

# Background report for the Adelaide Coastal Water Quality Improvement Plan

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## Report 7      Statutory capacity to implement the Adelaide Coastal Water Quality Improvement Plan

Note that this report was prepared as information provided to the Australian Government to meet reporting requirements on the development of the draft Adelaide Coastal Water Quality Improvement Plan (ACWQIP). The content of this report was developed in 2008 and does not necessarily reflect current views of the South Australian Government or current government policy.

## Background

The Adelaide Coastal Water Quality Improvement Plan (ACWQIP) has been developed in response to community concerns about the poor water quality of Adelaide's metropolitan coast and the impaired ecosystem that has resulted from this.

A major study, the Adelaide Coastal Waters Study (ACWS), has provided considerable scientific information upon which to devise a water quality improvement plan. Input by Adelaide's community has provided the targets consistent with those delivered through the ACWS and confirmed specific targets for nearshore water quality through the development of environmental values, water quality objectives and river flow objectives.

These lines of information have enabled targets to be derived for water quality managers to aim for—both over the life of the current ACWQIP and in the long term—to achieve and maintain a water quality for Adelaide's coast that is consistent with community expectations.

These targets are provided in Chapter 6 of the ACWQIP Part A.

The ACWQIP deals with discharges to Adelaide's coast from both point sources (wastewater treatment plants and Penrice Soda Products) and diffuse sources—those generated through stormwater and disturbances along the coast from dredging and other factors.

While much is currently being undertaken, achieving and maintaining appropriate water quality along Adelaide's coast is a long-term task. Work to improve discharge quality, or minimise discharge flows needs to be undertaken where the environmental, economic and social needs of Adelaide's community are all considered.

Those charged with the management of discharges operate within a legislative framework. The following describes this legislative framework, along with the way that it affects the management of Adelaide's coastal water quality.

## Relevant legislation

Legislation covers many aspects of businesses and individuals that interact with Adelaide's coast. Most of this has little or no direct bearing on Adelaide's water quality or related management and an exhaustive list of this is not provided. All South Australian legislation can be accessed online at: <[www.legislation.sa.gov.au/index.aspx](http://www.legislation.sa.gov.au/index.aspx)>.

The following legislation has aims that are consistent with the outcomes sought for the Adelaide's coast:

- *Environment Protection Act 1993*
- *Development Act 1993*
- *Local Government Act 1999*
- *Coast Protection Act 1999*
- *Natural Resources Management Act 2004*
- *Adelaide Dolphin Sanctuary Act 2005*
- *Stormwater Management Act 2007*.

These are listed with their full titles and objects, and a summary of their statutory capacities with respect to the ACWQIP.

### Environment Protection Act 1993

An Act to provide for the protection of the environment; to establish the EPA and define its functions and powers; and for other purposes.

## Objects

(1) *The objects of this Act are—*

(a) *to promote the following principles (principles of ecologically sustainable development):*

*(i) that the use, development and protection of the environment should be managed in a way, and at a rate, that will enable people and communities to provide for their economic, social and physical well-being and for their health and safety while—*

*(A) sustaining the potential of natural and physical resources to meet the reasonably foreseeable needs of future generations; and*

*(B) safeguarding the life-supporting capacity of air, water, land and ecosystems; and*

*(C) avoiding, remedying or mitigating any adverse effects of activities on the environment;*

*(ii) that proper weight should be given to both long and short term economic, environmental, social and equity considerations in deciding all matters relating to environmental protection, restoration and enhancement; and*

(b) *to ensure that all reasonable and practicable measures are taken to protect, restore and enhance the quality of the environment having regard to the principles of ecologically sustainable development, and—*

*(i) to prevent, reduce, minimise and, where practicable, eliminate harm to the environment—*

*(A) by programmes to encourage and assist action by industry, public authorities and the community aimed at pollution prevention, clean production and technologies, reduction, re-use and recycling of material and natural resources, and waste minimisation; and*

*(B) by regulating, in an integrated, systematic and cost-effective manner—*

*• activities, products, substances and services that, through pollution or production of waste, cause environmental harm; and*  
*• the generation, storage, transportation, treatment and disposal of waste; and*

*(ii) to co-ordinate activities, policies and programmes necessary to prevent, reduce, minimise or eliminate environmental harm and ensure effective environmental protection, restoration and enhancement; and*

*(iii) to facilitate the adoption and implementation of environment protection measures agreed on by the State under intergovernmental arrangements for greater uniformity and effectiveness in environment protection; and*

*(iv) to apply a precautionary approach to the assessment of risk of environmental harm and ensure that all aspects of environmental quality affected by pollution and waste (including ecosystem sustainability and valued environmental attributes) are considered in decisions relating to the environment; and*

