



STATUTORY POLICY REVIEW - DISCUSSION PAPER

Template for written submissions

Please provide your name and address and details of your organisation (if relevant)

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Questions from the discussion paper

CHAPTER 2: HOW STATUTORY POLICY WORKS

Question 1: In your experience, what has worked well with statutory policy? What has not worked well?

Worked Well

Providing a broad outlook regarding environmental conditions desired by the State.

Foreshadowing future environmental compliance requirements.

Generally describing terms used to demonstrate compliance (eg Best Practice, mixing zones etc).

Point source pollution has been well addressed through the use of discharge licences that are issued in accordance with SEPP.

Use of financial incentives to encourage environmental improvements such as increasing the waste to landfill charges

Financial analysis step in the policy development process such as the Regulatory Impact Statement for SEPPs

Not Worked Well

Providing specific information on how to achieve an environmental outcome such as “maximisation of reuse of treated effluent and sludge” or “maximise the sustainable reuse of treated effluent or sludge” in discharge licences. The use of the term “maximisation” is not adequate to help the holder of a discharge licence to determine the amount of reuse that is required to be compliant.

The connection between policy (SEPP objectives) and compliance in the case of diffuse sources of pollution is not clear. For example, compliance with SEPP environmental quality objectives and indicators in Victorian waterways is a long term outcome, one that is unable to be used for compliance and enforcement purposes.

Integrated water management requires a longer planning horizon to be successful and the current statutory policy framework does not support the requirements to implement this in the shorter term (eg developing strategies for IWM, requiring aspects of this such as water recycling without putting this into a rational context.

Clarity on compliance requirements so that improvement actions can be established.

Inadequate strategic planning based on policy to clearly describe 5 year environmental requirements to support expenditure in Water Plans supplied to the ESC.

Planning horizons not closely aligned to Water Plan timeframes.

Specifically describing application of terms used to demonstrate compliance (eg Practicability, mixing zones etc).

Clarity of difficult and subjective issues such as defining what is an “offensive odour”.

Management of diffuse source pollution.

Question 2: How well do you think the features and obligations in statutory policy are understood? Are some parts better understood than others? (We would welcome some examples).

Environmental protection principles are very broad not well understood in terms of how they have to be applied, some examples follow.

Details of “improvement actions” that may be required to achieve a broader compliance objective such as 1:5 containment of sewage are not detailed in statutory policy, especially when applying a term such as practicability or interpreting “environmental protection principles”.

The concept of a mixing zone is not well understood.

Trying to ultimately eliminate a mixing zone is not practicably achievable unless the discharge matches upstream water quality. This ignores the reality that no act has zero environmental impact either in the area of a mixing zone or related to impacts created by actions to reduce the impact such as increased energy and resource use.

Question 3: Are there critical issues, risks or relevant processes (e.g. upcoming reviews, strategic planning processes) that should be considered in prioritising individual policy reviews?

Affordability as it relates to the cost of environmental improvements and the Water Plan process.

How additional requirements contribute to increased greenhouse gas emissions.

How will EPAV conduct its role as a regulator of greenhouse gas emissions?

Consistency across jurisdictions and regulatory instruments that have incrementally developed (eg SEPPs leapfrogging each other as they are reviewed).

Trade waste management and the subsequent allocation of regulation for this to the ESC and potential consequences for discharge performance and opportunities to reuse effluent and sludge.

The hydrology of waterways is not always included in consideration to protect rivers, with a stronger focus on pollutants rather than stressors.

CHAPTER 4: CRITICAL CHALLENGES FOR STATUTORY POLICY

Question 4: What do you think are the main challenges for statutory policy? Are there other challenges not presented in the discussion paper?

Alignment within Australia and globally.

Maintaining relevance under changed Government directions.

Maintaining relevance when expenditure is being limited.

Cost of environmental improvements.

Clear hierarchy of instruments.

Achieving clarity between environmental quality required and enforcement mechanisms (eg how to pursue diffuse polluters).

Question 5: In your work, which instruments or documents under the Environment Protection Act do you (or your organisation) use most often? The Environment Protection Act, Regulations, statutory policies or guidance?

Statutory policies.

Guidance documents.

Works approvals.

Objectives and limiting parameters.

CHAPTER 5: APPROACHES TO STANDARD SETTING

Question 6: What types of measures or provisions in the ‘attainment programs’ of statutory policy do you find most useful?

Do you think these need to stay in statutory policy or may be better placed in other regulatory instruments or guidance?

Statutory Policy

Aspirational objectives help to guide strategy.

Planning and guidance documents are useful to formulate action programs as long as there is a clear connection with compliance.

