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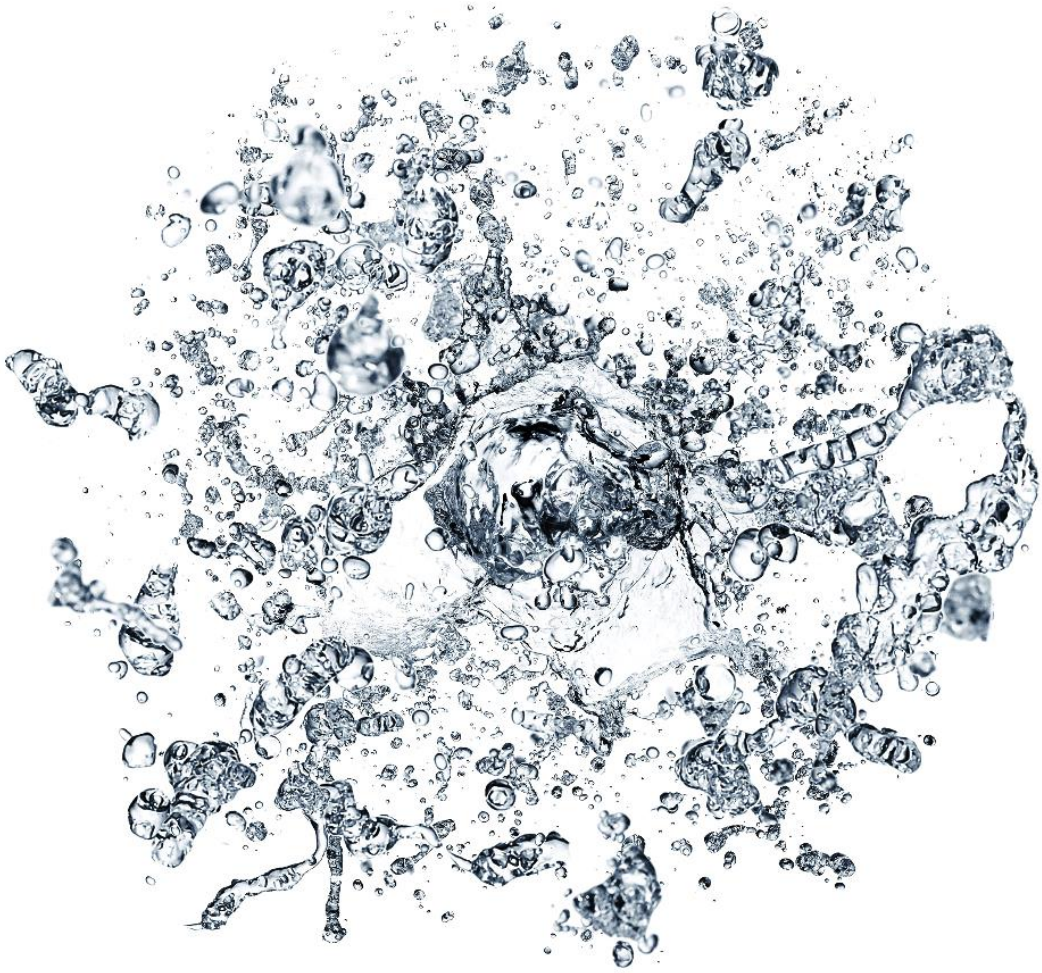


State Environment Protection Policy (Waters) Saved Clauses

Regulatory Impact Statement

April 2023

Deloitte Access Economics

Contents

Glossary

Acronym	Full name
AMAF	Asset Management Accountability Framework
CMA	Catchment Management Authority
DELWP	Department of Environment, Land, Water and Planning
DJPR	Department of Jobs, Precincts and Regions
DWMP	domestic wastewater management plans
EMP	Environmental management plan
EP Act	*Environment Protection Act 2017*
EP Act 1970	*Environment Protection Act 1970*
EPA	Environment Protection Authority
ERS	Environmental reference standard
FTE	Full-time equivalent
GED	general environmental duty
IDG	Irrigation development guideline
IWM	Integrated water management
LWMP	Land and Water Management Plan
MAV	Municipal Association of Victoria
MDBA	Murray-Darling Basin Authority
MCA	Multi-criteria analysis
OMLI	Orders for managers of land or infrastructure
OWMS	On-site domestic wastewater management system
RIS	Regulatory impact statement
SIP	Sustainable irrigation program
SEPP	State environment protection policy
SoO	Statement of Obligation
SIP	Sustainable Irrigation Program
SWS	Sustainable water strategy
VPP	Victoria Planning Provisions

Executive Summary

Purpose of this regulatory impact statement

The purpose of this Regulatory Impact Statement (RIS) is to assess the impact of the different options identified, including non-statutory interventions (such as guidance) and legislative instruments, to rehouse some or all of the obligations in the State Environment Protection Policy (Waters) (SEPP (Waters)) saved clauses, which are due to expire on 30 June 2023.

Background

As a result of the Independent Inquiry into the Environment Protection Authority Victoria (EPA) in 2016, the *Environment Protection Act 2017* (EP Act) came into effect from 1 July 2021.[1] The EP Act replaced the previous legislative framework including the *Environment Protection Act 1970* (EP Act 1970) and SEPP (Waters).

Prior to the EP Act coming into effect, all SEPPs were assessed to determine whether their content would be covered by the new legislative framework. For example, the content of some clauses would be covered by new duties, included within subordinate legislation that had been built to support the Act, or could be addressed through the use of tools, such as licences.

While the vast majority of SEPP (Waters) clauses were woven into the new legislative framework from the outset, a number of clauses were temporarily saved. These clauses were saved for a period of two years through the *Environment Protection Transitional Regulations 2021*. The decision to save these clauses was made in circumstances where:

- additional time was required to allow for changes in government processes
- it was unclear whether a replacement instrument was required
- clauses were linked and time was required to decouple them.

The additional two years has allowed time for government to consult with duty holders and identify whether a replacement instrument is required for the saved clauses, and if so, the most suitable instrument to support the policy intent of the clause. The SEPP (Waters) clauses saved in the Environment Protection Transitional Regulations 2021 are due to expire on 30 June 2023.

The clauses relate to aspects of:

- on-site wastewater management systems (OWMSs)
- urban stormwater management plans and asset management
- managing saline discharges and irrigation drainage
- managing pollutant load targets.

Problem statement

The primary problem that the expiry of SEPP (Waters) saved clauses presents is the risk of increased environmental harm in any areas where there are no other adequate risk controls in place to address the risks that the obligations within the clauses currently address (the residual risk). However, given the broader environment protection framework operating in Victoria, the residual risks associated with the expiry of many of the clauses are considered to be 'covered', This is that the measures imposed by other instruments (for example, the GED) have been determined to adequately address the residual risk of a clause expiring without additional regulatory intervention. In these cases, it is proposed that the obligations currently imposed by the clauses are not rehoused in a new tool. For the remaining clauses with residual risks not adequately covered by other instruments or tools, options to rehouse the obligation are considered in this RIS.

[1] The Environment Protection Regulations 2021 and the Environment Reference Standard also came into effect at this time.

The assessment of residual risks and impact of the broader environment protection framework for each clause has been informed by the advice of EPA and Department of Environment, Land, Water and Planning (DELWP), as well as input from stakeholders through both a survey, and a series of targeted workshops and interviews. Table i outlines which clauses are considered covered by existing regulations or tools and which are not, proceeding to the option assessment phase.

Table i: SEPP (Waters) saved clauses adequately covered by existing tools or regulations

Theme	SEPP (Waters) clause	Covered	Basis
OWMSs	Reticulated sewerage – 28(1)	✓	Victoria Planning Provisions (VPP), General environmental duty (GED)
	Onsite wastewater management – 28(2)	✓	VPP, GED
	Domestic wastewater management plans – 29	x	-
	Sewerage planning – 30	x	-
Urban stormwater	Stormwater asset management – 34(3)	x	-
	Stormwater management plans – 34(4)	x	-
Salinity and irrigation management	General obligation to minimise risks from saline wastewater – 35(1)	✓	General environmental duty
	Saline discharges authorised by the Murray-Darling Basin Authority – 35(5)	✓	Commonwealth instruments, Victoria's Salinity Accountability Manual
	Considerations for water use licences – 35(6)	✓	*Water Act 1989*
	Regional land and water management plans (LWMPs) – 37(1)	✓	*Water Act 1989*
	DELWP production of guidelines for LWMPs – 37(2)	✓	Policy commitment
	Irrigation activity management – 37(3)	x	-
	Collaboration in the development, implementation and monitoring of LWMPs and irrigation development guidelines (IDGs) – 37(4)	✓	Sustainable Irrigation Program
Pollutant load targets	Lake Wellington – Schedule 4.2	✓	Sustainable Water Strategy (SWS), Environmental reference standard (ERS)
	Corner Inlet – Schedule 4.3	✓	SWS, ERS
	Port Phillip Bay – Schedule 4.4	✓	SWS, EMP, ERS
	Western Port – Schedule 4.5	✓	SWS, ERS

Given the risk coverage assessment, there remain five clauses that are considered not to have their associated residual risks covered by otherwise existing instruments or tools. These are:

- Domestic wastewater management plans – Clause 29 of SEPP (Waters)
- Sewerage planning – Clause 30
- Stormwater asset management – Clause 34(3)
- Stormwater management plans – Clause 34(4)
- Irrigation activity management – Clause 37(3)

Each of these clauses are separately assessed in this RIS. However, as Clauses 29 and 30 are interrelated obligations on different parties, they are assessed together.

This process is not intended to review, renegotiate or expand the content and scope of the clauses beyond their current focus. This is because SEPP (Waters) was gazetted relatively recently in 2018, and therefore a full policy review is not yet warranted. It is about determining whether the instruction and subsequent obligation imposed by the existing clauses needs to be rehoused into a new environment protection instrument or can be achieved by other means. In order to consider whether and how this can best be achieved, the objectives of the proposed changes are to:

- minimise harm to human health and the environment by addressing risks created by the expiry of the SEPP (Waters) saved clauses
- avoid duplicating the intent or function of existing instruments or policies (reflecting a Better Regulation principle and policy priority of the EPA).[2]

The specifics of the clauses being assessed in this RIS and the problems they are intended to address are presented in Table ii.

Table ii: Summary of Clauses considered in this RIS and their associated risks

Concern	Roles and responsibilities	Description of problem
Domestic wastewater management plans Clauses 29 & 30	**Councils** must develop and publish on-site wastewater management plans (OWMP) to demonstrate they have identified and are managing risks to human health and the environment from OWMSs. Councils must consult relevant stakeholders, including water corporations, when developing a plan. **Water corporations** must develop a response to a council's on-site wastewater management plan if it identifies a sewage management solution that is not solely an onsite wastewater management system. They must provide the written response to council and prepare a five-yearly report on the implementation of the water corporation's identified preferred solution.	• Onsite domestic waste water systems that perform poorly or are installed in inappropriate locations can have a range of negative environmental, human health and amenity related impacts. Issues with systems can build up slowly over time and can be hidden in nature, highlighting the importance of proper planning and prevention. • Given the nature of these risks, a lack of long-term planning and coordination may, and have historically resulted in significant legacy costs. • Without a requirement for councils to develop DWMPs and for water corporations to respond to them, there is an increased risk of poor wastewater planning and missed opportunities to strategically identify ways wastewater management can be improved. • Without an express obligation to undertake these activities, it is possible that a subset of councils will reprioritise resources to other areas of need over time.
Stormwater asset management Clause 34(3)	**Owners and managers of assets** (understood in practice to be councils and Melbourne Water) must so far as reasonably practicable ensure that stormwater infrastructure designed to minimise risks from urban stormwater, is managed and maintained and is renewed or replaced so far as reasonably practicable when it can no longer be managed or maintained.	• Although there are a range of obligations that are highly likely to support the ongoing general maintenance of stormwater assets, the expiry of this clause risks the loss of maintenance having a strong environmental focus. • Without express requirements, stakeholders voiced concern that environmental protection elements of assets may not be adequately prioritised and that there would be a residual risk of environmental harm over time.

[2] Better Regulation Victoria (2021) *Towards Best Practice – A guide for regulators* <https://www.vic.gov.au/sites/default/files/2022-05/Towards%20Best%20Practice%20-%20A%20guide%20for%20regulators%20-%20Final.pdf>

Stormwater management plans Clause 34(4)	**Councils** must develop and publish plans to identify and minimise risks from urban stormwater, in consultation with relevant stakeholders, including water corporations, CMAs and the community. Councils must review and update the plan and publish a report on implementation at intervals of no more than 5 years.	• Stormwater management plans play an important strategic role in prioritising actions, promoting collaboration between different authorities and identifying opportunities for improvement to minimise risks of harm from urban stormwater. • Relevant stakeholders consulted were of the view that while some councils would likely continue to complete these plans, there is a risk that smaller, regional and rural councils may not. • The residual risk created by the clause's expiry, is linked to the loss of planning and collaboration associated with this sub-set of councils.
Irrigation activity management Clause 37(3)	**(Catchment management authorities) CMAs** must develop and publish land and water management plans (LWMP) that identify risks from irrigation activities and actions to minimise risks. They must take into account DELWP guidelines when developing the LWMP, and the environment reference standard.	• The development of LWMPs result in CMAs playing an important coordinating role in management irrigation risks and activity. • In the absence of this clause there is a risk that, over time, some CMAs may divert resources away from LWMPs to other priority areas and/or reduce the quality of plans.

Scope of this RIS and options considered

The options considered in this RIS represent instruments that have been identified as being capable of, to differing extents, rehousing the intent of the expiring SEPP (Waters) saved clauses in the Environment Protection Transitional Regulations 2021. While a number of potential options have been identified, not all are applicable to each set of clauses as they differ in the duty holders they are capable of covering and obligations they can impose.

Each set of expiring clauses will be assessed relative to the **base case**, a scenario where the SEPP (Waters) saved clauses expire on 30 June 2023 and are not rehoused in a new instrument. This is consistent with the Victorian Guide to Regulation's guidance for sunsetting regulations which requires the problem to be analysed as if the existing regulations did not apply.

The potential instruments or tools that are considered as options against each clause are:

1. **Guidance** provides information to help duty holders understand their obligations under the Act, approaches to identifying risks or practical measures that can be taken to minimise risk of harm based on individual circumstances. It does not impose compliance obligations.
2. **Statement of Obligation** (SoO) imposes obligations on water corporations (under the *Water Industry Act 1994)* or CMAs (under the *Water Act 1989* or the *Catchment and Land Protection Act 1994*) and can specify the obligations across a range of areas, such as specific standards and the performance of their functions. Compliance with a SoO is mandatory, with water corporations and CMAs required to report any identified material non-compliance to the relevant Minister and propose plans to prevent future non-compliance.
3. An **Order for Managers of Land or Infrastructure** (OMLI) is a legislative instrument under the EP Act that can apply to a council, public sector body or infrastructure manager. It sets out specific requirements for how land or infrastructure must be planned, managed, operated, or controlled. An OMLI plays a role in addressing responsibilities outside of the direct focus of the GED. Compliance with an OMLI is mandatory and, if an OMLI is contravened, EPA may issue a remedial notice. If the duty holder fails to comply with an issued remedial notice, EPA can take proceedings to enforce the notice in court.

For the purposes of this RIS, a key difference between OMLIs and SoOs is the enforcement pathways available. The consequences of non-compliance of obligations within a SoO are not set by the relevant Act, but are instead addressed within the instrument itself (and involve reporting the non-compliance to the Minister or Department). By comparison, the EPA can issue a remedial notice under the EP Act for non-compliance with an OMLI obligation and enforce that notice in

court if necessary. In some instances where the requirements of the EP Act are met, there may also be capacity for a third party to seek to enforce the performance of OMLI obligations (this is the case for any legal requirement under the EP Act).

Not all options are considered feasible instruments to rehouse the obligations of each SEPP (Waters) clause. Feasible options are influenced by whether there is a head of power to utilise an instrument for the intent of the saved clause and the existence of other tools covering similar obligations.

SoOs have not been considered against several clauses imposing obligations on council because SoOs are only applicable to water corporations and CMAs. Guidance has not been considered against a number of clauses because guidelines or guidance already exists, or is under development, for these obligations.

0 indicates which of these three options are being considered for rehousing each residual SEPP (Waters) clause.

0: Options under consideration for each set of residual SEPP (Waters) saved clauses

Clause theme	SEPP (Waters) clause	Guidance	Statement of Obligations	OMLI
Wastewater	Domestic wastewater management plan - 29			✓
	Sewerage planning - 30		✓	✓
Urban stormwater	Stormwater asset maintenance – 34(3)	✓		✓
	Stormwater management plans – 34(4)	✓		✓
Salinity and irrigation management	Irrigation activity management - 37(3)		✓	✓

Assessment of options

The options in this RIS are assessed using Multi-Criteria Analysis (MCA) to score each of the options against their respective base case. Each option is assessed against the following weighted criteria:

1. **Risk to human health and the environment (40%):** The extent to which each option addresses the residual human health and environment risk associated with the expiry of the relevant saved clause(s). This includes considerations of how the option directly reduces risk and the extent to which it facilitates the completion of the expectations or obligations by impacted stakeholders.
2. **Clarity of expectations (10%):** the extent to which each option provides clear expectations, providing clarity and certainty.
3. **Cost to EPA/DELWP (25%):** The extent to which each option imposes costs on EPA or DELWP to administer and enforce.
4. **Cost to duty holders (25%):** The extent to which each option imposes costs on responsible authorities to comply with obligations.

Options are analysed in the MCA for SEPP (Waters) clauses to determine the preferred option. As noted above, only one option (an OMLI) is considered for the domestic wastewater management plan clause (29), so an MCA was not undertaken for it.

Based on the assessments made in the MCA, it has been determined that **the preferred option is to rehouse all obligations, that were identified as creating residual risk, within an OMLI upon expiry of the clauses**.

This assessment has been reached on the basis that OMLIs are best able to achieve the objective of minimising harm to human health and the environment by addressing risks created by the expiry of the SEPP (Waters) saved clauses while avoiding the duplication of the intent or impact of other existing instruments or policies. Other options achieve a broadly similar cost to both government and regulated parties but have larger trade-offs to environmental risk reduction, regulatory clarity and effectiveness.

0 summarises the results for on-site wastewater management clauses. While both options achieve similar high scores against the benefit criteria, rehousing both clauses in an OMLI scores higher because it aligns similar and related obligations in the same instrument and also promotes more compliance as a result of the enforcement pathways available.

Table iv: Summary of MCA scoring for on-site wastewater management

Criteria	Option 1 – OMLI and SoO	Option 2 – OMLI
Benefits		
Environmental risk	8	9
Clarity	6	8
Costs		
Cost to EPA/DELWP (positive score is lower cost than base case)	-3	-4
Cost to duty holders (positive score is lower cost than base case)	-6	-7
Weighted score	**1.6**	**1.7**

0 summarises the results for the stormwater asset management clause. While both options were considered likely to reduce environmental risk relative to the base case, an OMLI is likely to achieve this to a greater degree given the more comprehensive enforcement pathways available. While this also imposes additional costs on duty holders and EPA/DELWP, the additional benefits outweigh the burden.

Table v: Summary of MCA scoring for stormwater asset management

Criteria	Option 1 – Guidance	Option 2 – OMLI
Benefits		
Environmental risk	3	5
Clarity	6	6
Costs		
Cost to EPA/DELWP (positive score is lower cost than base case)	-4	-5
Cost to duty holders (positive score is lower cost than base case)	-2	-4
Weighted score	**0.3**	**0.4**

Table vi summarises the results for the stormwater management plan clause. An OMLI is considered likely to increase the number and quality of stormwater management plans completed due to the broader enforcement pathways available. In particular, this benefit is expected to promote additional completion from smaller, regional and more resource constrained councils.

Table vi: Summary of MCA scoring for stormwater management plans

Criteria	Option 1 – Guidance	Option 2 – OMLI
Benefits		
Environmental risk	4	6
Clarity	6	6
Costs		
Cost to EPA/DELWP (positive score is lower cost than base case)	-2	-3
Cost to duty holders (positive score is lower cost than base case)	-2	-3
Weighted score	**1.2**	**1.5**

Table vii summarises the results for the irrigation activity management clause. While a SoO provides slightly more clarity to stakeholders by aligning with the way in which CMAs are compelled to complete other similar plans, an OMLI provides a relatively larger reduction in risk due to the enforcement pathways available.

Table vii: Summary of MCA scoring for irrigation activity management

Criteria	Option 1 – SoO	Option 2 – OMLI
Benefits		
Environmental risk	3	5
Clarity	7	6
Costs		
Cost to EPA/DELWP (positive score is lower cost than base case)	-2	-3
Cost to duty holders (positive score is lower cost than base case)	-2	-3
Weighted score	**0.9**	**1.1**

Please see the final exposure draft for the specific wording of the proposed OMLI.

Competition and small business impacts

In the context of this RIS, all regulated parties are governmental or quasi-governmental entities. Additionally, the obligations re-imposed are generally of a strategic planning nature. As such, the proposed OMLI is unlikely to have any adverse impact on competition in Victoria.

Similarly, as the preferred options only directly regulate parties that are governmental or quasi-governmental entities, the matters in this RIS are unlikely to directly impact small businesses in Victoria. Second- and third-order impacts associated with the OMLI, such as directions to apply certain conditions on water-use licences, may impact small business. However, given that stakeholders report that many of the obligations imposed are likely, to differing extents, to occur under the base case, the attributable costs are considered small.