*(v) to require persons engaged in polluting activities to progressively make environmental improvements (including reduction of pollution and waste at source) as such improvements become practicable through technological and economic developments; and*

*(vi) to allocate the costs of environment protection and restoration equitably and in a manner that encourages responsible use of, and reduced harm to, the environment with polluters bearing an appropriate share of the costs that arise from their activities, products, substances and services; and*

*(vii) to provide for monitoring and reporting on environmental quality on a regular basis to ensure compliance with statutory requirements and the maintenance of a record of trends in environmental quality; and*

*(viii) to provide for reporting on the state of the environment on a periodic basis; and*

*(ix) to promote—*

*(A) industry and community education and involvement in decisions about the protection, restoration and enhancement of the environment; and*

*(B) disclosure of, and public access to, information about significant environmental incidents and hazards.*

*The Minister, the Authority and all other administering agencies and persons involved in the administration of this Act must have regard to, and seek to further, the objects of this Act.*

This Act is most relevant to the management of the two major dischargers of nutrients to the waterways, and possibly the Department of Environment and Natural Resources (DENR) in its role managing the sand dredging of Adelaide's beaches. These dischargers are subject to environmental authorisations under the Environment Protection Act 1993 (EP Act) which allows the EPA to direct aspects of their day to-day activities, consistent with the objects of the EP Act. Provisions of this Act have also been used to:

- Develop and enforce environment improvement programs with SA Water which have seen the closing down of the Port Adelaide wastewater treatment plant, the upgrade of the Bolivar wastewater treatment plant and the resulting nutrient reduction of over 1,000 tonnes per year from these sources.
- Develop and enforce an environment improvement program by Penrice Soda Products to remove the solids from their discharge in 2002 and more recently, to enforce their agreed nutrient discharge reduction from 820 tonnes to 575 tonnes by 2010.

The EP Act allows the EPA to exert considerable control over the activities of the holder of an environmental authorisation. However, the objects of the EP Act need to be considered here as they require the EPA:

*(b) to ensure that all reasonable and practicable measures are taken to protect, restore and enhance the quality of the environment having regard to the principles of ecologically sustainable development, and*

*(i) to prevent, reduce, minimise and, where practicable, eliminate harm to the environment—*

*(A) by programmes to encourage and assist action by industry, public authorities and the community aimed at pollution prevention, clean production and technologies, reduction, re-use and recycling of material and natural resources, and waste minimisation; and*

*(B) by regulating, in an integrated, systematic and cost-effective manner—activities, products, substances and services that, through pollution or production of waste, cause environmental harm; and the generation, storage, transportation, treatment and disposal of waste.*

Directions that the EPA gives, and agreements that it enters into, must be 'reasonable and practicable'. The ACWQIP will provide advice to the EPA on the nutrient discharge goal for SA Water and Penrice, so that the it can ensure that the authorisations issued to these organisations set conditions that keep them reducing their discharges to meet these targets as soon as possible.

An example of this is the approach for Penrice Soda Products. Negotiations with Penrice suggest that it is reasonable and practicable for the nitrogen in their discharge to be reduced to 575 tonnes per year by 2010. While Penrice will make efforts to further reduce their discharge to 250 tonnes per year by 2015, the EPA is not yet confident that this is practically achievable. This information will be continually reassessed and further environment improvement programs will be negotiated with Penrice to further reduce their nitrogen discharge. This process will continue until Penrice's nitrogen discharge load is reduced to the level required to achieve the goal of the ACWQIP.

In this way the EP Act allows the EPA to continually 'lock in' interim goals for improvement under the guidance of overarching strategies such as the ACWQIP.

## **General environmental duty**

Section 25 of the EP Act:

*(1) A person must not undertake an activity that pollutes, or might pollute, the environment unless the person takes all reasonable and practicable measures to prevent or minimise any resulting environmental harm.*

It places an obligation on all people not to pollute. Enforcement of this obligation is through Environment Protection Orders. In addition to EPA authorised officers, other government officers and an increasing number of local council officers are becoming authorised officers under the EP Act, enabling them to initiate action to prevent pollution.

## **Development Act 1993**

An Act to provide for planning and to regulate development in the state; to regulate the use and management of land and buildings, and the design and construction of buildings; to make provision for the maintenance and conservation of land and buildings where appropriate; and for other purposes.