Regulations

Minimum standards are the basic requirements for regulations when enforcement is applied.

It is harder to regulate broader objectives when determining compliance.

Policy and regulations are best and most useful when backed by sound science.

Question 7: How well do you think statutory policies perform their standard-setting role?

Would specific types of standards be better placed in other regulatory instruments or guidance?

For longer term objectives, such as end point objectives, statutory policies are useful. Improvement programs can be developed with this in mind. These are not very useful when determining compliance.

Standards that are used to determine compliance need to be focused on shorter term and achievable current performance objectives and best described in regulations.

Consistency across jurisdictions makes economic sense and avoids unfair advantages based on geography.

It is difficult to respond to policies that have been incrementally developed especially when one policy is deemed to have more significance than another.

Principles are best located in legislation.

Question 8: Has including the roles and responsibilities of agencies — which often sets out how agencies will jointly tackle particular issues — in statutory policy been valuable?

Why/why not?

Being clear about roles is important but probably not best described in statutory policies. More direct statements of obligation are more effective, provided these are clear and kept up to date.

Defining roles and responsibilities needs flexibility to cope with changes to the political environment and to respond to emerging issues.

Diffuse source pollution requires a combined effort from protection agencies and polluters. Clarity on particular roles is important for this as is agreement to the roles required of them.

Reviewing the Implementation of plans and responses required by statutory policy is a critical step with the review timing set outside the frequency of review of the statutory policy. This is important to ensure that implementation is effective and responds to changing circumstances. For example the Port Phillip Bay EMP achieved the Western Treatment Plant reduction in Nitrogen effectively but the catchment reduction has not yet been achieved. The EMP should be reviewed to reflect this performance.

Question 9: In your experience, are there features in other fields of regulation that would be useful in the Victorian environment protection framework?

Independence between enforcement and policy setting helps to make for effective compliance.

Question 10: In your experience, what features of statutory policy in other states or overseas work well?

Encouraging participation and use of science in setting objectives and backing programs with adequate resourcing and using enforcement as a last resort contributes towards enhanced performance. (PPB EMP WTP, Chesapeake Bay).

CHAPTER 6: POTENTIAL MODELS FOR REFORM

Question 11: Which, if any, of the model(s) do you think may work well? Why?

Melbourne Water supports Model 2, in particular because it best:

- Clearly separates compliance requirements into regulations
- Retains statutory policy for longer term improvement objectives
- Locates principles in legislation
- Supports objective achievement by resourcing based on risk and allocation of cost to “polluter”, customer or receiver of benefit.

Question 12: Are there other models that should be considered?

No comment.

CHAPTER 6 (CONT'D): SPECIFIC SUGGESTIONS FOR REFORM

Question 13: What do you think of the specific suggestions for reform (on pages 25-26)?

In general a shorter list of policies is supported by consolidating current policies and by summarising general aspects that are broadly applicable.

Improving accessibility – support all suggestions.

Improving flexibility – care needs to be taken when using legal methods to adjust to changing circumstances. This is perhaps best left to less formal processes, using science to guide change processes that, once accepted can be built into regulations.

Accountability, management and coordination – EPA is not the sole arbiter of science regarding environmental improvement. Flexibility of the source of knowledge is important. Roles need to be clearly understood. It is more important to have adequate resourcing of science rather than focussing too much on who should do this.

Statutory policy should apply to the whole community, not to separate bodies because they had some role in developing it. Once in place all should strive to achieve it. Cooperative management between bodies is useful with clear delineation between setting policy and achieving objectives.

Question 14: What else should be done to make statutory policy more responsive, accessible and easier to apply?

Split up the broader task of environmental improvement into more appropriate regulatory instruments as follows:

- High level principles - legislation
- Longer term improvement objectives - statutory policy
- Current compliance obligations – regulations

Help with achieving these through adequately resourced guidance material and funding for appropriate modelling and scientific process to underpin the improvements. Continue to subject instruments to cost benefit analysis.

Question 15: How could the links between statutory policy, catchment planning, statutory planning and other frameworks be improved?

Alignment between jurisdictions for higher level objectives is necessary.

Hierarchies of instruments should be developed based on the level of specificity.

Geographical relevance should be used to determine local compliance.

Clear articulation of relevant accountability for actions under statutory policy and the linkages between protection agencies for achieving improvement actions.

Question 16: Do you have any other suggestions for reforms to the statutory policy framework?

It is important to ensure that adequate resources are available to implement improvement actions, in particular through the Water Plan process.

Involvement by protection agencies in setting longer term objective assists compliance.

Scientific processes should guide setting objectives.