Implementation, enforcement and evaluation

The primary activities that EPA will need to undertake to implement the proposed OMLI include creation and communication of the OMLI as well as updating guidance and other materials.

The OMLI will be created by the Governor in Council upon recommendation of the Minister and notification of making of the Order is required to be published in the Government Gazette. The proposed OMLI will be made as soon as practicable following the expiry of the Transitional Regulations.

EPA will develop communications materials that explain the changes for stakeholders. These communications will be undertaken through various methods, such as emails to key stakeholders, media releases and updates on the EPA website, social media, newsletters. Communications will also occur through the Engage Victoria web page.

Some guidance development and updates are relevant to supporting the draft OMLI. These include:

- DELWP Guidelines to support LWMPs
- webpage updates
- OWMP guidance to support OWMP requirement

EPA does not consider that specific additional guidance will be required in addition to the above.

Updates will also be made to relevant EPA internal policy and procedure documents to support monitoring and compliance processes.

Enforcement steps will be taken in line with EPA's Compliance and Enforcement policy.[3] There will be an initial focus on understanding and supporting consistency across council and catchment areas in line with EPA's regulatory approach.

In order to ensure the proposed OMLI is working effectively, evaluation may take place through monitoring of compliance and, when a review is undertaken, assessing the level of responsible authorities' awareness and compliance with obligations. As an OMLI does not have a specific expiry date, EPA may consider undertaking a review of the effectiveness of the OMLI instrument three years post implementation.

Public consultation

The understanding of the above issues and proposed solutions identified in this RIS has been developed based on input from affected stakeholders. Key engagement activities have included:

- An introductory webinar and workshops with a widely circulated invite to relevant stakeholders across February-March 2022 (with 100+ participants)
- A survey was distributed to duty holders aimed at confirming understanding of whether clauses would be covered by other instruments in the base case, as well as seeking views on the potential impacts of different options for rehousing the saved clauses in another instrument
- Five workshops to further confirm survey results and gain a more detailed understanding of the impacts duty holders would experience associated with each option being explored.

This RIS and the proposed OMLI have been publicly released for consultation to provide businesses, members of the public and other interested parties the opportunity to provide feedback through a formal submission process. The proposed OMLI and this RIS will be released via Engage Victoria for a minimum of a 28-day public comment period.

EPA and DELWP will consider all submissions received during public consultation and prepare a Response to Public Comment document which will outline the submissions received, and EPA's response.

[3] EPA publication 1798.2 <https://www.epa.vic.gov.au/about-epa/publications/1798-2>

1 Background

This chapter outlines the purpose of this Regulatory Impact Statement, background to the State Environment Protection Policy (Waters) saved clauses, and key steps to the RIS process.

1.1 Introduction

Victoria's water environments are some of the state's most valuable natural assets. Ensuring that waters are healthy now and into the future will support liveability for Victorians, productivity for the economy, and a healthy environment. Well-protected water environments provide water to households, ensure ecosystems can thrive, sustain industry, agricultural and aquaculture, and support recreation and tourism.

Previously, the primary regulatory mechanism for protecting Victorian waters from pollution was the *Environment Protection Act 1970* (EP Act 1970). The EP Act 1970 established the Environment Protection Authority (EPA) and defined EPA's roles, responsibilities and powers in relation to environment protection. The EP Act 1970 was supported by whole of government policies, called State Environment Protection Policies (SEPPs) that established in law the uses of the environment that the Victorian community wanted to protect and defined the environmental indicators and objectives needed to provide that protection.

SEPP (Waters) supported the protection of Victoria's waters in two key ways:

- by outlining the beneficial uses to be protected for different water bodies and the associated environmental quality objectives required to support these beneficial uses[4]
- by aiming to provide clarity and guidance on the processes, tools and mechanisms authorities use to protect the water environment.

In response to the Independent Inquiry into the EPA in 2016, the *Environment Protection Act 2017* (EP Act) came into effect from 1 July 2021.[5] The EP Act replaced the previous legislative framework and introduced, at the centre, the general environmental duty (GED), which applies to all Victorians. When the EP Act 2017 came into effect, the EP Act 1970 was revoked, which consequentially revoked SEPPs.

Prior to the EP Act coming into effect, all SEPPs were assessed to determine whether their content would be covered by the new legislative framework. For example, the content of some clauses would be covered by the GED, included within subordinate legislation that had been built to support the Act, or could be addressed through the use of tools, such as licences. EPA has previously published guidance explaining this assessment process and providing information on where the content of SEPPs can be found within the new framework.[6]

The vast majority of SEPP clauses were woven into the new legislative framework from the outset, with the exception of a few SEPP (Waters) clauses. These clauses were saved for a period of two years through the Environment Protection Transitional Regulations 2021. The decision to save particular clauses was made in circumstances where:

[4] Under the EP Act 1970, beneficial use was defined as "a use of the environment or any element or segment of the environment which is conducive to public benefit, welfare, safety, health or aesthetic enjoyment and which requires protection from the effects of waste discharges, emissions or deposits or of the emission of noise".
[5] The Environment Protection Regulations 2021 and the Environment Reference Standard also came into effect at this time.
[6] Environment Protection Authority Victoria, Using SEPPs and WMPs in the new environment protection framework, Publication 1994 (2021) <https://www.epa.vic.gov.au/-/media/epa/files/publications/1994.pdf>.

- additional time was required to allow for changes in government processes
- it was unclear whether a replacement instrument was required
- clauses were linked and time was required to decouple them (for example, some already rehoused clauses such as 35(1) and standards in Schedule 4 were saved for legal reasons because they were referenced in a separate saved clause).

The SEPP (Waters) clauses saved in the Environment Protection Transitional Regulations 2021 expire on 30 June 2023, and relate to aspects of:

- on-site wastewater management systems
- urban stormwater management plans and asset management
- managing saline discharges and irrigation drainage
- managing pollutant load targets.

The additional two years has allowed time for government to consult with duty holders and identify whether a replacement instrument is required for the saved clauses, and if so, the most suitable instrument to support the policy intent of the clause.

The purpose of this Regulatory Impact Statement (RIS) is to assess the impact of the different options identified, including non-statutory interventions (such as guidance) and legislative instruments, to rehouse the obligations in the SEPP (Waters) saved clauses which present a residual risk.

1.2 Protecting Victoria's water environments

Victoria's waters are made up of a number of different environments, including:

- marine environments (such as coasts, bays, inlets and estuaries)
- freshwater (such as rivers, streams, wetlands and lakes)
- groundwater resources.

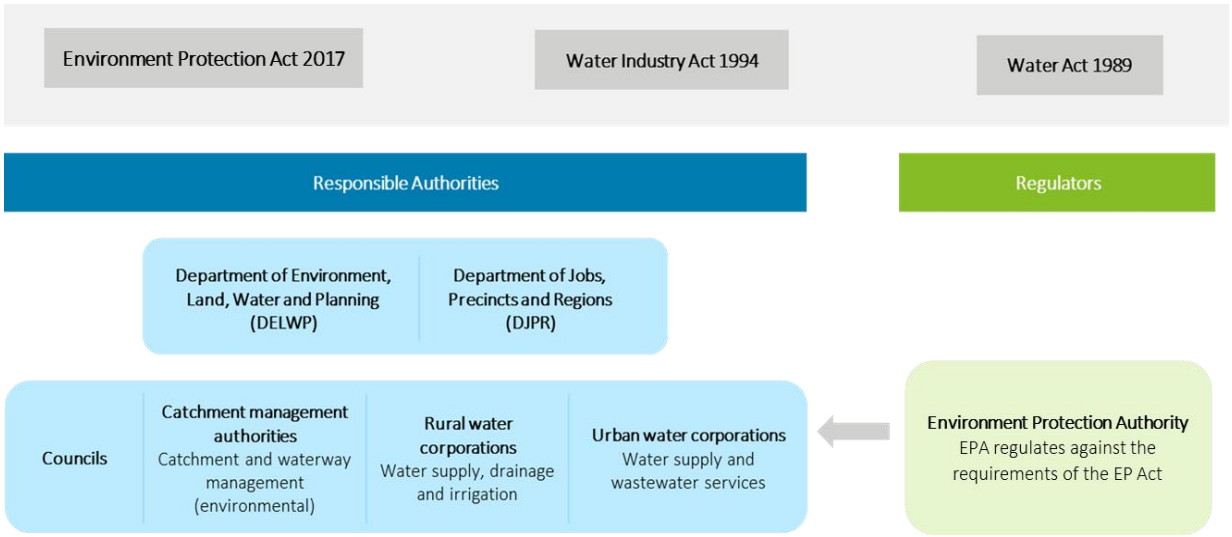
These water environments have major social, economic and environmental value to Victoria. Freshwater environments drain water from surrounding catchments where humans work and live, and flow into estuaries, bays and coasts. Groundwater is an important environment which many organisms live and rely on, and which interacts with almost all other water bodies. Groundwater is also used by agriculture, industry and for human consumption.

Human activities such as farming and urban and industrial development can impact water environments. Pollutants such as chemicals, oils and excess nutrients, often carried by runoff, can also affect water environments and water quality. Major threats to Victoria's waters include:

- pollution from urban run-off
- industrial activity and discharges
- urban and industrial development
- nutrient and sediment loading
- overuse
- climate change.

Victoria's Environment Protection Authority (EPA) is charged with the regulatory role and objective of protecting human health and the environment by reducing the harmful effects of pollution and waste. There are a number of other responsible government authorities who also contribute to the protection of Victoria's water environments. A non-exhaustive overview is outlined in Figure 1.1.

Figure 1.1: Governance of Victorian water in relation to SEPP clauses



Source: Deloitte Access Economics

1.2.1 The State Environment Protection Policy for Waters - SEPP (Waters)

The SEPP (Waters) played an important role in protecting Victoria's water environments by setting out standards and expectations for responsible authorities, regulators, decision makers and duty holders which promoted the effectiveness of the regulatory system for water protection overall.

However, the Independent Inquiry into the EPA concluded that in many instances the SEPPs were unclear and difficult to apply. The Inquiry recommended the SEPPs be phased out and components be split into new fit-for-purpose instruments which would make the instruments easier to use and allow for timely review and updating of standalone elements.

In response to the Inquiry and with the introduction of Victoria's new environment protection framework through the EP Act, the SEPP (Waters) was revoked as a subordinate instrument, and its formal statutory role ended on 1 July 2021. Most of the content of SEPP (Waters) was replaced by the new EP Act, the Environment Protection Regulations 2021 (EP Regulations) and the Environment Reference Standard 2021 (ERS), or through guidance produced by the EPA.

Consequential amendments (for example, removal of references to SEPP (Waters) and insertion of references to the ERS in other legislation) were also made. Part 5 of the ERS, which is a legislative instrument, has largely adopted the segments, environmental values (beneficial uses), indicators and objectives from SEPP (Waters). Pollutant load targets previously covered in SEPP (Waters) are now included in the ERS as marine pollutant load objectives and indicators.

Table 1.1 highlights the slight differences in terminology between the SEPP (Waters) and the ERS.

Table 1.1: Differences in ERS and SEPP (Waters) terminology

Instrument	Term for a use, attribute or function of the environment	Term for the quality or substance used as a metric to assess the use, attribute or function	Term for the character, level, concentration or amount of an indicator used to assess the use, attribute or function
SEPP (Waters)	Beneficial use	Environmental indicator	Environmental quality objective
ERS	Environmental value	Indicator	Objective

Clauses that contained compliance requirements and decision-making rules (e.g. refusal of applications for wastewater discharges) are now included in the EP Regulations (with changes to ensure alignment with the new environment protection framework).

The remaining SEPP (Waters) clauses, as saved under the Environment Protection Transitional Regulations 2021, largely include clauses which contributed to describing the range of management requirements and policy actions to be undertaken by duty holders to support meeting Victoria's water protection objectives.

1.2.2 Scope and purpose of the SEPP (Waters) saved clauses

The SEPP (Waters) saved clauses relate to aspects of:

- on-site domestic wastewater management systems (Clauses 28(1), (2), 29 and 30)
- urban stormwater management plans and asset management (Clauses 34(3), (4))
- salinity and irrigation management (Clauses 35(1), (5), (6) and 37)
- managing pollutant load targets (Schedule 4).

Scope and purpose of on-site domestic wastewater management system clauses

Wastewater (sewage) that comes from toilets, bathrooms, kitchens and laundries is typically treated by Victoria's reticulated sewerage systems, which comprise a network of collection pipes, sewer mains, pumping stations and treatment plants. Where reticulated sewerage is not available (e.g. on remote rural properties or unsewered small towns), sewage is managed using a stand-alone, on-site domestic wastewater management system (OWMS), often known as a septic tank system, that manages all wastewater onsite.[7] If installed incorrectly or not maintained properly, OWMSs can create risks to human health and the environment. Risks can also be cumulative where many OWMSs exist in one area or town.

The Environment Protection Transitional Regulations saved the following OWMS clauses that outline:

- Clause 28(1) – councils are to ensure appropriate wastewater management is in place when considering subdivision applications.
- Clause 28(2) – councils are to ensure subdivision applications requiring an OWMS are assessed in accordance with the Land Capability Assessment framework and any other guidance. If the proposed subdivision is in a special water supply catchment area, councils are obliged to ensure applications are in accordance with the *Guidelines for planning permit applications in open, potable water supply catchment areas*.
- Clause 29 – councils are to identify, assess and manage risks posed from OWMSs. Councils must prepare a Domestic Wastewater Management Plan to demonstrate they have identified and are managing associated risks.
- Clause 30 – water corporations are to prepare a response to a council Domestic Wastewater Management Plan which has identified off-site sewerage service options.

Scope and purpose of urban stormwater management clauses

Urban stormwater run-off carries a range of pollutants that degrade water environments and can change flow regimes. Drainage systems capture and convey stormwater along with pollutants into waterways, which can result in damaged aquatic ecosystems and reduced amenity from, for example, erosion and litter transport. Urban development, such as roads or property development, creates impervious surfaces that generate greater volumes of stormwater runoff and prevent rainwater from infiltrating to the water table, causing rainfall to run-off these surfaces and into the urban stormwater drainage system. Stormwater can harm Victoria's water environments by changing flow patterns causing erosion, and carrying pollutants, chemicals and oils into waterways and bays, and so careful planning, management and maintenance of stormwater infrastructure is important to minimise the risk of harm to human health and the environment.

[7] An OWMS has a design or actual flow rate of sewage not exceeding 5,000 litres on any day and includes all beds, sewers, drains, pipes, fittings, appliances and land used in connection with the treatment plant.

The Environment Protection Transitional Regulations saved the following urban stormwater management clauses that outline:

- Clause 34(3) – provisions for owners and managers of assets created to protect water quality to ensure the assets are designed, managed, and maintained appropriately. The explanatory memo states that these assets must be renewed or replaced when they are no longer functional.
- Clause 34(4) – the responsibilities of councils to develop and implement stormwater management plans.

Scope and purpose of saline discharges and irrigation drainage clauses

Varying concentrations of salt occur naturally in the soil and water within Victoria. Some surface waters have become unnaturally saline through land clearing of native vegetation and irrigation. Where land is cleared and irrigation occurs, salt is mobilised within the landscape and can increase land and water salinisation. For example, a higher proportion of water seeps into the groundwater system, causing groundwater levels to rise. The rising groundwater dissolves salts within the soil and brings saline water closer to the ground surface. It can also cause salt to be mobilised into waterways via surface runoff. These processes can cause salinisation of soils, expose plants to saline water and can cause an increase in saline groundwater discharge to freshwater waterways and depressions in the landscape. High levels of salinity can have serious implications for water quality of surface and ground water. This includes, but is not limited to, impacts on biodiversity, agricultural productivity, cultural uses and the supply of water for human consumption and use.

The Environment Protection Transitional Regulations saved the following saline discharges and irrigation drainage management clauses that outline:

- Clause 35(1) – a general obligation to minimise risks of saline wastewater discharge to receiving waters.
- Clause 35(5) – the Department of Environment, Land, Water and Planning (DELWP) is to ensure saline discharges are within the agreed Basin Salinity Targets under the Murray Darling Basin Authority (MDBA).
- Clause 35(6) – water corporations are to manage groundwater pumps and irrigation drainage consistent with relevant Land and Water Management Plans, and set conditions on, and ensure compliance with, water use licences consistent with the relevant Irrigation Development Guidelines.
- Clause 37 – the responsibilities of relevant responsible authorities in minimising the impact of irrigation drainage on receiving waters.

Scope and purpose of pollutant loads management clauses

Lake Wellington, Corner Inlet, Port Phillip Bay and Western Port are receiving environments for large amounts of the nutrient and sediment pollution captured and transported from Victoria's surrounding catchments. Without proper management, excessive nutrients and sediment can significantly impact water quality and result in loss of aquatic plants and species and harmful algal blooms, which in turn can impact aquaculture, fisheries and water-based recreation and tourism.

The Environment Protection Transitional Regulations saved all of Schedule 4, which contains tables specifying pollutant load reduction targets and clauses describing measures for achieving those targets for Lake Wellington, Port Phillip Bay, Western Port and Corner Inlet. Schedule 4 also sets out the protection authorities with obligations regarding associated management actions to achieve the pollutant load targets.

1.2.2.1 Summary of the roles, responsibilities and obligations of key stakeholders in the SEPP (Waters) saved clauses

Table 1.2 summarises the roles, responsibilities and obligations of the responsible authorities across the different clause groups, as outlined in the SEPP (Waters) saved clauses. There are often multiple authorities and protection authorities who have responsibilities for the same area of concern and therefore the table highlights in bold each agency and the actions they are required to undertake.

While the Table 1.2 describes the obligations as they currently exist within the SEPP (Waters) Saved Clauses, proposed changes have been made to the wording and extent of the obligations in order to align with the new EP Act, account for other policy tools, improve clarity and enforceability, as well as alignment with policy intent. These changes are outlined in Chapters 4-7 of this RIS.

Table 1.2: Summary of the roles and responsibilities of key stakeholders articulated in the SEPP (Waters) saved clauses

Clause group	Concern	Responsible authorities	Roles and responsibilities
On-site domestic wastewater management systems	On-site domestic wastewater management systems	Councils	**Councils** must ensure wastewater is properly treated and managed to prevent sewage flowing beyond property boundaries in applications for subdivisions. Councils must also ensure that a subdivision application in special water supply catchment areas requiring an onsite wastewater management system will not present a risk to water quality.
	Domestic wastewater management plan	Councils	**Councils** must prepare and implement domestic wastewater management plans to demonstrate they have identified and are managing risks to human health and the environment. Councils must consult the relevant water corporations, the community and other stakeholders when developing, revising or implementing a plan.
	Sewerage planning	Water corporations	**Water corporations** must develop a response to a council's domestic wastewater management plan if it identifies off-site treatment as the preferred option for wastewater management. The response must be provided to council and should be developed in collaboration with communities and government. Water corporations must prepare a five-yearly report on the implementation of identified preferred solution.
Urban stormwater	Management of urban stormwater	Managers and owners of water quality assets (Councils and Melbourne Water)	**Owners and managers of assets created to protect water quality** must ensure they are designed, managed and maintained to avoid harm to humans and minimise impacts on animals and waters. While the expiring clause does not specifically define 'owners and managers of assets', in practice this is understood by EPA and DELWP to apply to councils and Melbourne Water. **Councils** must develop and implement stormwater management plans, in consultation with the EPA, water corporations, landowners, CMAs and the community.

Saline discharges and irrigation drainage	Management of saline discharges	DELWP, water corporations	Sets out which **protection authorities** have responsibilities for managing saline discharges and the actions they must take.
	Responsibilities of protection authorities for irrigation drainage	CMAs, water corporations, DELWP, Department of Jobs, Precincts and Regions (DJPR)	Sets out the responsibilities relevant **protection authorities** have in minimising the impact of irrigation drainage and channels on receiving waters. **Catchment Management Authorities** must develop and implement land and water management plans, in accordance with **DELWP** guidelines, and develop and implement irrigation development guidelines. **Water corporations** must participate in land and water management plans and regional irrigation development guidelines.
Pollutant loads	Pollutant load management	CMAs, Water corporations, DELWP, EPA	Specifies pollutant load reduction targets, the conditions and requirements for achieving those targets and **the protection authorities** that must develop and implement plans to achieve the targets.

1.3 Legislative and regulatory framework for protecting Victoria's water environments

1.3.1 Environment Protection Act and Regulations

Victoria's environment protection framework is primarily established by the EP Act. The EP Act defines how EPA should work with the community and industry to minimise risks to human health and the environment from pollution and waste. The EP Regulations support the objectives of the EP Act and give effect to the Act through imposing obligations and associated penalties and enforcement for non-compliance, prescribing matters necessary to further its purpose, specifying details of activities permitted and providing for transitional arrangements.

The EP Act and Regulations provide a broad and flexible legislative framework and are designed to be risk-based, scalable and proportionate to the risk posed to human health or the environment. Specific duties and obligations under the EP Act and Regulations that relate to the protection of Victoria's water environments include:

- duties and offences relating to minimising risks to the environment and human health, pollution incidents, contaminated land, waste and littering (including notification and rectification duties)
- prescriptive regulation around the discharge of waste and wastewater
- permissions which regulate activities that involve discharge of waste to water.

