategies for managing diffuse sources of pollution. Unlike noise, the impact of which is reasonably consistent, the impact of point and diffuse sources of pollution will vary depending on a wide range of factors. Therefore we do not support the adoption of a regulation for water quality.

State Policies are intended to be high-level policy statements providing a strategic basis for planning decisions and ensuring a consistent approach to resource management issues. Decisions in relation to land uses are critical to an effective water quality management framework, therefore at a broad, strategic level, water quality management is well suited to the State Policy approach. The SPWQM currently provides a good basis for identifying the objectives of water quality management and the various responsibilities for implementation of these objectives.

Planning schemes are not explicitly required to have regard to EPPs. Given the importance of planning decisions to achieving water quality objectives, we believe that it is important to ensure that planning authorities are required to have regard to relevant water quality management issues when assessing development applications. For this reason, we would support retention of the SPWQM as a broad policy statement.

We would support the retention of a short SPWQM setting out the basic elements of a water quality management framework (setting objectives, identifying indicators, monitoring and investigation of impacts) and identifying the roles of responsible agencies. The SPWQM could require planning schemes to ensure that the following issues are considered in assessing development applications:

- Stormwater management
- Wastewater management (including possible land application)
- Erosion and sediment control
- Potential groundwater contamination
- Potential to compromise achievement of water quality objectives identified in any EPP (Water)
- Emergency management of pollution incidents

However, we acknowledge that an Environment Protection Policy (**EPP**) pursuant to the *Environmental Management and Pollution Control Act 1994* would be an appropriate instrument for implementation of a more detailed water quality management framework. We therefore support the provisions of the current SPWQM dealing with water quality objectives, monitoring, specific provisions for point and diffuse sources of pollution being converted to an EPP.

SPECIFIC POLICY PROVISIONS

Extent of application of the SPWQM

Given the complex (and relatively poorly understood) interaction of surface water and groundwater throughout Tasmania, we believe that the SPWQM should apply to *all* water bodies, including artificial and natural water bodies, whether on private land or not.

This is consistent with the recognition of a PEV for homestead supply – that category recognises that *any* raw water supply for domestic use should meet minimum standards, regardless of tenure.

As the SPWQM will essentially be implemented through other regulatory mechanisms (such as permit conditions), the inclusion of waterbodies on private land should not impose any additional regulatory burden. That is, it will not introduce any additional permit requirements, it will simply provide guidance for the assessment of any application which may affect that, or a related, water body.

Objectives

We support the current objectives, but acknowledge the comment in the discussion paper that the objectives rely on the development of Water Quality Objectives to have any meaning. As discussed elsewhere, significant efforts must be made to establish and implement WQOs and guidelines as soon as possible.

We do not believe it is a concern that the objectives do not specifically mention the NWQMS. The objectives of the RMPS are broad and relevant to water quality management. It is consistent with the suite of natural resource legislation in Tasmania to refer to those objectives. Therefore, it is appropriate that the objectives of the SPWQM aim to achieve the RMPS objectives. Achievement of those objectives will be consistent with the NWQMS objectives.

Basic Concepts

We agree that the basic concepts of PEVs, water quality objectives and water quality guidelines could be better explained. However, in our view it is appropriate to provide this through supporting material, rather than further background information in the text of the SPWQM itself. The implementation guidelines and draft planning scheme schedules prepared in support of the draft Coastal Policy and draft PAL Policy are good examples of practical documents to explain how the SPWQM is to be implemented. Broad ranging examples of how to implement the policy in different contexts would be the most beneficial way to ensure that the policy is adopted effectively throughout the State.

We support amendments to ensure that the SPWQM refers to the most current version of the ANZECC guidelines and Australian Drinking Water Guidelines.

Protected Environmental Values

We support the proposed amendments to clause 7.1 to adopt the ANZECC 2000 environmental values categories. We particularly support the inclusion of the cultural value PEV.

We also support inclusion of a Primary Industry PEV to include agriculture, aquaculture and fishing waters. In our view, waters which flow through forestry coupes should also be included in this category, as forestry activities present similar water quality management issues in terms of pesticide application, water interception and disturbance of riparian vegetation.

We strongly support the adoption of default PEVs for coastal water, groundwater and any surface waters which have not had PEVs identified. The advantages of default values are the immediate recognition of features to be protected. Default values also encourage further work to identify specific values and determine if the default values are appropriate. We would support the approach adopted in the Queensland *Environment Protection (Water) Policy 1997*, which provides that a default PEV does not apply if the natural properties of the water body prevent enhancement of the PEV.

We support incorporating PEVs in a schedule to the SPWQM. It is important to ensure that PEVs can be reviewed in light of changed circumstances,

improved scientific information or changes in community expectations. However, any review should be subject to community consultation and approval by the RPDC.

While we support removing the explicit requirement to include PEVs in external documents, it is important that the work done to identify PEVs and, eventually, WQOs is effectively utilised in resource management decisions. We recommend that regulatory authorities be required to have regard to PEVs and WQOs when developing resource management documents, such as:

- forest management plans;
- water management plans;
- management plans for parks and reserves under the *National Parks and Reserves Management Act 2002*;
- marine farming development plans under the *Marine Farming Planning Act 1995*;
- fisheries management plans and marine resources protected area management plans under the *Living Marine Resources Management Act 1995*.