### **Objects**

*The objects of this Act are to provide for proper, orderly and efficient planning and development in the State and, for that purpose—*

*(a) to establish objectives and principles of planning and development; and*

*(b) to establish a system of strategic planning governing development; and*

*(c) to provide for the creation of Development Plans—*

*(i) to enhance the proper conservation, use, development and management of land and buildings; and*

*(ii) to facilitate sustainable development and the protection of the environment; and*

*(iia) to encourage the management of the natural and constructed environment in an ecologically sustainable manner; and*

*(iii) to advance the social and economic interests and goals of the community; and*

*(d) to establish and enforce cost-effective technical requirements, compatible with the public interest, to which building development must conform; and*

*(e) to provide for appropriate public participation in the planning process and the assessment of development proposals; and*

*(f) to enhance the amenity of buildings and provide for the safety and health of people who use buildings; and*

*(g) to facilitate—*

*(i) the adoption and efficient application of national uniform building standards; and*

*(ii) national uniform accreditation of buildings products, construction methods, building designs, building components and building systems.*

This Act allows the regulation of new development and provides for consultation on proposed developments by affected stakeholders, including other statutory authorities. The Development Assessment Commission oversees the administration of the Development Act. Activities that have the potential to cause environmental harm are specified in both the Development Act and the EP Act. The EPA has the power under specific circumstances to direct the

Development Assessment Commission to refuse consent for a proposed development or to add conditions to ensure that the likelihood of a proposal causing harm to the environment is minimised.

The referral arrangement between the Development Act and the EP Act operates in an effective manner to reduce potential pollution in the catchment for the Adelaide's coast. This ensures that the potential for activities to pollute stormwater, or generate a wastewater discharge to the waterway is minimised both during development and during its operation.

### **Local Government Act 1999**

An Act to provide for local government and for other purposes.

#### **Objectives**

*The objects of this Act are—*

*(a) to promote the continuance of a system of local government in South Australia under which elected local government bodies are constituted for the better governance of the State in a manner that is consistent with the provisions of Part 2A of the Constitution Act 1934; and*

*(b) to encourage the participation of local communities in the affairs of local government and to provide local communities, through their councils, with sufficient autonomy to manage the local affairs of their area; and*

*(c) to provide a legislative framework for an effective, efficient and accountable system of local government in South Australia; and*

*(d) to ensure the accountability of councils to the community; and*

*(e) to improve the capacity of the local government system to plan for, develop and manage local areas and to enhance the capacity of councils to act within their local areas as participants in the Australian system of representative government; and*

*(f) to encourage local government to provide appropriate services and facilities to meet the present and future needs of local communities; and*

*(g) to encourage local government to manage the natural and built environment in an ecologically sustainable manner; and*

*(h) to define the powers of local government and the roles of council members and officials.*

The Local Government Act provides for local government authorities and includes the object of encouraging local government to manage the natural and built environment in an ecologically sustainable manner.

Local councils have the statutory ability to ensure that small business and individuals plan their activities and manage them in a manner that minimises harm to the Adelaide's coastal waters. Their officers are active in their local area and many are also authorised under the EP Act and act to enforce it for their local area. Local councils also run education programs to ensure that the resources needed to minimise discharges to Adelaide's coastal waters are available to businesses and individuals in their area.

### **Natural Resources Management Act 2004**

An Act to promote sustainable and integrated management of the state's natural resources; to make provision for the protection of the state's natural resources; to repeal the *Animal and Plant Control (Agricultural Protection and Other Purposes) Act 1986*, *Soil Conservation and Land Care Act 1989* and *Water Resources Act 1997*; and for other purposes.

## Objects

(1) *The objects of this Act include assisting in the achievement of ecologically sustainable development in the State by establishing an integrated scheme to promote the use and management of natural resources in a manner that—*

- (a) recognises and protects the intrinsic values of natural resources; and*
- (b) seeks to protect biological diversity and, insofar as is reasonably practicable, to support and encourage the restoration or rehabilitation of ecological systems and processes that have been lost or degraded; and*
- (c) provides for the protection and management of catchments and the sustainable use of land and water resources and, insofar as is reasonably practicable, seeks to enhance and restore or rehabilitate land and water resources that have been degraded; and*
- (d) seeks to support sustainable primary and other economic production systems with particular reference to the value of agriculture and mining activities to the economy of the State; and*
- (e) provides for the prevention or control of impacts caused by pest species of animals and plants that may have an adverse effect on the environment, primary production or the community; and*
- (f) promotes educational initiatives and provides support mechanisms to increase the capacity of people to be involved in the management of natural resources.*

(2) *For the purposes of subsection (1), ecologically sustainable development comprises the use, conservation, development and enhancement of natural resources in a way, and at a rate, that will enable people and communities to provide for their economic, social and physical wellbeing while—*