1.3.1.1 The general environmental duty

The cornerstone of the new environment protection framework is the general environmental duty (GED). The GED requires all Victorians (business, industry and the community) to take reasonably practicable measures to prevent or minimise any risk from pollution or waste to human health and the environment from activities undertaken. The GED underpins Victoria's shifting approach to managing environmental risk, moving from a reactive to prevention-based approach.

What is considered reasonably practicable to manage a risk in the context of the GED relates to:

- the likelihood of the risks eventuating
- the degree of harm that would result if those risks eventuated
- what the person concerned knows, or ought reasonably to know, about the harm or risks of harm and any ways of eliminating or reducing those risks
- the availability and suitability of ways to eliminate or reduce those risks
- the cost of eliminating or reducing those risks.

These considerations are assessed against the 'state of knowledge', which describes the body of accepted knowledge that is known or ought to be reasonably known about the harm or risks of harm to human health and the environment, and the controls for eliminating or reducing those risks.

The state of knowledge is all the information duty holders within an industry should reasonably know about managing their risks. This includes information from EPA, industry, government and the knowledge of the duty holder. Potential sources of knowledge include manuals, guidance from industry bodies, EPA guidance, technical notes and specific advice, or decisions provided by EPA. As an example, even if SEPP (Water) clauses are not expressly replaced by new legislative instruments, the content of those clauses may remain useful and relevant to informing the state of knowledge of water protection practices, often informing guidance and best practice.

A range of tools and instruments exist alongside the GED to inform or clarify performance standards and the state of knowledge for duty holders undertaking certain activities. These include:

- **guidance** published by the EPA that helps duty holders to understand their obligations and identity risks from their activities. Guidance can incorporate or reference documents produced by reputable standard setting bodies, and can give general advice or suggestions on how to comply with a duty.

- **compliance codes** which provide practical guidance on how to meet an existing obligation in the Act or subordinate legislation.
- a **permissions framework** (registrations, permits and licences) which works alongside the GED to ensure performance standards and conditions are met across a range of activities.

Where there is potential for uncertainty as to whether the GED and other broad requirements in the primary legislation are adequate to address the risks of harm posed by an activity, tools such as these may be utilised.

1.3.1.2 The Environment Reference Standard

The Environment Reference Standard (ERS) is a legislative instrument made under the EP Act that identifies environmental values that the Victorian community want to achieve and maintain, and provides a way to assess those environmental values across the state. The ERS covers values for ambient air, ambient sound, land and water (surface water and groundwater). Reference standards have indicators and objectives to assess the environmental value by how it is being achieved, maintained or threatened. Objectives are typically quantitative and scientifically assessable.

As noted in section 1.2.1, Part 5 of the ERS has largely adopted the segments, environmental values (beneficial uses), indicators and objectives from the SEPP (Waters).

1.3.1.3 Orders for Managers of Land or Infrastructure

An Order for Managers of Land or Infrastructure (OMLI) is a legislative instrument that sets requirements. An OMLI can set compliance expectations requiring a land and infrastructure manager to take certain actions to reduce risk. OMLI may require a land and infrastructure manager to:

- take a specific action
- consider a specific matter
- comply with a specific document, code, standard or rule.

It complements the GED in a similar way to regulations, i.e. where there is a need to clearly articulate an obligation. To date, no OMLIs have been created.

1.3.2 Other frameworks that play a role in protecting Victoria's water environments

Other instruments and policies play an important role in environment protection, including, but not limited to:

- *Water Act 1989*
- *Local Government Act 1989 and 2020*
- *Planning and Environment Act 1987*
- *Catchment and Land Protection Act 1994* (CaLP Act)
- *Water Industry Act 1994*
- Statements of Obligations (under the *Water Act 1989*, the *Water Industry Act 1994*, and the CaLP Act)
- Sustainable Water Strategies
- Victoria Planning Provisions
- Water for Victoria plan
- Land and Water Management Plans
- Waterway plans and strategies
- Regional Irrigation Development Guidelines.

1.4 About this RIS

The EPA has engaged Deloitte Access Economics to prepare this RIS in accordance with the Department of Treasury and Finance's *Victorian Guide to Regulation,*[8] *the Subordinate Legislation*

[8] Commissioner for Better Regulation, Victorian Guide to Regulation: A handbook for policy-makers in Victoria (2016) <https://www.vic.gov.au/sites/default/files/2019-10/Victorian-Guide-to-Regulation.pdf>

Act 1994 and its guidelines.[9] The rigorous assessment of regulatory and non-regulatory options within a RIS ensures that regulation best serves the Victorian community.

Key steps in the process to introduce proposed instruments include:

- preparation of the RIS (this document),
- independent assessment by the Commissioner for Better Regulation,
- public comment on the proposed OMLI, and
- considering and responding to all public comments.

The key purpose of this RIS is to examine what further action is needed to rehouse any components of the SEPP (Waters) saved clauses given the changes in the environment protection framework and other relevant frameworks since 2018 when they were introduced. Note, the intention of the assessment is not to expand the scope of the saved clauses beyond their current focus. The general approach to the assessment is as follows:

Identification of the nature and extent of the problem
This involved consideration of the nature and extent of the problem that the proposed legislative instruments aim to address, including the need for government intervention, the risks of non-intervention and the objectives of such intervention.

Identification of the options
The proposed OMLI and alternative options were developed by EPA and DELWP in consultation with subject matter experts and key stakeholders (such as water corporations, councils and CMAs) (see Appendix A for details of consultation undertaken). The limited scope of this project, in keeping with the focus of the original clauses, helped to inform options identification, as for certain duty holders there are only a limited number of options that could apply. The establishment of options allowed possible costs and benefits to be examined as part of the stakeholder consultation.

Assessment of the costs and benefits
Qualitative assessment of the cost and benefit tradeoffs under all options, relative to the base case, was undertaken consistent with the requirements of the *Victorian Guide to Regulation*. The analysis included consideration of benefits to key stakeholders, the environment and the Victorian community from improved management of risks from pollution and waste on Victoria's water environments. It also included considerations of the costs to key stakeholders of complying with their obligations, and costs to government of implementing and administering the regulations. The analysis reflects information held by EPA and DELWP, gathered through independent research and stakeholder consultation.

Assessment of other impacts
Consideration of the likely impacts of the preferred options on industry competition and small businesses.

Implementation and evaluation
Consideration is given to the arrangements for implementation and evaluation of the preferred options.

1.4.1 Public comment

This RIS and the proposed OMLI has been publicly released for consultation to provide businesses, members of the public and other interested parties the opportunity to provide feedback through a formal submission process. The proposed OMLI and this RIS will be released via Engage Victoria for, at minimum, a 28-day public comment period.

EPA will consider all submissions received during public consultation and prepare a Response to Public Comment document which will outline the submissions received, and EPA's response.

[9] Victorian Government, How to prepare regulatory impact assessments (2020) <https://www.vic.gov.au/how-to-prepare-regulatory-impact-assessments>

1.5 Structure of the report

This structure of the remainder of this report is as follows:

- Chapter 2: Problem statement
- Chapter 3: Option development
- Chapter 4: On-site wastewater management
- Chapter 5: Urban stormwater – Asset management
- Chapter 6: Urban stormwater – Management plans
- Chapter 7: Irrigation activity management
- Chapter 8: Preferred options
- Chapter 9: Implementation and evaluation strategy.

2 Problem statement

This chapter outlines the nature and the extent of the problem presented by the sunsetting of the saved SEPP (Waters) clauses.

This chapter is structured as follows:

- Section 2.1 - Highlights the contribution and value of water ecosystems to Victoria
- Section 2.2 - Outlines the potential risks associated with the areas of waste and pollution management that the current SEPP (Waters) saved clauses are designed to manage
- Section 2.3 – Outlines which SEPP (Waters) saved clauses will present a residual risk when they expire, and which are adequately covered by existing tools and obligations
- Sections 2.4 and 2.5 - Assess which SEPP (Waters) saved clauses are covered or not, in detail
- Section 2.6 – Outlines the objectives sought through the regulatory reset process in this RIS.

2.1 Water provides significant value to Victoria

Water is a primary input for many industries including agricultural production, aquaculture, manufacturing and processing, and the energy and mining sectors. Achieving good environmental outcomes and minimising the risk of pollution and waste on Victoria's water environments is essential for supporting Victorian industry. For example, agriculture is the largest water user in the state; in 2019-20, Victoria's gross value of agricultural production was $17.8 billion (or 3.7 per cent of Gross State Product) in 2020-21 and 74,800 people were employed in agriculture production in the state (2.7 per cent of employed persons).[10] This makes water particularly important for regional Victoria, where agriculture is a major employer.

The value derived from healthy water environments, free from pollution and waste, is extensive and multifaceted, and each discrete use of Victorian water environments holds its own value. For example, recreational fishing in Victoria is estimated to have generated $7.5 billion in combined direct and indirect output in 2018-19.[11]

The proper management of risks to Victoria's waters from pollution and waste, including the proper management of wastewater, stormwater, irrigation and pollutant loads, is crucial to ensuring that harm to human health and the environment is prevented or reduced.

A range of factors over the coming decades are likely to exacerbate pressures on Victoria's water environments and necessitate ongoing good management of risks and oversight. These factors include:

- population and urban growth
- climate change
- the competing needs of a large number of stakeholders.

Victoria's population is projected to almost double by 2051, reaching over 10 million people.[12] Growth is projected to be especially strong in major regional centres such as Ballarat, Bendigo and

[10] Department of Jobs, Precincts and Regions (2022). https://agriculture.vic.gov.au/about/agriculture-in-victoria/victorias-agriculture-and-food-industries
[11] EY, *The Economic Value of Recreational Fishing and Boating in Victoria* (2020) <https://vfa.vic.gov.au/__data/assets/pdf_file/0004/629257/The-economic-value-of-recreational-fishing-in-Victoria-2020-Ernst-and-Young-Report.pdf>.
[12] Department of Environment, Land, Water and Planning, *Water for Victoria* (2016) <https://www.water.vic.gov.au/water-for-victoria>.

Geelong.[13] A growing population and expanding urban area will create challenges for water health and water quality through increased demand for water, increased pollution and waste and greater volumes of stormwater.

Climate change presents challenges to waters (and associated infrastructure), water quality and health by contributing to longer, drier periods, greater temperature extremes and more intense storm events. This places pressure on water environments through less runoff entering rivers, streams and dams, and reduced groundwater recharge.[14] Extreme events such drought, floods and heatwaves threaten water quality and reduce the life span of water infrastructure.

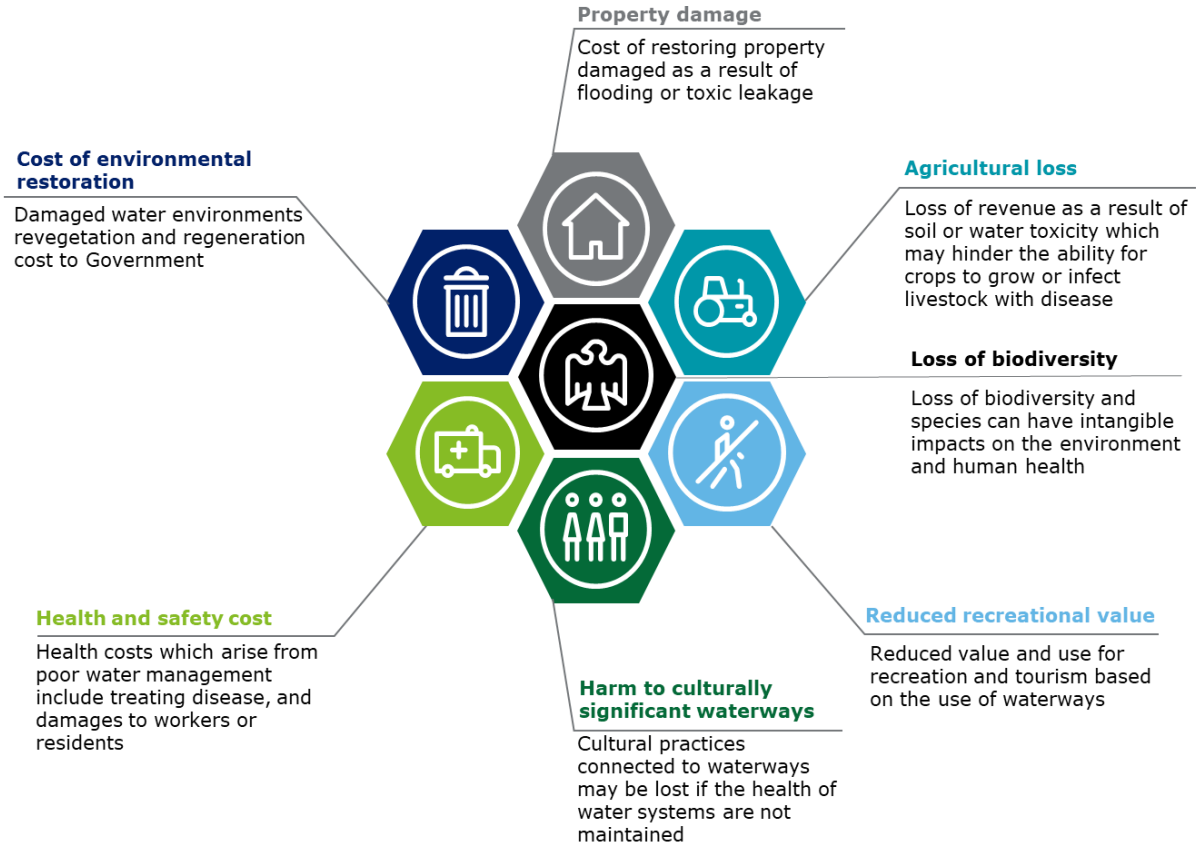
There are many stakeholders involved and responsible for different aspects of minimising risks to waters in Victoria. This includes state and local government, urban and rural water corporations, councils, Catchment Management Authorities[15] (CMAs) and landowners. Regulating actors in this space where appropriate helps ensure that risks and areas for improvement are identified. Many of these stakeholders are resource constrained, with internal competing priorities for funds which makes setting clear obligations vital to minimising the risk of harm from pollution and waste by clarifying what actions are most important.

2.2 Harms associated with mismanagement of risks to waters from pollution and waste

The obligations considered in this RIS are associated with protecting Victoria's waters from pollution and waste, with each area of concern bringing its own challenges and imperative for action. Specific issues and challenges for each area are presented below. At a high level, the potential costs that arise out of mismanagement of risks to waters, including from wastewater, stormwater, irrigation and pollutants, are outlined in Figure 2.1.

[13] Department of Environment, Land, *Water and Planning, Victoria in Future 2019* (2019) <https://www.planning.vic.gov.au/__data/assets/pdf_file/0032/332996/Victoria_in_Future_2019.pdf>.
[14] Department of Environment, Land, Water and Planning, *Water for Victoria* (2016) <https://www.water.vic.gov.au/water-for-victoria>.
[15] CMAs are responsible for the integrated planning and coordination of land, water and biodiversity management in each catchment and land protection regions. See https://www.water.vic.gov.au/waterways-and-catchments/our-catchments/catchment-management-framework.

Figure 2.1: Potential costs associated with mismanagement of risks to waters from pollution and waste



2.2.1 Risks from domestic wastewater

Effective treatment and management of domestic wastewater – principally consisting of water, sewage and other human-derived wastewater (e.g., bathroom and laundry water) - is integral to managing risks to human health and the environment. Key potential environmental and health impacts of domestic wastewater are:

- disease caused by bacteria, viruses and pathogenic microorganisms
- sediment build-up damaging waterways
- environmental degradation, death of aquatic organisms from excessive quantities of chemicals and heavy metals, nitrogen and phosphorous in the water environments.

Domestic wastewater (i.e. sewage generated on site) is managed and treated either through discharge to a reticulated sewerage system or to an on-site wastewater system, known as a septic tank system. As population growth contributes to the expansion of urban areas, there are additional pressures on sewerage systems. In the absence of a reticulated sewerage system and where it has been demonstrated that an onsite wastewater management system can be implemented, an OWMS must be installed correctly and managed properly so that all wastewater is treated and retained onsite.[16] Councils, in accordance with the EP Act and Regulations, are responsible for managing and assessing the permission scheme for on-site wastewater management systems.[17]

Around the state, legacy issues with OWMSs also exist partly from historic subdivision of land into allotments that were too small or incapable of containing effluent. This has historically occurred in

[16] Victorian Auditor-General's Office, *Managing the Environmental Impacts of Domestic Wastewater* (2018) <https://www.audit.vic.gov.au/report/managing-environmental-impacts-domestic-wastewater>.
[17] Permit A20 - On-site wastewater management systems is the relevant permission with the EP Regulations setting out matters for councils to consider when assessing applications and instances in which applications must be refused.

areas that experienced rapid population growth.[18] Existing legacy issues have created significant issues, with government and property owners making substantial investments over a long period of time to provide access to a reticulated sewerage or other appropriate wastewater systems. This has particularly been the case on the fringes of eastern Melbourne and on the Mornington Peninsula where a multi-decade program of works is continuing to connect property owners with OWMSs to the reticulated wastewater system.

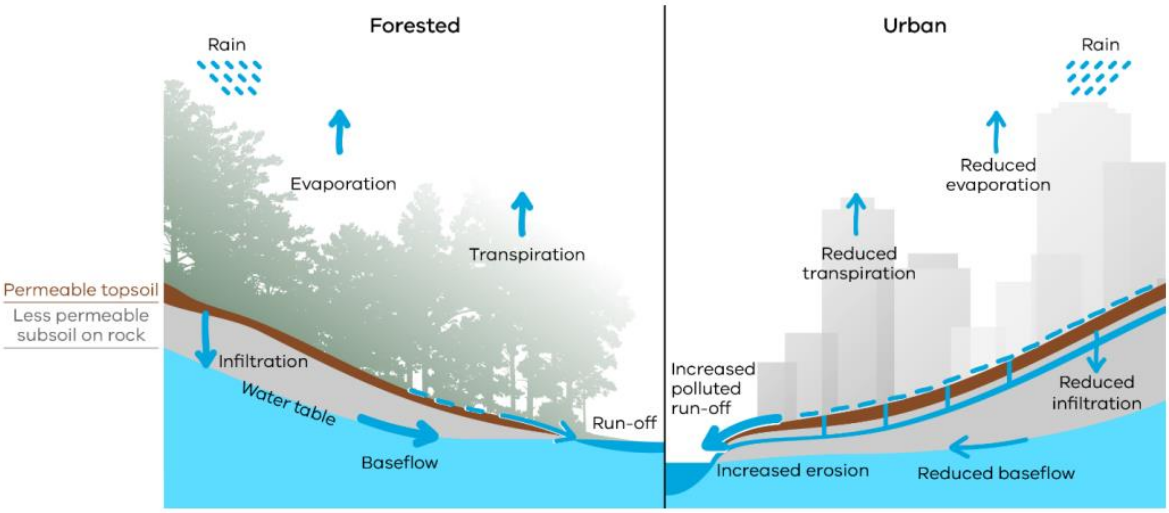
Onsite systems that perform poorly can have a range of negative environmental, human health and amenity related impacts. This can involve discharging nutrients and pathogens into local drainage systems, waters and creeks, causing boggy lawns and offensive odours, and risk of illness following contact with effluent.

2.2.2 Risks from urban stormwater

As Victoria grows, so do the number of sealed surfaces like roofs and roads. Stormwater runs off these sealed surfaces, and drainage systems[19] rapidly transport it into rivers, lakes, estuaries and bays. Increased urbanisation has led to a greater volume and frequency of stormwater runoff and rainwater being unable to infiltrate to the water table.

Figure 2.2 shows the impacts of urban development on the water cycle through comparison of the water cycle in an undeveloped catchment (left) to an urban catchment (right). Large amounts of urban stormwater cause erosion and harm aquatic ecosystems. If not managed properly, stormwater runoff can have significant negative impacts on surface waters such as rivers, lakes, estuaries, streams, wetlands, and coastal waters.

Figure 2.2: Impacts of urban development on the water cycle



Source: EPA Victoria, *Urban stormwater management guidance*, Publication 17391, June 2021

Negative impacts are due to stormwater runoff carrying pollutants into waters and disrupting natural flow patterns. Environmental pollutants and toxins from the urban environment that stormwater carries into water environments include heavy metals, human waste, litter, oil and grease, nitrogen and phosphorous, sediments and dissolved solids. These can degrade and contaminate natural environments. Key potential environmental impacts of urban stormwater include:

[18] Department of Environment, Land, Water and Planning, *State Environment Protection Policy (Waters)* (2018) <https://www.water.vic.gov.au/__data/assets/pdf_file/0022/395041/SEPP-Waters-Policy-Impact-Assessment.pdf>.
[19] The drainage system is separate from the sewerage system.

- harmful algal blooms
- alteration of chemical balance in waters
- acute and chronic effects on aquatic plants and animals
- erosion of water banks and flow disturbance
- increased sedimentation of the water
- increased flushing of contaminated groundwater to surface waters
- alteration of natural flow regimes, including significantly increased peak flows and loss of baseflow due to lack of infiltration
- general pollution and litter.