Management of Point Sources of Pollution

In general, the SPWQM provides adequate guidance in relation to point source emissions. However, the EPA should provide more guidance and assistance to smaller councils to ensure that appropriate permit conditions are implemented for point sources of pollution.

We consider it very important to expedite the development of guidelines for emergency management plans and acceptance of trade waste to sewage systems. These are complex issues, which many small councils do not have the resources to deal with appropriately without external guidance.

We believe that it is also important to develop guidelines for septic tanks. As noted in the discussion paper, groundwater pollution as a result of septic systems presents significant issues in many municipalities, particularly Glamorgan Spring Bay. The SPWQM should also encourage the orderly and sustainable development of sewage infrastructure and strongly discourage large developments which rely on septic tanks, particularly in areas where the water table is high. Clause 28.3 already provides for management of overflows, however more proactive provisions would be appropriate. For example, local governments should be required to consider the following factors when assessing a development relying on on-site septic systems:

- the number of existing on-site domestic waste water treatment systems in the locality;
- any reported problems with existing systems;
- the cumulative effect of the proposed and existing systems in the locality on water quality objectives;
- the sizes of the lots and the soil types, land slopes, hydrology and hydrogeology in the locality;

- the proximity of the systems to surface waters and ground waters in the locality;
- rainfall and other climatic conditions of the locality;
- the existing quality and water quality objectives for receiving waters;

Where specific emission guidelines have been developed, the SPWQM (or EPP) should explicitly state that regulatory authorities should require existing activities to be progressively improved to meet these emission targets (see, for example, cl. 12 of the EPP (Air) 2004). This could be achieved through Environmental Improvement Programmes or Environment Protection Notices.

Management of Diffuse Sources of Pollution

As a general comment, any review of the SPWQM should be implemented consistently with the results of the review of the aerial spraying code of practice and the review of slipways management. The landfill guidelines are also currently poorly implemented and should be considered for review.

The use of treated wastewater for irrigation remains a difficult water quality management issue. Where the activity is a Level 2 activity, the EPA is generally able to effectively assess the capacity of land to receive the wastewater. For smaller activities, councils often lack the expertise to effectively assess the impacts of proposed land application. In our experience, local governments are reluctant to approve small-scale re-use of domestic greywater, despite the potential benefits. Further resources and training should therefore be available to council officers to assess these issues. We note that the *Environmental Guidelines for the Use of Recycled Water in Tasmania* are also due for review.

The EPA / DPIW should also consider adopting a policy of maintaining a reserve capacity for receiving lands and waters to account for scientific uncertainty and other diffuse emissions. The provisions in the EPP (Air) 2004 in relation to reserve capacity are a good example of this approach.

Urban runoff continues to compromise water quality throughout Tasmania. We therefore commend the government for its efforts to develop the State Stormwater Strategy and a supporting planning directive. It is important to provide guidance for smaller councils on assessing capacity, and implementing effective permit conditions, to utilise water sensitive urban design features. Clause 42 of the Qld EPP (Water) is a further example of a guiding provision in relation to urban stormwater management.

As discussed above, groundwater should be managed as part of an integrated water system. We support the adoption of a risk management approach to identifying threats to groundwater quality as an interim measure, supported by efforts to improve knowledge regarding other groundwater sources in the State.

MONITORING AND INVESTIGATION

Monitoring programmes and the quality of data available in relation to water sources throughout Tasmania has improved significantly in recent years. The NRM programme in particular has done excellent work in establishing regional priorities and networks.

We strongly support the continuation of the various monitoring programs currently overseen by DPIW, EPA and DHHS. We also commend the level of information now publicly available in relation to water quality monitoring. The strategies identified for monitoring water quality in the current ANZ Fresh and Marine Water Quality Guidelines are a good guide to appropriate monitoring techniques. Again, we consider it very important that monitoring programmes be expanded to include groundwater resources.

In our view, it is important that the data that is available is used to develop water quality objectives and, where necessary, to trigger further studies. This is particularly the case in relation to diffuse pollution sources. Where waterways are identified as having higher than expected chemical levels, the results should trigger an investigation into land use practices in the catchment that have given rise to poor water quality. Efforts should be made to restore the environment and to adopt measures to mitigate the impacts of surrounding land uses.

We also recommend that clearer protocols be established in relation to notification and investigation of "incidents" with the potential to impact on water quality (such as chemical spills). In response to concerns raised over a recent spill in a forestry coupe near Pyengana, we were advised that a communication protocol exists between DPIW, EPA, DHHS and the local governments. The protocol apparently requires the agency first notified of the event to notify all the other relevant agencies. In practice, this does not always happen. We recommend that the protocols for notification and investigation be more explicit, publicly available and implemented more rigorously.

The EDO appreciates the opportunity to make these comments. Please do not hesitate to contact us if you wish to discuss anything raised in this submission.

Kind regards,

Environmental Defenders Office (Tas) Inc

Per:

A handwritten signature in black ink, appearing to read 'Jess Feehely', written over a light blue horizontal line.

Jess Feehely
Principal Lawyer