- (a) sustaining the potential of natural resources to meet the reasonably foreseeable needs of future generations; and*
- (b) safeguarding the life-supporting capacities of natural resources; and*
- (c) avoiding, remedying or mitigating any adverse effects of activities on natural resources.*

(3) *The following principles should be taken into account in connection with achieving ecologically sustainable development for the purposes of this Act:*

- (a) decision-making processes should effectively integrate both long term and short term economic, environmental, social and equity considerations;*
- (b) if there are threats of serious or irreversible damage to natural resources, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation;*
- (c) decision-making processes should be guided by the need to evaluate carefully the risks of any situation or proposal that may adversely affect the environment and to avoid, wherever practicable, causing any serious or irreversible damage to the environment;*
- (d) the present generation should ensure that the health, diversity and productivity of the natural environment is maintained or enhanced for the benefit of future generations;*
- (e) a consideration should be the conservation of biological diversity and ecological integrity;*
- (f) environmental factors should be taken into account when valuing or assessing assets or services, costs associated with protecting or restoring the natural environment should be allocated or shared equitably and in a manner that encourages the responsible use of natural resources, and people who obtain benefits from the*

*natural environment, or who adversely affect or consume natural resources, should bear an appropriate share of the costs that flow from their activities;*

*(g) if the management of natural resources requires the taking of remedial action, the first step should, insofar as is reasonably practicable and appropriate, be to encourage those responsible to take such action before resorting to more formal processes and procedures;*

*(h) consideration should be given to Aboriginal heritage, and to the interests of the traditional owners of any land or other natural resources;*

*(i) consideration should be given to other heritage issues, and to the interests of the community in relation to conserving heritage items and places;*

*(j) the involvement of the public in providing information and contributing to processes that improve decision-making should be encouraged;*

*(k) the responsibility to achieve ecologically sustainable development should be seen as a shared responsibility between the public sector, the private sector, and the community more generally; the local government sector is to be recognised as a key participant in natural resource management, especially on account of its close connections to the community and its role in regional and local planning.*

The Natural Resources Management Act (NRM Act) provides for the integration of South Australia's natural resources, including water resources. This enables the control of flows from the Adelaide's catchment, but also the ability to specify outcomes for water quality from the catchment.

The NRM Act provides for the protection and management of catchments and the sustainable use of land and water resources and, insofar as is reasonably practicable, seeks to enhance and restore or rehabilitate land and water resources that have been degraded. This includes responsibility for the effect that water discharged from the Adelaide's catchments has on its water quality.

The local government sector is recognised under the NRM Act as a key participant in natural resource management, especially on account of its close connections to the community and its role in regional and local planning.

While working with local government and other government and non-government authorities, the NRM Act enables the local NRM Board, the Adelaide and Mount Lofty Ranges Natural Resource Management (AMLR NRM) Board to plan for positive outcomes for the Adelaide's coastal waters.

### **Adelaide Dolphin Sanctuary Act 2005**

The Adelaide Dolphin Sanctuary Act (ADS Act) establishes a sanctuary to protect the dolphin population of the Port Adelaide River estuary and Barker Inlet and its natural habitat; to provide for the protection and enhancement of the Port Adelaide River estuary and Barker Inlet.

The ADS Act allows the DENR to directly intervene to protect dolphins from harm, but also requires that the objects of other Acts that enable management of the Port waterways include the objects of the ADS Act.

These acts are:

- Aquaculture Act 2001
- Coast Protection Act 1972
- Development Act 1993
- Environment Protection Act 1993
- Fisheries Act 1982



- Harbors and Navigation Act 1993
- Historic Shipwrecks Act 1981
- Mining Act 1971
- National Parks and Wildlife Act 1972
- Native Vegetation Act 1991
- Petroleum Act 2000.

### **Objects**

*The objects of this Act are—*

*(a) to protect the dolphin population of the Port Adelaide River estuary and Barker Inlet; and*

*(b) to protect the natural habitat of that population.*

*An Act to promote sustainable and integrated management of the State's natural resources; to make provision for the protection of the State's natural resources; to repeal the Animal and Plant Control (Agricultural Protection and Other Purposes) Act 1986, the Soil Conservation and Land Care Act 1989 and the Water Resources Act 1997; and for other purposes.*

The development of the Port Waterways WQIP was undertaken with considerable input from the Adelaide Dolphin Sanctuary, which in turn takes much of the management of the water quality of the sanctuary from the Port Waterways WQIP.

### **Aspects of the ACWQIP where statutory power does not exist**

The reduction of discharges to Adelaide's coastal waters will require the increase in the volume of wastewater and stormwater. The ACWQIP looks to the increase in the development of water reuse to provide load reductions. However, no legislation exists to force the reuse of wastewater.