In order to minimise risks of harm that urban development activities pose from urban stormwater runoff to the environment, stormwater management assets are invested in.[20] The value of stormwater assets is significant. For example, the City of Bendigo's drainage assets, with more than 420,000 drainage pits and 940 kilometres of pipes and culverts, are valued at more than $300 million and the city spends $1.5 million per year maintaining the system.[21]

Effective planning and management of stormwater assets is an issue of increasing concern with modelling suggesting that, if future urban growth is accommodated in the same way it has been until now, stormwater runoff in Melbourne will increase by almost 50 per cent by 2051.[22] Climate change is also likely to increase flood frequency and intensity, necessitating additional planning to ensure infrastructure is adequate for these new conditions, such that the risks to existing and future developments can be managed.[23]

Proactive planning and identification of issues assists to reduce costs over the long term. For example, retrofitting a high level of stormwater management into existing buildings is significantly more expensive ($700,000/Ha) compared to building it into new developments (approximately $400,000/Ha).[24]

2.2.3 Risks from saline discharges and irrigation drainage

Poorly managed irrigation and saline discharges (e.g. pumping) cause many environmental impacts. These impacts can be managed through improved farming, management and irrigation practices. Irrigation and saline discharges may also pose environmental risk by way of increasing salinity and water pollutants to receiving waters. This can further lead to the accumulation of salt, causing soil salinisation, groundwater salinisation and loss of landscape productivity. Potential adverse environmental impacts from increased salinity include:

- salinisation of freshwater systems, rivers and streams
- reduced oxygen levels in waterways that damages the ecosystem affecting microbial biota, plant and life (for example, it may contribute to black water or algal events)
- deterioration of groundwater quality
- land salinisation causing loss of landscape productivity (for example, degradation or loss of native vegetation and habitat, or reduced agricultural productivity)
- water unsuitable for human, animal, plant consumption or other purposes.

Irrigated agriculture accounts for 33 per cent of Victoria's agricultural output and is concentrated in 4 per cent of the state's agricultural land.[25] Irrigated agriculture in Victoria was worth $4.9 billion in 2018-19, representing 30 per cent of Australia's total irrigated agricultural production.[26]

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[20] Environment Protection Authority (2021) Publication 1739.1: Urban stormwater management guidance <https://www.epa.vic.gov.au/about-epa/publications/1739-1>
[21] City of Greater Bendigo, *Stormwater and drainage* (2022) <https://www.bendigo.vic.gov.au/Services/Roads-and-Drainage/Stormwater-and-drainage>.
[22] Department of Environment, Land, Water and Planning, *Issues Paper the for improving stormwater management advisory committee* (2018) <https://engage.vic.gov.au/download/document/5034>.
[23] Ibid.
[24] Department of Environment, Land, Water and Planning, *Issues Paper the for improving stormwater management advisory committee* (2018) <https://engage.vic.gov.au/download/document/5034>.
[25] Department of Environment, Land, Water and Planning, *Sustainable Irrigation Program* (2018) <https://www.water.vic.gov.au/water-for-agriculture/sustainable-irrigation-program>.
[26] Department of Environment, Land, Water and Planning, *Water for Agriculture* (2020) <https://www.water.vic.gov.au/water-for-agriculture/investment-in-irrigation-efficiency>.

The intensive nature of irrigation has the potential to have significant impacts at the local and catchment scale if left unmanaged, this includes risks of increased salinity. Victoria's Sustainable Irrigation Program undertakes a range of actions to help manage these risks, including through supporting CMAs' development of regional land and water management plans (LWMPs) and irrigation development guidelines (IDGs). LWMPs and IDGs aim to reduce the individual and cumulative environmental and third-party impacts of irrigation and improve farm water use efficiency, and provide sustainable, best practice land management objectives.

The effects of climate change generating warmer and drier conditions for most of the state, brings additional stress to irrigation systems in terms of quality of the water available for irrigation, and soil salinisation. Accurate forecasts, updated with the latest research and modelling are important in guiding current and future management of this resource.

Over and above the environmental cost of salinity, the financial and economic cost to Victoria is substantial. These costs arise through lost agricultural production and damage to infrastructure and physical assets as a result of increased maintenance costs, reduced effective life and increased operation costs. Importantly, these impacts are not limited to where adverse salinity events occur. Downstream locations within and outside Victoria can also be negatively impacted. A 2004 study estimated that the Murray-Darling Basin-wide cost of salinity was $300 million in 2004 dollars - $461 million in 2022 dollars.[27] The cost of salinity is also captured through Victoria's annual contributions through the Salinity Cost Effects in the Salinity Accountability Framework. In 2019 (as at 11/09/2019) Victoria's salinity debits under the framework, represented a salinity cost effect of $6.069 million per year.[28] This cost reflects the estimated economic effect of rising salinity levels in the basin.[29]

2.2.4 Risks from pollutant loads

Pollutant load refers to the level of a pollutant, described in mass per unit of time (e.g., tonne per year), entering a water body, with the load objective (or target) being what is required to protect environmental values [beneficial uses]. Pollutant load targets help mitigate the environmental risk posed by water pollution, by setting out the loads that must not be exceeded to protect environmental values in specified areas.

Pollutant load reduction targets are in place through the ERS (2021) to drive management interventions to reduce pollutant loads to receiving waterways that are generated from point and diffuse sources entering Lake Wellington, Corner Inlet, Western Port and Port Phillip Bay. Pollutants arise from urban and agricultural runoff, erosion, wastewater discharge and land clearing. The pollutant load targets set out either the reduction of loads from the most recently estimated baseline to a future target or a baseline load that must be maintained at, or not exceed, current levels, and are used to protect beneficial uses in the specified areas. Load reduction targets are developed in four steps:

- identifying water-quality dependent environmental values based on ecological character (the value of the water environment)
- identifying threats to environmental values from pollution
- determining actions required to protect water segments
- final target development, with stakeholder and community consultation.

Climate change is predicted to exacerbate risks from pollutant loads. For example, increased pollutants from greater frequency and intensity of summer storm events is linked to an increase in the frequency, duration or spatial extent of harmful algal blooms. This increases the likelihood of

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[27] Murray-Darling Basin Commission, *Dryland and urban salinity costs across the Murray-Darling Basin* (2004) < https://www.mdba.gov.au/sites/default/files/archived/mdbc-salinity-reports/2070_Dryland_and_urban_salinity_costs_across_MDB.pdf>.
[28] Department of Environment, Land, Water and Planning, *Victoria's comprehensive report 2019: Basin salinity management 2030* (2019) < https://www.water.vic.gov.au/__data/assets/pdf_file/0028/452908/Victorias-Comprehensive-Report-2019-BMS2030.pdf>.
[29] Department of Environment, Land, Water and Planning, *Victoria's comprehensive report 2019: Basin salinity management 2030* (2019) < https://www.water.vic.gov.au/__data/assets/pdf_file/0028/452908/Victorias-Comprehensive-Report-2019-BMS2030.pdf>.

more intense and frequent algal blooms at a time of year when it is likely to have the most impact on environmental values, including recreational use and aesthetic values.

The economic, social and environmental benefit of protecting these receiving water environments is substantial. For example, the economic value of tourism to the entire Gippsland Lakes system, of which recreation, wildlife and biodiversity and visual amenity are an integral element, is as much as $550 million each year.[30] An economic impact assessment of potential actions to reduce runoff and pollutants into Port Phillip Bay in line with load reduction targets estimated that, if the actions proposed are not implemented, the value of enjoyment locals and tourists derive from visiting Port Phillip Bay would be reduced by $39 million per year.[31]

2.3 Summary of risks and the SEPP (Waters) saved clauses

The SEPP (Waters) saved clauses will expire on 30 June 2023. The primary problem that the expiry of these saved clauses presents is a potential cumulative risk of environmental harm where there are no other adequate risk controls in place. This is in part due to the nature of the clauses, which are about medium-long term planning and strategic oversight.

This section provides a summary overview of the covered risks and residual risks associated with these clauses when they expire.

The term 'covered' refers to an assessment of obligations imposed by other instruments (for example, the GED) and where EPA and DELWP have determined that the risks addressed by a saved clause are adequately covered without additional further regulatory intervention. In these cases, it is proposed that the obligations currently imposed by the clauses are not rehoused in a new tool, when they expire.

Whether each clause is 'covered' is summarised in Table 2.1 below. The basis of the risks being covered, or residual risks associated with the expiry of certain saved clauses is then discussed in sections 2.4 and 2.5 respectively.

For the remaining clauses, it is considered that there is a residual risk upon the expiry of the current clauses and that options to rehouse the obligation should be considered. These options are identified in Chapter 3 and explored further in Chapters 4-7.

The assessment of residual risks for each clause has been informed by expert desktop legislative analysis, the evidence and advice of EPA and DELWP, as well as input from stakeholders through both a survey, and a series of targeted workshops and interviews. An overview of the consultations can be found in Appendix A.

[30] Department of Environment, Land, Water and Planning, *State Environment Protection Policy (Waters)* (2018) <https://www.water.vic.gov.au/__data/assets/pdf_file/0022/395041/SEPP-Waters-Policy-Impact-Assessment.pdf>.
[31] Ibid.

Table 2.1: Covered risks of SEPP (Waters) saved clauses

Theme	SEPP (Waters) clause	Covered	Basis
OWMS	Reticulated sewerage – 28(1)	✓	VPP, GED
	Onsite wastewater management – 28(2)	✓	VPP, GED
	Domestic wastewater management plan – 29	×	-
	Sewerage planning – 30	×	-
Urban stormwater	Stormwater asset management – 34(3)	×	-
	Stormwater management plans – 34(4)	×	-
Salinity and irrigation management	General obligation to minimise risks from saline wastewater – 35(1)	✓	GED
	Saline discharges authorised by the Murray-Darling Basin Authority – 35(5)	✓	Commonwealth instruments, Victoria's Salinity Accountability Manual
	Considerations for water use licences – 35(6)	✓	*Water Act 1989*
	Regional LWMPs – 37(1)	✓	*Water Act 1989*
	DELWP production of guidelines for LWMPs – 37(2)	✓	Policy commitment
	Irrigation activity management – 37(3)	×	-
	Collaboration in the development, implementation and monitoring of LWMPs and IDGs – 37(4)	✓	Sustainable Irrigation Program
Pollutant load targets	Lake Wellington – Schedule 4.2	✓	SWS, ERS
	Corner Inlet – Schedule 4.3	✓	SWS, ERS
	Port Phillip Bay – Schedule 4.4	✓	SWS, EMP, ERS
	Western Port – Schedule 4.5	✓	SWS, ERS

2.4 Clauses with covered risks

This section outlines which saved SEPP (Waters) clauses are considered covered and assesses the obligations and stakeholder input that has been considered in reaching this determination.

2.4.1 Covered clause: Applications for subdivision and on-site domestic wastewater management systems – Clauses 28(1) (2)

Clause 28(1)(2) of the expiring SEPP (Water) clauses relates to subdivision applications and appropriate provision of a wastewater management system that does not result in effluent flowing onto neighbouring properties and minimises risk of harm. There are also considerations which include ensuring development will not present a risk to water quality and that the approval for development is in accordance with specified guidelines, including the *Guidelines for planning permit applications in open, potable water supply catchment areas* and the *Victorian Land Capability Assessment Framework*.[32]

The risks associated with expiry of clauses 28(1)(2) are considered to be adequately covered under the VPP, EP Regulations and the GED. The VPP provides several considerations and

[32] Department of Environment, Land, Water and Planning, the *Guidelines for planning permit applications in open, potable water supply catchment areas* and the *Victorian Land Capability Assessment Framework* (2012) <https://www.gippswater.com.au/application/files/5414/3917/2023/Potable-Water-Guidelines-November-2012.pdf>.

requirements, including standards that mange risks associated with wastewater management. These include:

- Section 56 Residential Subdivision, including 56.07-3 which states the objective of wastewater management is to provide a system that is adequate for the maintenance of public health and the management of effluent in an environmentally friendly manner.
- Standard C24 (under Section 56.07-3) which outlines that wastewater systems must be designed, constructed and managed in accordance with requirements and to the satisfaction of the relevant water authority and the EPA, and consistent with any relevant domestic waste water management plan.
- Section 32.05-05 (Township Zone) which states that if reticulated sewerage is not available, subdivision applications must be accompanied by a Land Capability Assessment on the risks to human health and the environment of an on-site wastewater management system constructed, installed or altered on the lot, in accordance with the Environment Protection Regulations. Equivalent provisions apply in other zones and overlays as well as under certain provisions.
- Section 66.02-5 which relates to applications made in special water supply catchment areas which must be referred to the relevant water supply authority who are recognised as the determining referral authority. This ensures appropriate works within areas declared under the CaLP Act (areas that provide water for drinking water purposes).

In addition to these aspects of the VPP, section 28(h) of the EP Regulations places requirements on councils to refuse applications for OWMSs that pose an unacceptable risk of harm to human health or the environment. In assessing such an application, councils must consider whether an OWMS is suitable for its site and purpose, if there is sufficient area available for the treatment or disposal of waste and the findings of any land capability assessment. These considerations largely replicate those that are imposed by clauses 28(1)(2).

Finally, the GED plays a role in minimising the risks created by the expiry of clauses 28(1)(2) by placing an obligation on duty holders to minimise harms so far as is reasonably practicable. The activity of subdividing may give rise to risks of harm to human health and the environment. Existing guidance, such as the Land Capability Assessment Framework, forms part of the existing state of knowledge for the GED, and accordingly sets a reference point for the GED. It is also important to note the continuous improvement expectations of the GED.

Managing residual risks from the expiry of clause 29 (see Chapter 4) through the proposed OMLI, may also assist in further supporting management of risks identified above. Consensus that the risks associated with expiry of these clauses are covered was validated during stakeholder workshops, where councils agreed that the considerations and standards in the VPP are adequate to manage the risks. Councils also indicated that they would be likely to undertake the same or similar activities in the absence of the clauses. However, one council noted that it could exacerbate pressures to reduce application processing times and costs if the level of consideration required to be given to applications is reduced. Given the requirements of the VPP and GED, this is not expected to be a material risk.

2.4.2 Covered clause: General duties for the discharge of saline wastewater - 35(1)

The risks associated with the expiry of clause 35(1), which imposes a general obligation for avoiding or minimising the impact of the discharge of saline wastewater to the beneficial uses [environmental values] of receiving waters, are considered to be adequately covered by the GED. In fact, the GED has broader application than that of clause 35(1) as it covers risks to human health and the environment and is not limited to the risks to beneficial uses. Environmental values may still be referred to for GED compliance purposes to assist in understanding the risks of harm to human health and the environment from an activity and in identifying reasonably practicable controls.

During the stakeholder consultation process, there was unanimous agreement from stakeholders that the risks associated with the clause's expiry are covered and that they would be highly likely to undertake the similar activities in its absence.

2.4.3 Covered clause: DELWP responsibilities for the management of saline discharges in the Murray Darling Basin - 35(5)

The risks associated with the expiry of clause 35(5), an obligation on DELWP to ensure that saline discharges authorised by the Murray-Darling Basin Authority do not contribute to increasing salinity of land or waters and do not exceed agreed targets, is considered covered under Commonwealth legislation and by the Manual for Victoria's Salinity Accountability in the Murray-Darling Basin. Specifically, obligations and expectations under the *Basin Plan 2012 (Cth)*, the Murray-Darling Basin Agreement and Basin Salinity Management 2030 Strategy (BSM2030) are considered to provide sufficient impetus to ensure that DELWP undertake similar actions and that the potential risks are covered.

2.4.4 Covered clause: Water corporations incorporation of LWMPs and IDGs into operating activities 35(6) & 37(1)

Clauses 35(6) and 37(1) place obligations on water corporations to:

- take account of Irrigation Development Guidelines (IDGs) when placing conditions on water use licences
- operate groundwater pumps in accordance with Land and Water Management Plans (LWMPs)
- participate in implementing regional LWMPs and report on achievements regarding their management of irrigation drains against their corporate plan.

Broadly, where the content of the SEPP clause supports an understanding of risks and how they can be managed they contribute to the state of knowledge and remain relevant for the purposes of the GED. As such, upon expiry, the considerations of clauses 35(6) and 37(1) will continue to inform actions that should be taken to minimise risk as far as is practicable.

Other legislative requirements also address the potential risks associated with these clauses' expiry. For example, pursuant to Part 4B of the *Water Act 1989*, water use licences must set out, among other things, the conditions to which licences are subject.[33] In doing this a water corporation must consider specified water use objectives that are intended to minimise impacts of water use on persons and the environment, including minimising the impacts of salinity from irrigation.[34] A separate determination also sets out standard water-use conditions to help ensure irrigation developments meet the standards necessary to minimise the impacts of water uses.[35] These standard conditions are to be informed by an assessment of local conditions and the appropriate design of irrigation systems.

Regional Catchment Strategies identify relevant water corporations as delivery partners in existing strategies and action plans. This includes the implementation of Sustainable Water Strategies (SWS) and LWMPs. Reporting on achievements regarding water corporation's management of irrigation drains against their corporate plan is further supported by DELWP guidance and the Statement of Obligation (SoO) under the *Water Industry Act 1994* regarding functions under the *Water Act 1989*.

2.4.5 Covered clause: Preparation of guidelines by DELWP – 37(2)

Clause 37(2) imposes obligations on DELWP to prepare and maintain guidelines for the development of LWMPs and IDGs. During the stakeholder consultation process, CMAs saw it as imperative that the guidelines continue to be maintained. Doing so plays an important role in ensuring that planning continues to reflect regional conditions. While stakeholders' preference during consultations was to continue to place an express obligation on DELWP to produce these guidelines, the risks associated with not doing so are considered covered by the broader legislative environment supporting DELWP's ongoing role in managing Victoria's water protection regime. This includes its role in administering the *Water Act 1989, Water Industry Act 1994* and CaLP Act.

The importance of maintaining guidance is expressly recognised in *Water for Victoria* which notes that government will "ensure that regional irrigation development guidelines are contemporary to

[33] Section 64L(2)(c) *Water Act 1989*
[34] Ministerial determination, 'Objective to minimise salinity impacts from irrigation in high salinity impact zones 2021' (21 December 2020).
[35] Ministerial determination, Water-use objectives' (20 June 2007).

emerging knowledge and risks, and are applied across the state" and "ensure water-use licence conditions remain relevant to current and future risks at a regional level, and are effectively enforced to manage the potential offsite impacts of irrigation".

The importance and ongoing commitment to regionally specific guidelines is also reflected in the SWSs. The Central and Gippsland SWS sets outs plans, through the Sustainable Irrigation Program (SIP), to administer land- and water-use mapping to improve Victoria's understanding of how agriculture in Victoria is changing and identify emerging trends in water use. This information will inform updates to IDGs to ensure that any new, changed, or redeveloped irrigation farms install efficient and effective systems that maximise water-use efficiency and minimise harm to the environment.

2.4.6 Covered clause: Authorities to collaborate in the development and implementation of LWMPs and IDGs - 37(4)

Clause 37(4) places obligations on water corporations, DELWP and DJPR to participate in the development, implementation and monitoring of LWMPs and IDGs. The importance of collaboration between different parties responsible for managing Victoria's water environments was strongly expressed through the consultation process. There was agreement that failing to ensure this collaboration occurs risks a degradation in the quality of LWMPs and IDGs over time. While the clause 37(4) helps ensure this collaboration, other existing obligations are considered sufficient to maintain it in its absence. This includes through *Water for Victoria*, the SWSs and the *Water Act 1989*.

Water for Victoria outlines that the government will support implementation of integrated water management planning by fostering collaboration across water corporations, local government and the community and ensuring the role of water corporations and CMAs in integrated water management planning is reflected within their governance frameworks. One way this will be achieved is through the Sustainable Irrigation Program, which is administered by DELWP and delivered in partnership with CMAs, DJPR and rural water corporations.

The Victorian Government is investing $50.1 million over 2020-2024 in the Sustainable Irrigation Program. Activities in the program include developing and implementing LWMPs in major irrigation regions to reduce the environmental and third-party impacts of irrigation and to guide new irrigation development to meet sustainability and best practice land management objectives. Obligations in the *Water Act 1989* and SoO under the *Water Industry Act 1994* support the compliance of CMAs and water corporations respectively to engage in this process and ensure ongoing collaboration.

2.4.7 Covered clause: Pollutant load targets – Schedule 4

Schedule 4 specifies pollutant load reduction targets, the conditions and requirements for achieving the targets, and the protection authorities that must develop and implement plans to achieve the targets. It also communicates that the relevant CMA for Corner Inlet and Lake Wellington must prioritise taking action to achieve the pollutant load target. These targets have guided stakeholders to keep the emphasis on the pollutant load reduction outcomes in each of the geographic areas. The primary environmental risk Schedule 4 addresses is an increase in the frequency, duration or spatial extent of harmful algal blooms, and the loss in the current cover, extent and condition of seagrasses, within the bounds of natural variation (from Table 5.7 in ERS (2020)).

The obligations contained in Schedule 4 are now covered by other instruments. The pollutant load targets are now in the ERS, as pollutant load objectives, while obligations to incorporate pollutant loads targets into management plans and prioritise specified activities to reach targets are considered to be covered the SWS. This includes pollutant load targets in Lake Wellington, Corner Inlet, Port Phillip Bay and Western Port.

During the stakeholder consultation process, several possible avenues of addressing the potential risks created by the expiry of Schedule 4 were considered. This included guidance and OMLIs, as well as other existing instruments highlighted by stakeholders such as the Port Phillip Bay Environment Management Plan. While there were differing views about which instruments may be

most effective to incorporate or cover the differing obligations prescribed at each site, there was a broad consensus that it was important for the risks to be addressed.

Testing with stakeholders the extent to which a SWS would adequately address the risk was complicated by the drafting of the new Central and Gippsland Region SWS occurring in a parallel but separate process to this RIS. As such, requirements under the SWS were not clear at the time of consultation. However, a separate consultation process was undertaken in the development of the SWS and, with it now being published, it is considered adequate to address the risks.

A SWS provides for the strategic planning of the use of water resources in the region to which it applies and are used to identify threats to water availability and water quality, and include policies and actions to help water users, water corporations and CMAs manage and respond to those threats. It must be reviewed every 10 years, and Water for Victoria identified the opportunity to complete five-yearly assessments of Sustainable Water Strategies, which help identify any key trends and issues to be taken up in any future review. The 2022 Central and Gippsland SWS is a long-term plan developed to secure a sustainable supply of water for that region. The SWS outlines the plan to protect water quality in our waterways and bays by managing nutrient loads and sediments in Port Phillip Bay, Western Port, Lake Wellington and Corner Inlet and Nooramunga.

It outlines that managing nutrient loads in Port Phillip Bay and Western Port remains a high priority to protect these precious natural assets and their immense social, economic, environmental and cultural value to Victoria. Nutrients are considered a key threat because they are one of the main causes of algal blooms, which pose a risk to marine life and human health. Marine pollutant load objectives for Port Phillip Bay, Western Port and the Western Treatment Plant in Werribee will continue to guide action and investment to ensure the protection of water quality and beneficial uses. The Port Phillip Bay Environmental Management Plan 2017–2027 (DELWP 2017b) represents the Victorian Government's ongoing commitment to ensuring that Port Phillip Bay remains healthy and resilient over the coming decade.

The Central and Gippsland SWS contains actions the Victorian Government will do to help reach the marine pollutant load objectives specified in the Environment Reference Standard (Victoria Government Gazette No. S245, 2021) for Port Phillip Bay, Western Port, Lake Wellington and Corner Inlet and Nooramunga.

The Central and Gippsland SWS implementation plan recognises that actions to achieve the marine pollutant load objectives are to be implemented through existing management frameworks, similar to Schedule 4. The extent that actions and plans to achieve the pollutant load targets can be implemented by the lead and support authorities identified, is dependent on the funding available and will be secured within existing pathways.

2.5 Residual risk of expiring clauses

This section outlines which SEPP (Waters) clauses are not covered by the broader regulatory framework and presents the residual risks associated with their expiration.

2.5.1 Residual risk: Council and water corporation responsibilities for domestic wastewater management plans – 29 & 30

Clauses 29 and 30 build on the existing council domestic wastewater management plans (DWMP) as a mechanism to demonstrate that councils have identified and are managing health and environmental risks associated with unsewered sites and onsite domestic wastewater management systems, particularly failing OWMSs, and are taking action to prevent discharge of wastewater beyond site boundaries.

Clause 29 requires councils to develop and implement DWMPs and ensure that they consult with the relevant water corporations and other stakeholders in the development process. Where the DWMP developed by a council identifies off-site or approved alternative treatment as the preferred option for improved sewage management (e.g. addressing failing OWMSs), Clause 30 requires water corporations to develop a response to the plan and provide it to the council. The response must include options for the sustainable management of sewage, as well as costs, timeframes and five yearly reporting for the implementation of preferred solutions.

Together these clauses act as an important tool for effective wastewater management planning. When they expire no other instruments of government will impose similar obligations that require the development of an onsite domestic wastewater management plan for strategic wastewater planning.

The GED applies to owners or users of OWMSs, including septic tank systems and secondary treatment systems, as operating and maintaining an OWMS is an activity involving risks of harm to human health and the environment. Additionally, there are requirements under the EP Regulations that require OWMS owners to maintain their systems (including older legacy systems), check for signs the system may be failing or is not in good working order, and to notify council if a system poses a risk of harm to human health or the environment. The Regulations also require a landowner to provide information to occupiers on how to correctly operate and maintain the system, and to keep maintenance service records and provide them to council on request.

However, without a requirement for councils to develop DWMPs and for water corporations to respond, there is an increased risk of poor wastewater planning resulting from missed opportunities to strategically identify ways wastewater management can be improved and any actions to prevent harm. Over time, this may lead to poor strategic management of degrading and failing systems or missed opportunities to minimise environmental and human health risks. DWMPs help to address the cumulative impacts of these systems.

Obligations to develop DWMPs support councils prioritising funds and resources to these issues of long-term planning. Without an express obligation, it is possible that some councils will reprioritise resources to other areas of need over time. As outlined in section 2.2.1, due to the potentially hidden nature and slow build-up of problems related to OWMSs, a lack of long-term planning and coordination risks creating significant legacy costs that may be incurred at a later date.

2.5.2 Residual risk: Management of stormwater assets by councils and Melbourne Water - 34(3)

Clause 34(3) sets out requirements for owners and managers of assets created to protect water quality, to ensure the assets are appropriately designed and managed so as not be harmful to humans or animals, and that they are maintained for their original environmental purpose. This includes renewing or replacing these assets with substitute assets that meet equivalent environmental standards, when they are damaged, are no longer functional, or have effectively reached the end of their operational life. These provisions aim to ensure assets do not give rise to harm and continue to function to minimise risks from stormwater to receiving waters.

Issues related to stormwater asset management include that some duty holders are not aware of their new or existing requirements, such as GED requirements, or in many cases do not have comprehensive data on their assets to support asset planning or budget allocation. As a public service agency, Melbourne Water is required to comply with the mandatory asset management requirements in the Asset Management Accountability Framework (AMAF), whereas that framework does not apply for councils. Councils are, however, required to develop an Asset Plan detailing maintenance, renewal, upgrade and other activities in relation to each class of infrastructure asset, such as drainage infrastructure (including water quality assets), under the control of the council.

While the AMAF, GED and existing activities are highly likely to support assets being generally maintained, a concern from stakeholders was the requirement of maintenance to have an environmental focus may be lost – e.g. maintaining the asset so it continues to minimise risks from stormwater and risks from the asset itself, and renewal of assets when they're no longer minimising risk of harm from stormwater. Without express requirements, there was uncertainty that the risks would be adequately managed, and stakeholders voiced concern that environmental protection elements of assets may not be adequately prioritised. In the absence of rehousing the specific asset management clause contained within the SEPP the specific obligation on Melbourne Water and councils to maintain the stormwater infrastructure that comes under their ownership/control becomes less clear. Given the potential risk to human health and environment from poorly maintained stormwater infrastructure, there is benefit from having a clear articulation

of expected management actions. Given this, the residual risk associated with this clause's expiry is not considered to be adequately covered by other instruments.

2.5.3 Residual risk: Council development of stormwater management plans – 34(4)

Clause 34(4) creates an obligation for councils to develop and implement stormwater management or equivalent plans, in consultation with various stakeholders, to manage the impacts of urban stormwater runoff on receiving waters. The reference to "or equivalent plans" recognises that stormwater management may be considered in the broader integrated water management framework.

The stormwater management clauses are used by stakeholders for a range of purposes. These include agency collaboration, the development of Integrated Water Management/Stormwater plans, and asset maintenance. The expiry of these clauses poses challenges for these aspects of stormwater management, with each challenge having potential consequential effects for stakeholders and the broader stormwater management system.

Stakeholders voiced mixed views about the impact of these clauses expiring. Some stakeholders were concerned plans might not be developed in the future and/or that there would be less agency collaboration and missed opportunities for improvement. However, some councils were of the view that these plans would still be funded and completed by many councils in the absence of the clause. They suggested that the risk of non-completion in stormwater planning is likely greatest from smaller, regional councils who may find it harder to justify to internal management the need to prioritise funding to undertake urban stormwater management planning. Given this, it is considered that the expiry of the clause creates a residual risk primarily related to inaction from smaller, regional councils.

2.5.4 Residual risk: Catchment Management Authorities development and implementation of land and water management plans and irrigation development guidelines - 37(3)

Clause 37(3) places obligations on CMAs to develop and implement LWMPs and IDGs in accordance with specified DELWP guidelines.

Based on an EPA and DELWP assessment of the broader regulatory framework, the current SoOs under the CaLP Act and the *Water Act 1989* for CMAs have been identified as covering some aspects of clause 37(3). This includes:

- preparing regionally specific irrigation development guidelines consistent with the Irrigation Development Guidelines Advisory Note, or subsequent guidance
- developing and coordinating the implementation and review of Land and Water Management Plans, or their equivalent, if identified in the RCS and any other State policy, framework, strategy, plan or guideline applicable to the management of salinity and irrigation drainage
- including in project proposals to the Department, elements of works programs aligned with the Regional Catchment Strategy and related sub-strategies, in accordance with any guidelines issued by the Department.

However, these SoOs do not create requirements for CMAs to incorporate additional environmental protection elements that are relevant to the current saved clause. Stakeholders viewed this clause as playing an important role in promoting coordination between the broad range of parties responsible for salinity and irrigation management, and identification of actions. Without this coordination, they considered that there would be a risk of divergence and inconsistency. Additionally, Clause 37(3) was seen as important in ensuring that best practice is created and followed.

Based on stakeholder consultation the residual risk in the absence of this clause is that, over time, some CMAs may divert resources away from LWMPs to other priority areas and/or reduce the quality of plans. This risk stems from the important coordination role that CMAs play in identifying environmental risks and actions, and bringing parties together in the development of LWMPs and its focus on environmental risk which stakeholders considered may be less likely to occur in the absence of the saved clause.

Given the sophistication of the stakeholders involved in the development and implementation of these plans and guidelines, any shift away from best practice and a contemporary understanding of regional conditions in the absence of the saved clause is likely to be gradual. However, stakeholders viewed that, without enforceable obligations, a shift away is still likely to occur as parties reallocate limited resources to higher priority areas over time. Any potential deterioration in quality is unlikely to be uniform across regions but may be concentrated in individual areas.

2.6 Objectives

The existing Transitional Regulations act as a transitionary mechanism to save certain clauses in the SEPP (Waters) for a period of two years after the commencement of the new EP Regulations. This occurred to allow EPA time to scope options and engage with stakeholders affected to determine how these obligations should be managed in future. Potential options would support EPA to achieve its objective of protecting human health and the environment by reducing the harmful effects of pollution and waste.

The transition process is not reviewing, renegotiating or expanding the content and scope of the clauses beyond their current focus. It is about determining whether the instruction and subsequent obligation imposed by the existing clauses needs to be rehoused into a new environment protection instrument or can be achieved by other means. In order to consider whether and how this can best be achieved, the objectives of the proposed changes are to:

- minimise harm to human health and the environment by addressing risks created by the expiry of the SEPP (Waters) saved clauses
- avoid duplicating the intent or impact of existing instruments or policies.

3 Option development

This chapter sets out the options for consideration in this RIS.

3.1 Options for assessment

As part of the RIS process, it is necessary to consider different options that could achieve the Victorian Government's objectives. The *Subordinate Legislation Act 1994* requires a RIS to consider "other practicable means of achieving those objectives, including other regulatory as well as non-regulatory options".

The options considered in this RIS represent instruments that have been identified as being capable of, to differing extents, rehousing the intent of the expiring SEPP (Waters) saved clauses in the Environment Protection Transitional Regulations 2021. While a number of potential options have been identified, not all are applicable to each set of clauses as they differ in the duty holders they are capable of covering and obligations they can impose. Additionally, it has been determined that the risks associated with the expiry of a number of the clauses are sufficiently addressed through existing tools and do not warrant additional regulatory action.

Each set of expiring clauses will be assessed relative to the **base case**, a scenario where the SEPP (Waters) saved clauses expire on 30 June 2023 and are not replaced. This is consistent with the *Victorian Guide to Regulation's* guidance for sunsetting regulations which requires the problem to be analysed as if the existing regulations did not apply.

A summary of the options considered in this RIS is presented in Table 3.1.

Table 3.1: Options to be considered to rehouse the intent of SEPP (Waters) saved clauses

Options	Description
Guidance	Guidance provides information to help duty holders understand their obligations under the Act, approaches to identifying risks or practical measures that can be taken to minimise risk of harm based on their individual circumstances. It does not impose compliance obligations.
Statement of Obligation (SoO)	A SoO imposes obligations on water corporations (under the *Water Industry Act 1994*) or CMAs (under the *Water Act 1989* or CaLP Act) and can specify the obligations across a range of areas, such as specific standards and the performance of their functions. Compliance with a SoO is mandatory, with water corporations and CMAs required to report any identified material non-compliance to the relevant Minister and propose plans to prevent future non-compliance. Outside of this pathway, there is limited enforcement available.
Order for Managers of Land or Infrastructure (OMLI)	An OMLI is a legislative instrument under the EP Act that can apply to a council, public sector body or infrastructure manager. It sets out specific requirements for how land or infrastructure must be planned, managed, operated, or controlled. An OMLI plays a role in addressing responsibilities outside of the direct focus of the GED. For example, the land or infrastructure manager playing a role in addressing risks arising from third parties using the land or infrastructure, rather than direct activities of the manager. Compliance with an OMLI is mandatory and, if an OMLI is contravened, EPA may issue a remedial notice. If the duty holder fails to comply with an issued remedial notice, EPA can take proceedings to enforce the notice in court. These orders are made by the Governor in Council, on recommendation by the Minister. Their development is supported by DELWP and EPA, and they require formal consultation with a regulatory impact assessment.

	There is no requirement in the Act to review an OMLI within any specific timeframe.

For the purposes of this RIS, a key difference between OMLIs and SoOs is the enforcement pathways available. While the consequences of non-compliance of obligations within a SoO are established in the instrument itself and involve actions such as reporting to the Minister or Department, by comparison, the EPA can issue, and enforce in court, remedial notices under an OMLI. In some instances where requirements of the EP Act are met, third parties to an OMLI may seek to enforce the performance of the obligations they contain.

The options being considered to rehouse the intent of each set of SEPP (Waters) saved clauses that are not adequately covered are presented in Table 3.2 below.

The options considered feasible for assessment depend on whether there is a head of power to utilise an instrument for the intent of the saved clause and the existence of other tools used for similar obligations.

For clauses which SoOs have not been considered feasible (Clauses 29 and 34), this has been based on the fact that SoOs can only impose obligations on water corporations and CMAs, and that these clauses impose obligations on councils.

For some clauses guidance was not considered a suitable option because guidelines or guidance already exist or are already under development through processes separate to this RIS. Specifically:

- *Model municipal domestic wastewater management plan (DWMP)* published by the Municipal Association of Victoria (MAV) currently outlines in detail the expected contents of plans. Work is underway to update the model DWMP with additional guidance and also include elements of the *Risk Assessment Guidance* published by DELWP
- *Onsite wastewater management plan (OWMPs) - Risk Assessment Guidance* has been published by DELWP in June 2022 and supports the development of a key component of the OWMPs. It is an evidence-based methodology for completing a risk assessment as part of developing onsite wastewater management plans.
- *Land and Water Management Plan Guidelines* (draft) set out expectations for the review, renewal and implementation of LWMPs. They outline the approach for developing LWMPs that are irrigator and community focused, and also address the IDGs.

Where these guidelines exist, they have been incorporated into the base case for assessment.

When selecting options, consideration was given to whether creating new obligations in the EP Regulations was an appropriate option. However, it was determined that the EP Act does not contain a clear head of power to create regulations for all of the matters contained within the saved SEPP (Waters) clauses. This is consistent with the overall policy intent of the new EP Framework, with regulations best applying to persons who directly conduct activities while an OMLI is better suited to requiring those in a strategic position that control/manage land or infrastructure to take action to minimise risks to human health or the environment.

Table 3.2: Options under consideration for each set of SEPP (Waters) saved clauses

Theme	SEPP (Waters) clause	Covered	Guidance	Statement of Obligations	OMLI
OWMS	Reticulated sewerage – 28(1)	✓ (VPP, GED)			
	Onsite wastewater management – 28(2)	✓ (VPP)			
	Domestic wastewater management plan – 29				✓
	Sewerage planning – 30			✓	✓
Urban stormwater	Stormwater asset management – 34(3)		✓		✓
	Stormwater management plans – 34(4)		✓		✓
Salinity and irrigation management	General obligation to minimise risks – 35(1)	✓ (GED)			
	Saline discharges authorised by the Murray-Darling Basin Authority – 35(5)	✓ (Commonwealth instruments)			
	Considerations for water use licences – 35(6)	✓ (*Water Act 1989*)			
	Regional LWMPs – 37(1)	✓ (*Water Act 1989*)			
	DELWP production of guidelines for LWMPs – 37(2)	✓ (Policy commitment)			
	Development of LWMPS and IDGs – 37(3)			✓	✓
	Collaboration in the development, implementation and monitoring of LWMPs and IDGs - 37(4)	✓ (Sustainable Irrigation Program)			
Pollutant load targets	Lake Wellington – Schedule 4.2	✓ (SWS, ERS)			
	Corner Inlet – Schedule 4.3	✓ (SWS, ERS)			
	Port Phillip Bay – Schedule 4.4	✓ (SWS, EMP, ERS)			
	Western Port – Schedule 4.5	✓ (SWS, ERS)			

3.2 Approach to options assessment

Options to address the residual risk posed by the expiry of clauses that have been determined not to be covered under the base case are assessed in the remainder of this RIS.

The options against each clause have been assessed using multi-criteria analysis (MCA). MCA has been chosen as the preferred analysis tool because it provides a robust way of evaluating the disparate and often qualitative data available. It is a structured and transparent approach that can balance several distinct impacts, for example the extent to which options address the objectives of the proposed OMLI and encourage the desired behaviours in the market. Cost Benefit Analysis is not appropriate for this analysis because of the intangible nature of benefits.

MCA requires judgement as to how the options will contribute to a series of criteria selected to reflect the benefits and costs associated with each fees option. Each criterion is assigned a weight, to reflect its importance to the policy decision. A weighted score is then derived for each option and the option with the highest weighted score is then selected as the preferred option. The MCA technique is outlined in Figure 3.1.

Figure 3.1: Multi-Criteria Analysis

MCA refers to a range of techniques used to assess policy options against a set of decision criteria. It enables a transparent comparison of options using a mixture of quantitative and qualitative information and allows analysis to consider a wider range of criteria (e.g. equitable considerations) which are not typically included in other common financial analyses, like break-even analysis. All necessary subjective judgements and assumptions used to determine options and criteria, and to assign scores and weights, are made explicit in the write up. The preferences of the decision maker reflected in these judgements and assumptions can be readily changed through a sensitivity analysis or by incorporating alternative indicators.

Where possible in MCA, scores should reflect the relative size or scale of impact when comparing:

- impacts of different options against a single criterion and
- different impacts of a single option for all criteria.

In addition, weights should reflect the priority or importance of a particular type of cost or benefit.

The criteria for this MCA and their allocated weights are outlined in Table 3.3 below.

Table 3.3: MCA Framework

Criteria	Description	Weighting
Benefit criteria		**50%**
Criterion 1: Reduction in risk to human health and the environment	The extent to which each option addresses the residual human health and environment risk associated with the expiry of the relevant saved clause(s). This includes considerations of how the option directly reduces risk and the extent to which it facilitates the completion of the expectations or obligations by impacted stakeholders.	40%
Criterion 2: Clarity	Many of the stakeholders impacted by the obligations considered exist in a complex, multifaceted environment and some instruments may provide greater clarity and certainty of the expectations than others. While this may not contribute to environmental benefits or costs, certain duty holders may derive utility from the knowledge that they are fulfilling defined expectations. This criterion assesses the extent to which each option provides clear expectations, providing clarity and certainty.	10%
Cost criteria		**50%**
Criterion 3: Cost to EPA/DELWP	The extent to which each option imposes costs on EPA or DELWP to administer and enforce. A higher level or standard of compliance with the options assessed may result in avoided future costs associated with rectifying environmental harm or proactive compliance activities. However, these are not incorporated into the scoring as they are highly uncertain and would be a secondary or indirect impact of EPA activities. The scoring in this RIS therefore reflects the direct impact on costs to EPA or DELWP associated with each option, in order to assess them in terms of immediate costs to government arising from the selection of one option over the other.	25%
Criterion 4: Cost to duty holders	The extent to which each option imposes costs on responsible authorities (councils, CMAs, water corporations, government departments) to comply with expectations or obligations.	25%

3.2.1 Weighting

The weighting of the cost and benefit criteria have been neutrally weighted at a total of 50 per cent each. This conforms with best practice as set out in Better Regulation Victoria's Guidance Note on MCA.[36]

Criterion 1, reduction in risk to human health and the environment receives the equal highest weighting as management of environmental risk is the primary objective of the proposed OMLI. Any option that would create a disproportionate risk to the environment, relative to the base case, would be counter to the Act's purpose of setting out a legislative framework for the protection of human health and the environment. This also speaks to the extent to which each option's treatment of the obligations facilitates their completion by impacted stakeholders. This has a direct bearing on the effectiveness and scope to enable a reduction in environmental risk.

Criterion 2, clarity, receive the lowest weighting. While it is important for stakeholders to have confidence that they are fulfilling an expectation or obligation, it is less important than whether appropriate environmental standards are being set.

Both cost criteria receive equal weights.

The nature of the obligations that the options considered in this RIS impose are targeted at governmental or quasi-governmental actors. As such, it is not considered necessary to weight the value of any additional burden differently than from the cost to government of regulating. Any differences in the changes in the cost to these parties will be reflected in their respective rankings in the relevant cost criterion, rather than the weighting.

3.2.2 Scale

Each option is scored against each criterion on a scale from –10 to +10, based on the option's impact on each criterion in comparison to the base case.

Table 3.4: MCA scale

Score	Description
-7 to -10	Much worse than the base case
-3 to -6	Somewhat worse than the base case
-1 to -2	Marginally worse than the base case
0	No change from the base case
1 to +2	Marginally better than the base case
+3 to +6	Somewhat better than the base case
+7 to +10	Much better than the base case

Note that a negative score for a cost criterion indicates that an option is *more* costly than the base case, and a positive score indicates it is *less* costly.

The following chapters separately assess each clause or set of clauses that are not considered covered under the base case.

[36] Better Regulation Victoria, '*Guidance Note – Multi-Criteria Analysis'* (2014).

4 On-site wastewater management

4.1 Options for on-site wastewater management

This chapter assesses options to rehouse the obligations contained within clauses 29 and 30 of the saved SEPP (Waters). These clauses currently play an important role in ensuring that sufficient strategic planning of wastewater systems, such as septic tanks, is undertaken by councils and water corporations.

Onsite systems that perform poorly or are degraded can have a range of negative environmental, human health and amenity related impacts. This can involve discharging nutrients and pathogens into local drainage systems, waters and creeks, causing boggy lawns and offensive odours, and risk of illness following contact with effluent. As systems such as septic tanks are typically underground, problems that lead to these adverse outcomes are often hidden and build-up slowly over time. As a result, a lack of long-term planning, preventative actions and coordination risks creating significant legacy costs that may be incurred in the future.

Councils are well-placed to reduce these risks as they have primary responsibility for land use planning decisions for subdivisions whereby they can ensure that allotment sizes are appropriate for onsite domestic wastewater management systems; are also currently accountable for building approvals; and are responsible for overseeing the management of onsite domestic wastewater management systems. Without the obligations currently imposed by these clauses, there is an increased risk of poor wastewater planning resulting in missed opportunities to identify improvements in wastewater management and prevent harm. Over time, this may lead to poor strategic management of degrading and failing systems or missed opportunities to minimise environmental and human health risks. Additionally, an express obligation to undertake these activities supports councils prioritising funds and resources to these issues of long-term planning. Without this, it is possible that some councils will reprioritise resources to other areas of need over time.

These roles and responsibilities imposed by these clauses, and as rehoused in the proposed OMLI, are outlined in Table 4.1. The proposed OMLI drafting seeks to clarify these roles and responsibilities consistent with the way the SEPP was understood to have functioned.

Table 4.1: Roles and responsibilities for domestic wastewater (see proposed OMLI for specific wording)

Concern	Roles and responsibilities
Domestic wastewater management plan	**Councils** must develop and publish on-site wastewater management plans (OWMP) to demonstrate they have identified and are managing risks of harm to human health and the environment from unsewered allotments and OWMSs. Councils must consult relevant stakeholders, including water corporations, when developing a plan.
Sewerage planning	**Water corporations** must develop a response to a council's on-site wastewater management plan if it identifies a sewage management solution that is not solely an onsite wastewater management system. Water corporations must provide the written response to council and prepare a five-yearly report on the implementation of the water corporation's identified preferred solution.

Because these obligations are directly linked to one another, options to rehouse them have been assessed together. Without obligations on councils to produce OWMPs, there can be no obligation on water corporations to develop a response to such a plan. EPA have developed options based on the residual risks presented by the expiry of the saved SEPP (Waters) clauses identified in Chapter 2 and the instruments available. The two options that have been considered are:

- Option 1: Separately rehouse obligations for onsite wastewater management plans and sewerage planning in an OMLI and SoO respectively
- Option 2: Rehouse obligations for onsite wastewater management plans and sewerage planning in an OMLI.

As SoOs can only impose obligations on water corporations or CMAs (but not councils), it is not possible to consider an option that would rehouse both obligations within a SoO. The options are assessed relative to the base case and each are explained in more detail below.

4.1.1 Base case: Clause lapses and is not rehoused in a new instrument

Under the base case, the clauses are left to lapse and the obligations they currently impose are not rehoused in a new instrument. Based on an EPA and DELWP assessment of the obligations that otherwise exist, and consultations with affected stakeholders, it has been determined that there is no other obligation on councils to compel the development of OWMPs. Over time, this could lead to an increased risk to the environment and human health from issues such as reduced council assessment of risks and prioritisation of actions to most effectively prevent harm. This may see cases of discharge of wastewater beyond allotment boundaries and illness following contact with effluent.

4.1.2 Option 1: OMLI and SoO

Option 1 would rehouse obligations for councils to produce OWMPs in an OMLI and for water corporations to provide a response when councils identify an action involving a sewage management solution that is not solely an onsite wastewater management system in the existing water corporation SoO.

4.1.3 Option 2: OMLI

Option 2 would rehouse obligations for councils to produce OWMPs and for water corporations to develop a response when councils identify an action involving a sewage management solution that is not solely an onsite wastewater management system in an OMLI. The obligations would be contained within one consolidated OMLI that covered both obligations.

4.2 Analysis of options for on-site wastewater management

The discussion below compares the options against the assessment criteria. Each option is scored relative to the base case where the obligations contained within the saved clauses expire and there is no obligation for councils to develop OWMPs or for water corporations to provide responses.

4.2.1 Criterion 1: Reduction in environmental risk (OWMS)

Table 4.2: Scoring of reduction in environmental risk

Criteria	Option 1 – OMLI and SoO	Option 2 – OMLI
Environmental risk	8	9

Option 1 (OMLI and SoO) receives a score of **8** for this criterion as it is much better than the base case in which the SEPP (Wates) saved clauses expire.

OWMPs are an important tool in the wastewater management planning framework. They enable councils to identify, assess and manage health and environmental risks (as discussed in section 2.2.1) associated with OWMSs, particularly failing OWMSs, and prevent harm. Without these plans being prepared, there is likely an increased risk to the environment as existing OWMPs become outdated. This is particularly important in high-risk townships where there is an ongoing need to fill gaps in information about the location, performance and risks of existing OWMSs, and undertake planning accordingly.[37] The regular updating and measurement of progress against

[37] Victorian Auditor-General's Office, 'Managing the environmental impact of domestic wastewater' (September 2018) <https://www.audit.vic.gov.au/sites/default/files/2018-09/20180919-Managing-the-Environmental-Impacts-of-Domestic-Wastewater.pdf>.

these plans is also important.[38] Some councils have also found ongoing or regular review and assessment of OWMSs to be critical to ensuring that the planned activities are feasible, appropriate and proportionate to the risk.[39]

Similarly, the obligation on water corporations to provide responses to council OWMPs plays an important role in requiring collaboration between organisations responsible for different elements of wastewater planning and enabling opportunities to identify ways wastewater management can be improved.

During stakeholder consultation, stakeholders validated the important role that OWMPs play. Specifically, councils consulted in the preparation of this RIS advised that having a clear mandate to prioritise activities in the context of constrained budgets was an important factor in ensuring that activities are undertaken in line with their OWMPs, as no other obligation outside the OWMPs compels undertaking those activities.

Ensuring the OWMPs continue to be developed will contribute to positive environmental outcomes through reducing the risk of harm from unsuitable systems and facilitating coordination between stakeholders. For example, without the obligations councils would have more limited information of where and what types of OWMSs are installed in their municipality. This would exacerbate existing information gaps in some regions where there are an unknown number of legacy systems installed. Both an OMLI and SoO were seen as effective tools to achieve the development of plans by councils and responses from water corporations. As such, it is considered that the reduction in environmental risk associated with this option is somewhat better than the base case.

Option 2 (OMLI) receives a score of **9** for this criterion as it is much better than the base case and marginally better than Option 1.

While both an OMLI and SoO were both seen as effective tools to mandate the completion of the relevant obligations for Option 1, stakeholders viewed an OMLI as a more effective tool given the enforcement pathways available under the Act. Given the more limited enforcement pathways associated with non-compliance with a SoO, there is a potential risk of fewer or lower quality responses being provided to councils over time. This would contribute to the adverse environment and human health outcomes through the channels discussed in Section 2.5.1. Some stakeholders suggested that this may occur among a sub-set of water corporations who are more resource constrained.

Additionally, rehousing the obligations for water corporations to develop responses to the OWMPs in an OMLI rather than a SoO was seen by some stakeholders as creating a more effective environment for long term planning and investment in domestic wastewater. This was, in part, due to the enforcement pathway attached to an OMLI being more likely to encourage investment and resources dedicated to managing these elements of domestic wastewater. For example, while an OMLI provides the EPA with powers to issue and enforce a remedial notice, a SoO requires duty holders to report material non-compliance to the relevant Minister and propose plans to prevent future non-compliance.

Given this feedback, placing all obligations in an OMLI is viewed as likely to ensure better compliance and quality of responses from all water corporations. However, given that water corporations consulted reported high level of compliance with SoO requirements, it is not considered likely that this option would result in a substantially greater level of environmental protection compared to Option 1.

[38] Victorian Auditor-General's Office, 'Managing the environmental impact of domestic wastewater' (September 2018) <https://www.audit.vic.gov.au/sites/default/files/2018-09/20180919-Managing-the-Environmental-Impacts-of-Domestic-Wastewater.pdf>.
[39] Nillumbik Shire 'Background paper: Domestic wastewater management plan 2019-2023' (2019) <https://hdp-au-prod-app-nil-participate-files.s3.ap-southeast-2.amazonaws.com/5415/6833/8304/Domestic_Wastewater_Management_Plan_-_Background_paper.pdf>.

4.2.2 Criterion 2: Clarity of expectations (OWMS)

Table 4.3: Scoring of clarity of expectations

Criteria	Option 1 – OMLI and SoO	Option 2 – OMLI
Clarity	6	8

Option 1 (OMLI and SoO) receives a score of **6** for this criterion as it is somewhat better than the base case in which the SEPP (Waters) saved clauses expire.

Through the consultation process, councils highlighted that developing OWMPs are a key activity that they see as managing and prioritising risks of OWMSs and complementing existing requirements. OWMS planning processes are seen by councils as positive as it provides a structured way to focus on the risks and direct their resources to where they will create the most value. As such, providing obligations creates a clearer regulatory environment for duty holders compared to the base case where there is no express obligation. Both an OMLI and SoO give certainty for councils and water corporations on the action they are required to undertake.

Option 2 (OMLI) receives a score of **8** for this criterion as it is much better than the base case.

While both an OMLI and SoO provide clear obligations, placing these related and interacting obligations in the same instrument promotes simplicity and greater regulatory clarity. Fragmenting the system risks making it more difficult for stakeholders to navigate their obligations. However, as the stakeholders affected are sophisticated organisations, this is unlikely to be a significant impact. Nonetheless, Option 2's approach of placing the obligations for both councils and water corporations in one instrument is considered to provide marginally more clarity than Option 1.

4.2.3 Criterion 3: Cost to EPA/DELWP (OWMS)

Table 4.4: Scoring of cost to EPA/DELWP

Criteria	Option 1 – OMLI and SoO	Option 2 – OMLI
Cost to EPA/DELWP (positive score is lower cost than base case)	-3	-4

Option 1 (OMLI and SoO) receives a score of **-3** for this criterion as it is somewhat more costly than the base case in which the SEPP (Wates) saved clauses expire.

Regulatory oversight costs from EPA and DELWP are marginally greater due to potential enforcement that would not otherwise be necessary under the base case. EPA have indicated that the instrument will necessitate additional compliance assessment, which may lead to additional enforcement actions under an OMLI, relative to other instruments.

The EPA also will incur establishment and education costs for the OMLI. As this is the first instance of an OMLI being utilised, these costs are expected to be marginally greater than a typical recreation of sunsetting regulations (where an existing regulation is carried over in the same regulation). However, some economies of scale are likely to be achieved given that a number of obligations in addition to domestic wastewater are proposed to be placed into an OMLI as well.

Ensuring the proactive planning to prevent harm from OWMSs by ensuring councils have OWMPs in place is likely to have associated avoided costs due to preventing issues that may require subsequent EPA involvement.

Option 2 (OMLI) receives a score of **-4** for this criterion as it is somewhat worse than the base case.

Given that a greater number of stakeholders will be subject to an OMLI under Option 2, it is expected that the education and enforcement costs are marginally greater. However, this is not expected to be a substantially greater cost.

4.2.4 Criterion 4: Cost to duty holders (OWMS)

Table 4.5: Scoring of cost to duty holders

Criteria	Option 1 – OMLI and SoO	Option 2 – OMLI
Cost to duty holders (positive score is lower cost than base case)	-6	-7

Based on the stakeholder consultation process it is expected that, relative to the base case, both options are likely to result in a greater level of compliance activity from all or a specified group of duty holders. Differences in costs are therefore expected to be driven by the number of stakeholders undertaking compliance activities and the extent of those activities. These drivers are assumed to increase with the strength of potential enforcement pathways available under each option.

Costs presented in this RIS are indicative costs based on stakeholder interviews and a survey. Stakeholders anticipated that the general nature of the activities undertaken against each option is expected to be similar and align with the activities currently undertaken to comply with SEPP (Waters) obligations. Therefore the nature of the costs are considered similar to those currently incurred complying with the expiring SEPP (Waters) clauses. These have been used to assess the cost to duty holders.

Option 1 (OMLI and SoO) receives a score of **-6** for this criterion as it is somewhat more costly than the base case in which the SEPP (Wates) saved clauses expire.

Both councils and water corporations indicated during consultations that they would be unlikely to consistently allocate resources towards OWMPs unless expressly required to do so. As such, Option 1, which does impose a requirement to do so, would increase the regulatory burden relative to the base case.

Costs of OWMPs are reported to vary between councils, however the cost and effort has been described as 'significant', and differ across the lifecycle of a plan's development, implementation and monitoring stages. Examples of costs currently incurred provided by individual councils consulted include:

- $100,000 annually to fund technical staff to manage, develop and implementing onsite wastewater management projects
- $253,000 in staffing costs to assist with implementing the actions of the OWMP and other OWMP related tasks[40]
- $120,000 for consultant costs for the OWMP and related staff resources.

Some stakeholders believed that costs would likely be greater under an OMLI, compared to other instruments that would impose comparable obligations, because of the enforcement pathways available under the Act. The prospect of having the obligations enforced could induce greater effort to ensure obligations are discharged.

Option 2 (OMLI) receives a score of -**7** for this criterion as it is much more costly than the base case and marginally more costly than Option 1.

[40] One council stated that they employ 1.5 FTE to implement actions. While specific costs were not provided, they have been estimated on the basis of an average full-time salary of $96,408 reported by the ABS and 75 per cent on-costs as recommended in Appendix D of the Department of Treasury and Finance's *Regulatory Change Measurement Manual*.

The nature of activities and costs under this option are the same as under Option 1, however as this option places the obligations in an instrument with strong potential enforcement pathways, it is expected that compliance (and cost) will be higher. However, given that costs on councils to develop plans are expected to comprise a greater proportion of total costs related to water corporation's responses to plan, the additional cost is considered marginal.

4.3 Identification of preferred option for on-site wastewater management

The results of the MCA (analysed above and summarised in Table 4.7) show that Option 2 receives the highest weighted score, and therefore is the preferred option.

It rehouses domestic wastewater obligations for councils and water corporations in an instrument that reduces environmental risk and promotes regulatory clarity.

Table 4.6: Summary of MCA scoring for on-site wastewater management clauses

Criteria	Option 1 – OMLI and SoO	Option 2 – OMLI
Benefits		
Environmental risk	8	9
Clarity	6	8
Costs		
Cost to EPA/DELWP (positive score is lower cost than base case)	-3	-4
Cost to duty holders (positive score is lower cost than base case)	-6	-7
Weighted score	**1.6**	**1.7**

5 Urban stormwater – Asset management

5.1 Options for stormwater asset management

This chapter assesses options to rehouse the obligations contained within clause 34(3) of the saved SEPP (Waters) clauses. This clause sets out requirements for owners and managers of 'stormwater infrastructure'.[41] The clause aims to ensure assets created to minimise risks from urban stormwater continue to function to minimise risks to the environment and human health.

While other tools such as the AMAF, GED, Local Government Act and existing activities are likely to support assets being generally maintained, stakeholders have expressed a concern that without the saved clause's focus on environmental risk, maintenance activities may lose sight of the importance of environmental protection. Without explicit requirements, there was uncertainty that the risks would be adequately managed, and stakeholders voiced concern that environmental protection elements of assets may not be adequately prioritised.

The lack of this environmental focus is considered to, in the extreme, contribute to negative environmental and health impacts from uncontrolled stormwater runoff where assets are failing or no longer functional. Urban stormwater can carry pollutants into waters and disrupt natural flow patterns. In addition to degrading the natural environment, urban stormwater can impose public health costs, damage property and affect the availability of water for irrigation. Where not properly managed or maintained, stormwater infrastructure may fail and no longer minimise risks from urban stormwater. Taking reasonable steps to ensure the infrastructure itself doesn't pose a risk is also important.

These roles and responsibilities imposed by these clauses, and as rehoused in the proposed OMLI, are outlined in Table 5.1. The proposed OMLI drafting seeks to clarify these roles and responsibilities consistent with the way the SEPP was understood to have functioned.

Table 5.1: Roles and responsibilities for urban stormwater asset management

Concern	Roles and responsibilities
Asset maintenance	**Owners and managers of assets** (councils and Melbourne Water) must so far as reasonably practicable ensure that stormwater infrastructure designed to minimise risks from urban stormwater, is managed and maintained and is renewed or replaced so far as reasonably practicable when it can no longer be managed or maintained.

EPA have developed options based on the residual risks presented by the expiry of the saved SEPP (Waters) clauses identified in Chapter 2 and the potential instruments available to address these risks. Two options for addressing the risks created by the expiry of the **asset management** clause are assessed in this RIS. These are:

- Option 1: Rehouse requirements for asset management in guidance
- Option 2: Rehouse requirements for asset management in an OMLI.

[41] In this case, 'stormwater infrastructure' refers to an asset designed to manage stormwater quality or reduce stormwater quantity to minimise risks of harm to human health and the environment from urban stormwater – for example, constructed sediment ponds, constructed wetlands, biofiltration and infiltration systems, bioretention basins, raingardens, rainwater tanks, vegetated swales, passively irrigated street trees, grass swales and permeable pavements.

As SoOs can only impose obligations on water corporations or CMAs (but not councils), it is not possible to consider an option that would rehouse the obligation within a SoO. All options are assessed relative to the base case and each are explained in more detail below.

5.1.1 Base case: Clause lapses and is not rehoused in a new instrument

Under the base case, the clause is left to lapse and the obligations they currently impose are not rehoused in a new instrument. Under the base case the *Local Government Act 2020* and *Water Act 1989* continue to apply to local councils and Melbourne Water respectively. Melbourne Water is the legislated authority managing drainage (stormwater management) and flood management under the *Water Act 1989* and has a function under that Act to develop and implement schemes for the use, protection and enhancement of land and waterways. Likewise, councils manage stormwater drainage under the *Local Government Acts (1989 and 2020)*.

Councils and Melbourne Water undertake a number of activities to deliver on their legislative functions. Melbourne Water, for example, develops a Waterways and Drainage Investment Plan, which forms part of its pricing proposal to the Essential Services Commission and is a responsibility also outlined in the SoO issued by the Minister under the *Water Industry Act 1994*. Each council determines its own maintenance activities based on local priorities with authorisations contained in the *Local Government Act 2020*. For example, actions that asset owners undertake include regular inspections, removing litter and other debris from pits, and investigating and repairing blockages.

The GED, requiring anyone who is engaging in any activity that may give rise to risk of harm to human health or the environment to minimise that risk, also continues to apply and the content of the existing clause, even if lapsed, can inform the state of knowledge to support GED compliance. The activity of developing (creating impervious surfaces) is clearly an activity that gives rise to increased risk of harm from urban stormwater. Stormwater assets are specifically designed to minimise those increased risks from stormwater and need to be maintained by the asset owner/manager as a means of managing that risk (see Urban stormwater management guidance).

While the actions of Melbourne Water and councils operate to address risks arising from urban stormwater, there remains a risk of harm to human health and the environment from stormwater that is cumulative in nature. In the absence of rehousing the specific asset management clause contained within the SEPP the specific obligation on Melbourne Water and councils to maintain the stormwater infrastructure that comes under their ownership/control becomes less clear. Given the potential risk to human health and environment from poorly maintained stormwater infrastructure (as discussed in section 2.2.2) there is benefit from having a clear articulation of responsibility and expected management actions.

5.1.2 Option 1: Guidance

Option 1 would rehouse expectations for stormwater infrastructure maintenance in guidance. Given that guidance does already exist for stormwater asset management, there has not been an indication from stakeholders that substantial additional technical guidance that goes beyond the clause is needed. However, that could be informed by the public consultation on this RIS. Guidance would include rehousing clause content, such as environmental aspects to consider regarding maintenance. The issuing of guidance would not impose compliance obligations but would provide information on the importance of maintaining infrastructure, and inform the state of knowledge to the extent the GED applies.

5.1.3 Option 2: OMLI

Option 2 would rehouse specific requirements on Melbourne Water and councils for asset management in an OMLI and would require that stormwater infrastructure be managed and maintained so as to minimise risks from urban stormwater so far as reasonably practicable. When the stormwater infrastructure cannot be maintained to achieve this outcome, the OMLI will require that they be replaced or renewed as far as it is reasonably practicable to do so.

While the existing clause is not explicit about who it applies to, it has in practice compelled action from Melbourne Water and councils who manage stormwater drainage and, as the managers of stormwater assets, that minimise risks of harm from urban stormwater. In the absence of the clause, the specific obligations on Melbourne Water and councils regarding maintenance of the stormwater infrastructure that comes under their ownership/control (by the asset being 'handed

over' to them by a developer) become less clear. The OMLI clarifies this and the stormwater asset maintenance requirement.

5.2 Analysis of options for stormwater asset management

The discussion below compares the options against the assessment criteria. Each option is scored relative to the base case where the obligations contained within the saved clauses lapse.

5.2.1 Criterion 1: Reduction in environmental risk (asset management)

Table 5.2: Scoring of reduction in environmental risk

Criteria	Option 1 – Guidance	Option 2 – OMLI
Environmental risk	3	5

Option 1 (Guidance) receives a score of **3** for this criterion as it is somewhat better than the base case in which the SEPP (Waters) saved clauses expire.

During consultations, there was strong agreement from all stakeholders that the asset management requirement should be rehoused in a new instrument. Although, stakeholders were divided on the consequences of the clause expiring, and whether the risk would be adequately covered by other mechanisms. For example, under the base case each council would still determine its own maintenance based on local priorities, in accordance with local government legislation, and undertake activities pursuant to the GED.

Stakeholders consulted in the preparation of this RIS anticipated that general asset management activities would continue if the clause expired. However, some councils expressed concern that without a specific requirement to incorporate a focus on environmental protection, some environmental considerations in stormwater asset management may be lost. They noted that there is pressure on councils to only maintain the aesthetic aspects of assets, and this clause currently provides an important driver for a continuing focus on maintenance that protects waterways and human health from stormwater.

Placing environmental considerations in guidance was seen as further informing the state of knowledge under the GED by setting expectations around what duty holders should reasonably know about managing their risks in relation to asset management.[42] As such, this option is likely to provide a greater degree of environmental risk reduction than the base case, but with only a marginal benefit over the base case (noting that some management activities would still be undertaken in the base case).

Option 2 (OMLI) receives a score of **5** for this criterion as it is somewhat better than the base case and better than Option 1.

An OMLI, by creating an obligation to ensure stormwater management assets are maintained to minimise risks to human health and the environment from urban stormwater, would likely result in a greater degree of compliance and effectiveness when compared to guidance. Stakeholders confirmed this by expressing concern that guidance would reduce the effectiveness of the requirements compared to this option.

Placing obligations for ensuring stormwater management assets are managed and maintained to minimise risk of harm to human health and the environment from urban stormwater in a mandatory instrument was also seen as a more effective tool to encourage ongoing investment in assets. Council and CMA stakeholders who expressed a preference for an OMLI did so because OMLIs provide mandatory and clear obligations

[42] See Section 1.3.1.1 for discussion of the operation of the GED

Given these considerations, this option would likely reduce environmental risk from stormwater assets by more than Option 1.

5.2.2 Criterion 2: Clarity of expectations (asset management)

Table 5.3: Scoring of clarity of expectations

Criteria	Option 1 – Guidance	Option 2 – OMLI
Clarity	6	6

Option 1 (Guidance) receives a score of **6** for this criterion as it is somewhat better than the base case in which the SEPP (Waters) saved clauses expire.

Guidance, relative to the base case, makes it clearer how duty holders are expected to act in relation to managing these stormwater assets and that maintenance needs to consider environmental protection. Within the general duties framework where guidance informs the state of knowledge, this is expected to provide duty holders with greater clarity and certainty about the maintenance standards they are expected to meet.

Option 2 (OMLI) also receives a score of **6** for this criterion as it is also somewhat better than the base case.

OMLIs, by their nature, clearly express duty holders' specific requirements, and would provide clarity regarding the specific requirements to manage and maintain assets. However, recent EPA experience with other new tools created under the EP Act shows that these new tools are often no clearer than guidance, as stakeholders are already familiar with, and trust guidance, and know where to find it. Therefore, this option receives the same score as Option 1.

Concerns were expressed that an OMLI may create conflict if it required actions of Melbourne Water that went above requirements under the expiring clause and the *Water Act 1989* and *Water Industry Act 1994*. EPA consider that these concerns are manageable and may be able to be addressed with careful drafting of the OMLI, ensuring there is nothing contradictory in the obligations. The current SEPP wording is not clear and 'maintain for the purposes constructed' can sometimes be disproportionate in the case of legacy assets. It is intended this will be made clearer in the drafting of the OMLI. This is an important aspect of ensuring that there is not a blind requirement to ensure every asset, or any outdated original design standard, must be renewed/replaced immediately, both of which could represent excessive costs. EPA welcome additional views from stakeholders on this point.

5.2.3 Criterion 3: Cost to EPA/DELWP (asset management)

Table 5.4: Scoring of cost to EPA/DELWP

Criteria	Option 1 – Guidance	Option 2 – OMLI
Cost to EPA/DELWP (positive score is lower cost than base case)	-4	-5

Option 1 (Guidance) receives a score of **-4** for this criterion as it is somewhat more costly than the base case in which the SEPP (Wates) saved clauses expire.

Regulatory oversight costs from EPA and DELWP are greater under this option compared to the base case given the potential activities that would not otherwise be necessary.

Option 2 (OMLI) receives a score of **-5** for this criterion as it is somewhat more costly than the base case.

EPA have indicated that the instrument will necessitate additional compliance assessment, which may lead to additional enforcement actions under an OMLI, relative to other instruments. As such, enforcement costs are expected to be correspondingly higher.

The EPA also will incur establishment and education costs. This includes the additional stakeholder consultation that will be undertaken to ensure that no conflict is created with the actions required of Melbourne Water under the *Water Act 1989* and *Water Industry Act 1994*. Additionally, as this is the first instance of an OMLI being utilised, these costs are expected to be marginally greater than a typical recreation of sunsetting regulations. However, some economies of scale are likely to be achieved given that a number of obligations in addition to urban stormwater management clauses are proposed to be rehoused in an OMLI.

5.2.4 Criterion 4: Cost to duty holders (asset management)

Table 5.5: Scoring of cost to duty holders

Criteria	Option 1 – Guidance	Option 2 – OMLI
Cost to duty holders (positive score is lower cost than base case)	-2	-4

In consultation for this RIS, stakeholders advised that, relative to the base case, both options are likely to result in a greater level of compliance activity from all or a specified group of duty holders. Differences in costs are therefore expected to be driven by the number of stakeholders undertaking compliance activities and the extent of those activities. These drivers are assumed to increase with the strength of potential enforcement pathways available under each option.

Costs presented in this RIS are indicative costs based on stakeholder interviews and a survey. As stakeholders anticipated that the general nature of the activities undertaken against each option is expected to be similar and align with the activities currently undertaken to comply with SEPP (Waters) obligations, the nature of the costs are considered similar to those currently incurred complying with the expiring SEPP (Waters) clauses. These have been used to assess the cost to duty holders.

Option 1 (Guidance) receives a score of **-2** for this criterion as it is marginally more costly than the base case in which the SEPP (Waters) saved clauses expire.

With a greater focus on environmental considerations when maintaining stormwater assets, managers of these assets are likely to incur greater costs under this option relative to the base case. Examples of costs currently incurred to discharge the obligations of the SEPP (Waters) clause provided by individual consulted stakeholders include:

- $80,000 per year for one council to maintain stormwater assets
- Annually allocated fund of $343,000 comprised of several employees spending up to half their time on asset design, in addition to associated activity from the broader assets team
- For council-built assets, one council estimated they would spend around $500,000 on the design, management and maintenance (excluding construction costs).

As stakeholders could not quantify or attribute the extent of costs that might be attributed to guidance rather than current activities, this RIS presents illustrative costs of the type of activities currently undertaken in compliance with the SEPP (Waters) saved clauses, a portion of which may in some cases be attributed to guidance.

However, as previously noted, stakeholders reported that a degree of general maintenance would occur under the base case irrespective of whether the obligations of the existing clause are rehoused. As such, the additional level of cost under guidance compared to the base case is expected to be modest.

Option 2 (OMLI) receives a score of -**4** for this criterion as it is somewhat more costly than the base case and more costly than Option 1.

The nature of activities and costs under this option are the same as under Option 1, however as this option places asset management requirements in an instrument with strong potential enforcement pathways, it is likely that an OMLI would induce greater compliance rates. That is to say, a greater quantity of the types of costs described under Option 1 are expected to be attributable to compliance costs under this option through both generally a greater volume and quality of asset management undertaken. However it should be noted that compliance was still required under the SEPP (Waters) and would be required under the proposed OMLI too.

5.3 Identification of preferred option for stormwater asset management

The results of the MCA (discussed above and summarised in Table 5.7) show that Option 2 receives the highest weighted score, and therefore is the preferred option.

It rehouses stormwater management obligations for councils and Melbourne Water in an instrument that reduces environmental risk and promotes regulatory clarity.

Table 5.6: Summary of MCA scoring for asset management

Criteria	Option 1 – Guidance	Option 2 – OMLI
Benefits		
Environmental risk	3	5
Clarity	6	6
Costs		
Cost to EPA/DELWP (positive score is lower cost than base case)	-4	-5
Cost to duty holders (positive score is lower cost than base case)	-2	-4
Weighted score	**0.3**	**0.4**

6 Urban stormwater – Management plans

6.1 Options for stormwater management plans

This chapter assesses options to rehouse the obligations contained within clause 34(4) of the saved SEPP (Waters) clauses. This clause sets out an obligation for councils to develop plans to identify and minimise risks from urban stormwater, in consultation with relevant stakeholders.

In the absence of this clause there is expected to be a risk of reduced prioritisation of risk management actions and collaboration between stakeholders in the stormwater space, leading to missed opportunities to identify improvements. Over time, this would increase the risk of negative environmental and health impacts from urban stormwater runoff and a degradation of the natural environment (see Section 2.2.2), or forgo potential improvements in mitigating these impacts. The risk of reduced prioritisation is expected to be concentrated among smaller, regional councils, for whom a requirement to collaborate can help prioritise funding to undertake stormwater management planning in consultation with other stakeholders.

These roles and responsibilities imposed by these clauses, and as rehoused in the proposed OMLI, are outlined in Table 6.1. The proposed OMLI drafting seeks to clarify these roles and responsibilities consistent with the way the SEPP was understood to have functioned.

Table 6.1: Roles and responsibilities for urban stormwater

Concern	Roles and responsibilities
Stormwater management plans	**Councils** must develop and publish plans to identify and minimise risks of harm to human health and the environment from urban stormwater, in consultation with relevant stakeholders, including water corporations, CMAs and the community. Councils must review and update the plan and publish a report on implementation at intervals of no more than 5 years.

EPA have developed options based on the residual risks presented by the expiry of the saved SEPP (Waters) clauses identified in Chapter 2 and the potential instruments available to address these risks. Two options for addressing the risks created by the expiry of the **stormwater management plan** clause are assessed in this RIS. These are:

- Option 1: Rehouse requirements for stormwater management plans in guidance.
- Option 2: Rehouse requirements for stormwater management plans in an OMLI.

As SoOs can only impose obligations on water corporations or CMAs (but not councils), it is not possible to consider an option that would rehouse the obligation within a SoO. All options are assessed relative to the base case and each are explained in more detail below.

6.1.1 Base case: Clause lapses and is not rehoused in a new instrument

Under the base case, the clause is left to lapse and the obligations they currently impose are not rehoused in a new instrument. Based on an EPA and DELWP assessment of the obligations that otherwise exist, and consultations with affected stakeholders, it has been determined that there is no other obligation on councils to compel the development of stormwater management plans.

6.1.2 Option 1: Guidance

Option 1 would rehouse requirements for stormwater management plans in guidance. The issuing of guidance would provide information to support good environmental planning behaviour by councils.

6.1.3 Option 2: OMLI

Option 2 would rehouse requirements for stormwater management plans in an OMLI. This would impose an obligation on councils.

6.2 Analysis of options for stormwater management plans

The discussion below compares the options against the assessment criteria. Each option is scored relative to the base case where the obligations contained within the saved clauses lapse and there is no obligation for councils to develop stormwater management plans.

6.2.1 Criterion 1: Reduction in environmental risk (stormwater management plans)

Table 6.2: Scoring of reduction in environmental risk

Criteria	Option 1 – Guidance	Option 2 – OMLI
Environmental risk	4	6

Option 1 (Guidance) receives a score of **4** for this criterion as it is somewhat better than the base case in which the SEPP (Waters) saved clauses expire.

During consultations, most stakeholders agreed that under the base case, there is a risk that stormwater management plans might not be developed or updated. Councils were of the view that other existing mechanisms are not sufficient to manage the potential risks created in the absence of stormwater management plans being developed. In particular, there are no other stormwater management obligations that require councils to carry out this role of strategic stormwater management planning.

The key consequence of these plans not being developed or developed to a lower standard is that there would be a reduced opportunity for improvements in stormwater management and risk minimisation, and opportunities for collaboration between stakeholders in the stormwater management system, resulting in a potential risk of poorer environmental outcomes such as those outlined in Section 2.2.2, and long-term misalignment in actions and activities undertaken by these stakeholders.

However, Melbourne Water, who are responsible for a large number of stormwater assets, have indicated they will continue supporting councils, such as through provision of advice or funding, in developing integrated water management (IWM) or stormwater management plans. There are key drivers, such as the IWM Framework, which would continue to enable and encourage councils to engage in stormwater planning.

Councils consulted suggested that the risk of non-completion or engagement in stormwater planning is likely greatest from smaller, regional councils with fewer resources who may find it harder to justify to internal management the need to prioritise funding to undertake stormwater management planning. This is a view reiterated by the Municipal Association of Victoria. For other councils, stakeholders were of the view that placing expectations in guidance would provide a sufficient authorising environment for councils to maintain the completion and standards of stormwater management plans.

Still, some stakeholders will likely continue to complete management plans under the base case due to existing support mechanisms, such as from Melbourne Water, so the primary additional benefit associated with guidance will likely be related to the collaboration it promotes.

Option 2 (OMLI) receives a score of **6** for this criterion as it is somewhat better than the base case and better than Option 1.

The creation of an obligation, with broad enforcement pathways, to develop stormwater management plans and undertake the associated consultation is likely to result in a broader completion of plans relative to guidance. The requirement to review plans at intervals of no more

than five years also ensures that they continue to reflect contemporary conditions, supporting environment protection and risk minimisation. This may reduce the potential long-term environmental risk of poorer stormwater management outcomes associated with expanding urban development and the potential deterioration of planning for stormwater management. The option is likely to also attract environmental benefits associated with a greater number of regional councils who may reallocate funds over time under the base case completing plans. During consultation, councils were of the view that an obligation under an OMLI was likely to be more effective than guidance, placing this option above Option 1.

6.2.2 Criterion 2: Clarity of expectations (stormwater management plans)

Table 6.3: Scoring of clarity of expectations

Criteria	Option 1 – Guidance	Option 2 – OMLI
Clarity	6	6

Option 1 (Guidance) receives a score of **6** for this criterion as it is somewhat better than the base case in which the SEPP (Wates) saved clauses expire.

Guidance, relative to the base case, makes information regarding the importance of stormwater planning clearer, to support good environmental planning behaviour by councils.

Option 2 (OMLI) receives a score of **6** for this criterion as it is also somewhat better than the base case and Option 1.

OMLIs, by their nature, clearly express duty holders' obligations, and would provide clarity on what is needed when developing a plan, such as actions, consultation, review and reporting to achieve environmental outcomes. However, recent EPA experience with other new tools created under the EP Act shows that these new tools are not necessarily clearer than guidance, as stakeholders are already familiar with, and trust guidance, and know where to find it. Therefore, this option receives the same score as Option 1.

6.2.3 Criterion 3: Cost to EPA/DELWP (stormwater management plans)

Table 6.4: Scoring of cost to EPA/DELWP

Criteria	Option 1 – Guidance	Option 2 – OMLI
Cost to EPA/DELWP (positive score is lower cost than base case)	-2	-3

Option 1 (Guidance) receives a score of **-2** for this criterion as it is marginally more costly than the base case in which the SEPP (Wates) saved clauses expire.

Regulatory oversight costs from EPA and DELWP are greater under this option compared to the base case given the potential activities than would otherwise occur under the base case. Given the expectation that the risk of non-completion of plans under the base case is likely to be concentrated among smaller, regional councils, the additional oversight costs from EPA under this option are considered to be concentrated.

The EPA also will incur establishment and education costs in modifying any relevant guidance and ensuring that duty holders are aware of the changes.

Option 2 (OMLI) receives a score of **-3** for this criterion as it is somewhat more costly than the base case and slightly more costly than Option 1.

EPA have indicated that the instrument will necessitate additional compliance assessment, which may lead to additional enforcement actions under an OMLI, relative to other instruments. As such,

enforcement costs are expected to be correspondingly higher. However, given that the nature of the additional activities undertaken by councils is expected to relate to collaboration, the additional oversight costs are unlikely to be substantial.

The EPA also will incur establishment and education costs. As this is the first instance of an OMLI being utilised, these costs are expected to be marginally greater than a typical recreation of sunsetting regulations and compared to Option 1. However, some economies of scale are likely to be achieved given that a number of obligations in addition to urban stormwater management clauses are proposed to be rehoused in an OMLI.

6.2.4 Criterion 5: Cost to duty holders (stormwater management plans)

Table 6.5: Scoring of cost to duty holders

Criteria	Option 1 – Guidance	Option 2 – OMLI
Cost to duty holders (positive score is lower cost than base case)	-2	-3

Based on the stakeholder consultation process it is expected that, relative to the base case, both options are likely to result in a greater level of compliance activity from all or a specified group of duty holders. Differences in costs are therefore expected to be driven by the number of stakeholders undertaking compliance activities and the extent of those activities. These drivers are assumed to increase with the strength of potential enforcement pathways available under each option.

Costs presented in this RIS are indicative and based on stakeholder interviews and a survey. As stakeholders anticipated that the general nature of the activities undertaken against each option is expected to be similar and align with the activities currently undertaken to comply with SEPP (Waters) obligations, the nature of the costs are considered similar to those currently incurred complying with the expiring SEPP (Waters) clauses. These have been used to assess the cost to duty holders.

Option 1 (Guidance) receives a score of **-2** for this criterion as it is marginally more costly than the base case in which the SEPP (Wates) saved clauses expire.

Melbourne Water indicate they will continue to provide funding for councils to develop IWM or stormwater management plans. This would continue to enable and encourage councils to engage in stormwater planning. The additional activities undertaken by councils under this option are considered to be relatively modest. Examples of costs currently incurred to comply with stormwater planning under the existing SEPP (Waters) clauses include:

- three to four months of existing staff time to develop stormwater management plans and additional specialist consultancy to identify IWM opportunities.
- for planning applications, the assessment is spread across a number of existing resources and is estimated to be less than $10,000 annually with another $50,000 on the detail design assessment phase.
- one council reporting that much of the work is integrated into otherwise occurring works with inspectors keeping an eye out for defects or issues as well as respond to request for inspection.

While stakeholders suggested that many duty holders are likely to continue completing management plans under the base case, guidance may increase the rate or quality of plan completion among smaller, regional councils who are most likely not to complete plans. As stakeholders could not quantify or attribute the extent of costs that might be attributed to guidance rather than the base case, this RIS presents illustrative costs of the type of activities currently undertaken in compliance with the SEPP (Waters) saved clauses, a portion of which may in some cases be attributed to guidance.

Given the reported costs and integration into other activities, the regulatory burden by councils is also relatively modest and is primarily comprised of additional coordination and collaboration with other stakeholders to support stormwater management. Guidance may also provide a more flexible approach that allows councils to identify and undertake solutions that may achieve the same outcome but at lower cost than prescribed obligations.

Option 2 (OMLI) receives a score of -**3** for this criterion as it is somewhat more costly than the base case and marginally more costly than Option 1.

The proposed OMLI includes a requirement to review and update the plan and publish a report on implementation of the plan on its website at intervals of no more than five years. Council strategic plans are generally reviewed at 5 year intervals, so setting a review period is in keeping with this and the other plans EPA requires such as onsite wastewater management plans. Given the differing levels of risk in different council areas, a proportionate approach is expected. For example, depending on risks and actions and how much change there has been over the 5 year period, a review of the plan may not necessitate a substantial change in the content of the plan to ensure that the risks to human health and the environment continue to be minimised – the review may just prompt completed actions to be removed or marked as complete so that the plan is current.

Due to the enforcement pathways available under an OMLI and the prospect of having the obligations enforced, it is expected that an OMLI would induce greater effort to ensure obligations are discharged, and consequentially higher costs relative to Option 1. However, many of the councils consulted (representing only a sub-set of all councils) said there would likely be no change to their activities and costs if this obligation was placed in guidance or an OMLI. The additional costs associated with this option is the additional effort and management activities expected to be undertaken by regional councils updating their plans under this option relative to Option 1. This cost is likely to be incurred over the medium term, which is the period in which these councils may have otherwise shifted resources to other priority areas. Given that these councils comprise only a sub-set of all councils, the additional cost under this option is also relatively small.

6.3 Identification of preferred option for stormwater management plans

The results of the MCA (discussed above and summarised in Table 6.7) show that Option 2 receives the highest weighted score, and therefore is the preferred option.

It rehouses stormwater management plan obligations for councils in an instrument that reduces environmental risk and promotes regulatory clarity.

Table 6.6: Summary of MCA scoring for stormwater management plans

Criteria	Option 1 – Guidance	Option 2 – OMLI
Benefits		
Environmental risk	4	6
Clarity	6	6
Costs		
Cost to EPA/DELWP (positive score is lower cost than base case)	-2	-3
Cost to duty holders (positive score is lower cost than base case)	-2	-3
Weighted score	**1.2**	**1.5**

7 Irrigation activity management

7.1 Options for irrigation activity management

This chapter assesses options to rehouse the obligations contained within clause 37(3) of the saved SEPP (Waters). The clause places obligations on CMAs to develop and implement LWMPs and IDGs in accordance with DELWP guidelines. In developing these plans, CMAs play an important role in promoting coordination between the broad range of parties responsible for salinity and irrigation management.

In the absence of this clause, there is a risk of divergence between protection authorities and the practice and understanding of measures by landowners, as well as missed opportunities for identifying improvements. Over time, this may contribute to adverse salinity outcomes such as the accumulation of salt causing soil salinisation, groundwater salinisation and loss of landscape productivity. This has large potential environmental and economic consequences (as outlined in Section 2.2.3).

These roles and responsibilities imposed by this clause, and as rehoused in the proposed OMLI, are outlined in Table 7.1. The proposed OMLI drafting seeks to clarify these roles and responsibilities consistent with the way the SEPP was understood to have functioned.

Table 7.1: Roles and responsibilities for salinity management

Concern	Roles and responsibilities
Irrigation activity management	**CMAs** must develop and publish land and water management plans (LWMP) that identify risks of harm to human health and the environment from irrigation activities and actions to minimise risks. They must take into account DELWP land and water management plan guidelines when developing the plans, and the environment reference standard.

EPA have developed options based on the residual risks presented by the expiry of the saved SEPP (Waters) clauses identified in Chapter 2 and the potential instruments available. The two options that have been considered are:

- Option 1: Rehouse obligations in a SoO
- Option 2: Rehouse obligations in an OMLI.

The options are assessed relative to the base case and each are explained in more detail below.

7.1.1 Base case: Clause lapses and is not rehoused in a new instrument

Under the base case, the Regulations are left to lapse and the obligations they currently impose are not rehoused in a new instrument. Based on an EPA and DELWP assessment of the obligations that otherwise exist, the current SoOs (CaLP Act SoO and *Water Act 1989* SoO) for CMAs include some similar requirements. This includes requirements to:

- prepare regionally specific irrigation development guidelines consistent with the Irrigation Development Guidelines Advisory Note, or subsequent guidance
- develop and coordinate the implementation and review of Land and Water Management Plans, or their equivalent, if identified in the RCS and any other State policy, framework, strategy, plan or guideline applicable to the management of salinity and irrigation drainage
- include in project proposals to the Department, elements of works programs aligned with the Regional Catchment Strategy and related sub-strategies, in accordance with any guidelines issued by the Department.

However, while the existing SoO does contain obligations related to LWMP and IDGs, it does not create requirements to incorporate additional environmental protection elements relevant to the current saved clause.

7.1.2 Option 1: SoO

Option 1 would expand CMAs' obligations in the existing SoO to incorporate the environmental protection elements currently included in the saved clause. Specifically, to complete LWMPs that identify risks of harm to human health and the environment from irrigation activities and actions to minimise risks.

7.1.3 Option 2: OMLI

Option 2 would rehouse the obligations of the saved clause in an OMLI. The OMLI would require that CMA's take account of DELWP LWMP Guidelines and that LWMPs identify risks to human health and the environment from pollution or waste arising from irrigation activities, and actions to minimise those risks. As irrigation development is a part of 'irrigation activity' it is not considered necessary to explicitly replicate the IDG requirements of the existing saved clause. Rather, CMA's irrigation guideline development and review will be nested under the LWMP requirements and CMAs would consequentially be required to take into account DELWP guidelines when developing their LWMP.

DELWP guidelines can address when an IDG is required to be reviewed and updated by CMAs. There is some content that may be sufficient in the current draft DELWP guidelines which addresses IDGs, including that the LWMP provide for the review and implementation of irrigation development guidelines. These guidelines could be further expanded if needed. These guidelines are available on Engage Victoria in draft form and a final version will be published on the finalisation of any OMLI.

7.2 Analysis of options for irrigation activity management

The discussion below compares the options against the assessment criteria. Each option is scored relative to the base case where the obligations contained within the saved clauses lapse.

7.2.1 Criterion 1: Reduction in environmental risk (irrigation)

Table 7.2: Scoring of reduction in environmental risk

Criteria	Option 1 – SoO	Option 2 – OMLI
Environmental risk	3	5

Option 1 (SoO) receives a score of **3** for this criterion as it is somewhat better than the base case in which the SEPP (Wates) saved clauses expire.

During consultations, stakeholders reported that LWMPs are likely to still be undertaken in some form in the absence of the saved clause because it's a requirement under the CALP Act and is also key to how CMAs currently see themselves discharging their GED with respect to managing salinity. However, there was also a view that, over time, some CMAs may divert resources away from LWMPs to other priority areas and reduce plan quality.

The consequence of fewer CMAs developing LWMPs, or doing so to a lower environmental standard, is the loss of the important coordination role that they play as well as identification of key actions to minimise risk. In the absence of the saved clause, stakeholders reported that this identification of, and coordination on, environmental actions may be less likely to occur. A reduced level of identification of risks of harm and coordination may mean outdated regional priorities and growing environmental risk over time.

Stakeholders also reported that placing the environmental requirements to develop LWMPs in a SoO would assist in creating a clear mandate to prioritise activities amongst resource constrained budgets, relative to the base case. Additionally, stakeholders reported that having a mandatory

requirement to undertake these obligations helps justify the actions that are ultimately included in the plans to stakeholders and ensure compliance.

Given that this risk is likely to occur over time and that stakeholders report that some of the associated planning activities will be undertaken in the base case, Option 1 achieves only a marginally better reduction in environmental risk relative to the base case.

Option 2 (OMLI) receives a score of **5** for this criterion as it is somewhat better than the base case and marginally better than Option 1. In practice, the obligations imposed under Option 2 are similar to those under Option 1. However, relative to a SoO, an OMLI is likely to create a degree of additional reduction in environmental risk due to the enforcement pathway available under an OMLI and the prospect of having the obligations enforced inducing greater effort to ensure obligations are discharged. As such, this option achieves a marginally greater reduction in environmental risk compared to Option 1.

EPA and DELWP have determined that using DELWP guidelines is adequate and proportionate to manage CMA's updates of IDGs. The proposed OMLI does not expressly incorporate requirements for the development of IDGs. This is not expected to create additional environmental risk, as CMAs will be required to take account of the DELWP guidelines when developing their LWMPs and IDG updates will be managed through the DELWP guidelines. IDGs aim to clarify the processes for authorities when approving water use licences; point to relevant procedures and agencies, including Local Government, and approval processes; and providing clarification to reduce the uncertainty for prospective developers. DELWP guidelines can address when an IDG is required to be reviewed and updated by CMAs.

7.2.2 Criterion 2: Clarity of expectations (irrigation)

Table 7.3: Scoring of clarity of expectations

Criteria	Option 1 – SoO	Option 2 – OMLI
Clarity	7	6

Option 1 (SoO) receives a score of **7** for this criterion as it is much better than the base case in which the SEPP (Wates) saved clauses expire.

Placing these obligations in a formal instrument promotes regulatory clarity by ensuring that the obligations CMAs are expected to undertake are explicit in the SoO and how these obligations should be undertaken are supported by guidance.

Other strategies that CMAs are required to complete are typically mentioned in the relevant Act and then referenced and clarified in a SoO. For example, regional waterway strategies and streamflow management plans, and sub-strategies. As such, aligning the development of these plans with that general approach promotes clarity within the broader framework.

Option 2 (OMLI) receives a score of **6** for this criterion as it is somewhat better than the base case but marginally worse than Option 1.

Like a SoO, placing these obligations in an OMLI promotes regulatory clarity by ensuring that the obligations CMAs are expected to undertake are explicit. However, as obligations on CMAs to develop other types of plans are currently contained with their SoO, placing obligations to develop LWMPs in an OMLI does not align with the way similar obligations are imposed. As such, this option provides CMAs slightly less clarity than Option 1. As CMAs affected are sophisticated organisations and as this approach is similar to the status quo, this is unlikely to be a significant impact.

7.2.3 Criterion 3: Cost to EPA/DELWP (irrigation)

Table 7.4: Scoring of cost to EPA/DELWP

Criteria	Option 1 – SoO	Option 2 – OMLI
Cost to EPA/DELWP (positive score is lower cost than base case)	-2	-3

Option 1 (SoO) receives a score of **-2** for this criterion as it is marginally more costly than the base case in which the SEPP (Waters) saved clauses expire.

Regulatory oversight costs from EPA and DELWP are expected to be marginally greater than the base case due to potential enforcement that would not otherwise be undertaken. DELWP include that there are approximately 10 FTE staff engaged in salinity management activities across Victoria, with 3 FTE within the DELWP itself. However, as LWMPs and IDGs are expected to still be completed under the base case, the limited nature of the additional obligations imposed under this option implies a more limited increase in enforcement activity.

Option 2 (OMLI) receives a score of **-3** for this criterion as it is somewhat more costly than the base case and marginally more costly than Option 1.

As the nature of obligations imposed under this option are the same as under Option 1, the costs to EPA and DELWP are expected to be similar. However, EPA have indicated that the instrument will necessitate additional compliance assessment, which may lead to additional enforcement actions under an OMLI, relative to other instruments.

The EPA also will incur establishment and education costs. As this is the first instance of an OMLI being utilised, these costs are expected to be marginally greater than a typical recreation of sunsetting regulations. However, some economies of scale are likely to be achieved given that a number of obligations in addition to salinity management are proposed to be placed into an OMLI.

7.2.4 Criterion 4: Cost to duty holders (irrigation)

Table 7.5: Scoring of cost to duty holders

Criteria	Option 1 – SoO	Option 2 – OMLI
Cost to duty holders (positive score is lower cost than base case)	-2	-3

Based on the stakeholder consultation process it is expected that, relative to the base case, both options are likely to result in a greater level of compliance activity from all or a specified group of duty holders. Differences in costs are therefore expected to be driven by the number of stakeholders undertaking compliance activities and the extent of those activities. These drivers are assumed to increase with the strength of potential enforcement pathways available under each option.

Costs presented in this RIS are indicative and based on stakeholder interviews and a survey. As stakeholders anticipated that the general nature of the activities undertaken against each option is expected to be similar and align with the activities currently undertaken to comply with SEPP (Waters) obligations, the nature of the costs are considered similar to those currently incurred complying with the expiring SEPP (Waters) clauses. These have been used to assess the cost to duty holders.

Option 1 (SoO) receives a score of **-2** for this criterion as it is marginally more costly than the base case in which the SEPP (Wates) saved clauses expire.

As CMAs indicated that they would likely still undertake LWMPs and IDGs under the base case, some costs of completing them are not attributable to this option. Additional costs may be associated with the continued preparation of plans from CMAs whose priorities may have otherwise changed in the base case.

Examples of costs currently incurred provided by individual CMAs consulted include:

- costs to develop and implement the plans which vary depending on the priorities and available funding. The development of plans includes input from 6 staff
- one CMA reported that the Sustainable Irrigation Program in their region currently receives revenue of approximately $170,000 per annum to implement programs in support of salinity and drainage management. The whole Sustainable Irrigation Program in the region currently receives funding of approximately $1.5 million per annum.

Option 2 (OMLI) receives a score of -**3** for this criterion as it is somewhat more costly than the base case and similarly costly as Option 1.

As CMAs indicated that they would be likely to still undertake LWMPs and IDGs under the base case and the obligations are the same as under Option 1, it is not expected that cost under this option would significantly differ. However, due to the enforcement pathways available under an OMLI and the prospect of having the obligations enforced, it is expected that an OMLI would induce greater effort to ensure obligations are discharged, and consequentially higher costs relative to Option 1.

7.3 Identification of preferred option for irrigation activity management

The results of the MCA (discussed above and summarised in Table 7.7) show that Option 2 receives the highest weighted score, and therefore is the preferred option.

Rehousing the obligations in an OMLI scores marginally better than doing so in the CMA's SoO.

Table 7.6: Summary of MCA scoring for irrigation activity management

Criteria	Option 1 –SoO	Option 2 – OMLI
Benefits		
Environmental risk	3	5
Clarity	7	6
Costs		
Cost to EPA/DELWP (positive score is lower cost than base case)	-2	-3
Cost to duty holders (positive score is lower cost than base case)	-2	-3
Weighted score	**0.9**	**1.1**

8 Preferred options

8.1 Preferred options

The results of each MCA support an OMLI being the preferred option to best manage residual risks when the relevant obligations contained in the saved SEPP (Waters) clauses expire. The results of each MCA are summarised in Table 8.1.

An OMLI best achieves the objective of minimising the potential harms to human health and the environment created through expiry of the SEPP (Waters) saved clauses by contributing to a greater number of duty holders undertaking obligations to a higher standard than other options considered. It also achieves the objective of avoiding the duplication of the intent or impact of other existing instruments or policies.

The obligations contained within the OMLI are designed to deliver similar intended outcomes to those currently contained in the SEPP (Waters) saved clauses. However, there are some ways in which the obligations have been clarified or refined to better achieve their intended outcomes. This includes the proposed OMLI:

- specifying Melbourne Water and councils under the stormwater asset management clause, and the requirement to so far as reasonably practicable replace stormwater infrastructure when it can no longer be managed or maintained to minimise risk
- specifying a five-year review period for stormwater management plans, reflecting the typical practice of councils regarding strategic plans and consistent with other plan requirements
- not specifically including a requirement regarding CMAs' preparation of IDGs in the OMLI, instead requiring this via the DELWP Guidelines (which are an incorporated document to the OMLI).

As demonstrated in Chapters 4-6, most other options achieve a broadly similar cost to both government and regulated parties but larger trade-offs to environmental risk reduction, regulatory clarity and effectiveness.

Please see the final exposure draft for the specific working of the proposed OMLI.

Table 8.1: Preferred options

Clause theme	Clause	Guidance	Statement of Obligations	OMLI
Wastewater	Domestic wastewater management plan - 29			✓
	Sewerage planning - 30		x	✓
Urban stormwater	Stormwater asset management – 34(3)	x		✓
	Stormwater management plans – 34(4)	x		✓
Salinity	Development of LWMPs - 37(3)		x	✓

8.2 Competition and small business impacts

8.2.1 Competition

As Victoria is a party to the Competition Principles Agreement, regulation in Victoria is required to include a competition assessment.[43] The Competition Principles Agreement sets out that any new primary or subordinate regulation should not restrict competition except where:

- restriction of competition is required to meet the government's objectives; and
- the benefits of the restriction outweigh the costs.

Restrictions on competition can be identified where there will be changes to the way a market functions due to the implementation of the proposed regulation.

In the context of this RIS, all regulated parties are governmental or quasi-governmental entities. Additionally, the obligations re-imposed are generally of a strategic planning nature. As such, the proposed OMLI is unlikely to have any adverse impact on competition in Victoria.

8.2.2 Small business impact

To ensure the impacts of regulation on small business are examined appropriately, an assessment of the effects on small business is required. This aims to ensure that regulation does not impact business growth and productivity unreasonably, especially that of small businesses.

Small businesses can experience disproportionate impacts from regulation due to limited resources for interpretation of updates in compliance requirements, and the cumulation of different requirements. The lack of economies of scale may affect these businesses' ability to comply with different options.

As the preferred options only directly regulate parties that are governmental or quasi-governmental entities, the matters in this RIS are unlikely to directly impact small businesses in Victoria. Second- and third-order impacts associated with the OMLI, such as applying certain conditions, may impact small business. However, given that stakeholders report that many of the obligations imposed are likely, to differing extents, to occur under the base case, the attributable costs are considered small.

[43] Better Regulation Victoria, '*Victorian Guide to Regulation*' (November 2016).

9 Implementation and evaluation strategy

This chapter outlines the actions that EPA will undertake to implement and assess both the efficiency and effectiveness of the proposed regulatory instrument

9.1 Implementation

The key questions considered for implementation are:

- What needs to be done?
- When will it be done?
- Who will do it?
- Who will monitor implementation, enforcement and compliance?

9.1.1 What needs to be done?

The primary activities that EPA will need to undertake to implement the proposed OMLI include creation and communication of the OMLI as well as updating guidance, such as webpages, and other materials.

The OMLI will be created by the Governor in Council upon recommendation of the Minister and notification of making of the Order is required to be published in the Government Gazette.

EPA will develop communications materials that explain the changes for stakeholders. These communications will be undertaken through various methods, such as emails to key stakeholders, publication in bulletins, media releases and updates on the EPA website, social media, newsletters. Communications will also occur through the Engage Victoria web page.

Some guidance development and updates are relevant to supporting the draft OMLI. These include:

- DELWP Guidelines to support LWMPs (these guidelines are available on Engage Victoria in draft form and a final version will be published on the finalisation of any OMLI)
- webpage updates
- OWMP guidance to support OWMP requirement

EPA does not consider that specific additional guidance will be required in addition to the above.

Updates will also be made to relevant EPA internal policy and procedure documents to support monitoring and compliance processes. As the obligations that will be contained in the OMLI are largely rehousing existing requirements, no substantive changes are expected.

9.1.2 When will it be done?

The proposed OMLI will be made as soon as practicable following the expiry of the Transitional Regulations. . Public consultation on the proposed OMLI and Regulatory Impact Statement will occur for, at minimum, 28 days and feedback to consultation submissions will be provided upon making of the OMLI.

9.1.3 Who will do it?

The EPA is primarily responsible for implementing the proposed OMLI and updating any changes to procedure documents to support monitoring and compliance processes.

9.1.4 Who will monitor implementation, enforcement and compliance?

Enforcement steps will be taken in line with EPA's Compliance and Enforcement policy.[44] There will be an initial focus on understanding and supporting consistency across council and catchment areas in line with EPA's regulatory approach.

Areas where EPA may initially focus compliance include:

- For OWMS plans – councils with unsewered rural areas. These areas (in particular those with high rainfall and smaller lots) present challenges and may impact sensitive water supply catchment areas. Water quality in surrounding areas, topography and other factors would also be considered to determine most at risk locations.
- For Stormwater Plans – metropolitan areas with increased development.
- For LWMP Plans – rural catchment areas with identified challenges. For these areas, managing salinity will be a focus.

9.2 Evaluation

In order to ensure the proposed OMLI is working effectively, EPA evaluation may take place through monitoring of compliance and assessing the level of responsible authorities' understanding of obligations.

Responsible authorities must understand their obligations under the OMLI, and actively minimise the risk to human health and the environment. Their understanding of this will be evaluated through:

- publicly reported evaluations of management plans produced in accordance with the OMLI
- EPA's engagement with stakeholders to gauge understanding.

EPA engagement with stakeholders will occur through sector reference groups, direct engagement with local councils, and steering and oversight committees with DELWP and the Municipal Association of Victoria.

In addition to specific evaluation of the OMLI, the EPA will continue to monitor and consider compliance trends as part of its routine compliance and enforcement regime. This routine monitoring will be extended to including monitoring of compliance with the OMLI. Long-term trends in issuing compliance advice and incident reports would be expected to decrease with proactive implementation of required management plans.

As an OMLI does not have a specific expiry date, EPA may consider undertaking a review of the effectiveness of the OMLI instrument three years post implementation. Such reviews are important to ensure that the requirements in an OMLI remain proportionate and necessary over time. They may include an assessment of the need for any adjustments to be made to the OMLI.

[44] EPA publication 1798.2 https://www.epa.vic.gov.au/about-epa/publications/1798-2.

Appendix: Stakeholder consultation

EPA and DELWP ran an introductory webinar and workshops with a widely circulated invite to relevant stakeholders across February-March 2022 (with 100+ participants).

Further extensive stakeholder consultation was undertaken by Deloitte in the development of this RIS. This consultation was undertaken from June-July 2022, and comprised a survey and a series of online stakeholder workshops.

A survey was distributed to duty holders and was aimed at confirming understanding of whether clauses would be covered by other instruments in the base case, as well as seeking views on the potential impacts of different options for rehousing the saved clauses in another instrument.

Five workshops were held to further confirm survey results and gain a more detailed understanding of the impacts duty holders would experience associated with each option being explored.

In addition to relevant EPA and DELWP staff, stakeholder attendance at these workshops in July 2022 included:

Workshop theme	**Representatives (total organisations)**
Urban stormwater clauses	Councils (8), water corporations (3), CMAs (1), MAV (1)
Domestic wastewater clauses	Councils (12), water corporations (2)
Salinity and irrigation management clauses	Water corporations (5), CMAs (3), Agriculture Victoria (1)
Pollutant Load targets (split into two workshops)	Councils (2), water corporations (2), CMAs (4)

The views of stakeholders collected during consultation have been used to inform the analysis in this RIS.

Limitation of our work

General use restriction

This report is prepared solely for the internal use of the Environment Protection Authority Victoria. This report is not intended to and should not be used or relied upon by anyone else and we accept no duty of care to any other person or entity. The report has been prepared for the purpose preparing a RIS for the SEPP (Waters) saved clauses. You should not refer to or use our name or the advice for any other purpose.

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