In this case, the reuse of wastewater needs to be supported by stakeholder interest, and the need for additional supplies of water for metropolitan and near-metropolitan Adelaide.

A cooperative approach between stakeholders is needed to ensure that a viable strategy for water reuse is developed.

### **Relevant legislative arrangements should a market based instrument be further developed (information taken from report provided in Appendix 7 regarding potential for use of market based instruments)**

This section examines the current legislative and institutional arrangements and policy settings relevant to the management of stormwater in SA. It also provides a preliminary assessment of the potential to implement the short-listed market based instruments (MBIs) to address the impacts of stormwater on coastal water quality in Adelaide.

#### **1 Legislative arrangements for stormwater management in South Australia**

Local government has had the primary responsibility for provision and maintenance of local stormwater infrastructure in South Australia in the past. The state government has enacted legislation providing for construction and funding of specific sections of the metropolitan drainage system. Funding for local stormwater drainage has also been a local government responsibility, with some access to state government subsidies since the late 1960s (where a catchment exceeds 40 hectares under the Catchment Management Subsidy Scheme).

Stormwater quality in South Australia is affected by various laws including the Environment Protection Act 1993, Environment Protection (Water Quality) Policy 2003, Development Act 1993, Public and Environmental Health Act 1987 and Waterworks Act 1932. The Natural Resources Management Act 2004 provides for NRM Boards to play a role in

reducing stormwater pollution, with some collecting a levy for the purpose of promoting improvements in stormwater quality.

Recent state/local government agreements and resulting amendments to the Local Government Act 1999 have provided a framework for planning and funding stormwater management.

In 2005 the *Urban Stormwater Management Policy for South Australia* was developed setting out a range of strategies to improve stormwater management relating to the roles and responsibilities of state and local government. The strategies cover the key areas of risk minimisation, governance, planning, environmental sustainability, and funding. One of the key policy goals is to reduce the environmental impacts of stormwater as a conveyor of pollution.

The policy required the state to collaborate with local government in developing a legally binding agreement for the future management of stormwater. In 2006 an Agreement on Stormwater Management was signed by the state government and the Local Government Association, providing improved finance and governance arrangements for stormwater management throughout South Australia. The agreement provided for the creation of a Stormwater Management Authority (SMA) with representation from state and local government to implement the agreement.

The new bilateral agreement included new arrangements for the state support for funding of stormwater (in place of the Catchment Management Subsidy scheme). Amendments to the Local Government Act by the *Local Government (Stormwater Management) Amendment Act 2007* implemented the agreement, including by establishing the SMA on 1 July 2007.

A key element of the new governance arrangements is the development of stormwater management plans for catchments to ensure stormwater management is addressed on a total catchment basis. Steering committees with representatives from constituent councils and representatives from the NRM Board and other state government agencies will oversee the preparation of the plans. The plans require approval by the SMA.

Funding arrangements for any proposed works and their maintenance are to be decided by the local councils within the catchment. There are principles for cost-sharing that may be used by councils in the absence of inter-council agreement. The SMA may become involved in resolving cost sharing by councils if they are unable to agree.

Applications may be made to the SMA for funding towards the production of stormwater management plans and stormwater infrastructure works. An applicant may be a local council, group of councils, a statutory drainage authority or any other person, company or body. To be eligible for funding, projects must demonstrate:

a significant flood mitigation component as well as addressing, wherever practicable, value adding opportunities such as stormwater reuse and water quality enhancements.

The Urban Stormwater Management Policy also requires the EPA to develop stormwater quality targets on a catchment-by-catchment basis for reducing the environmental impact on watercourses and other receiving waters to inform the stormwater management planning process by local councils.

## **2 Legislative scope for implementing short-listed instruments**

### **a Stormwater quality charges**

The EPA's existing ability to levy stormwater quality charges by way of differentiated licence fee on licensed activities does not meet the requirements of this mechanism as the mere ownership of land is not a licensed activity.

The Local Government Act allows local councils to impose a range of different rates on existing urban landholders, including 'service rates' for specified services. Service rates may be imposed only in respect of a service provided or made available by the council. The services in respect of which a service rate may be charged do not include stormwater management services.

Stormwater management could become a prescribed service by amendment of the *Local Government (General) Regulations 1999*. Incorporating pollution-related factors into calculating the rate (such as impervious area) would also require amendment to the Regulations. A risk in attempting to use a service rate as a stormwater pollution charge is the

possible argument that the service rate could not be hypothecated to general regional stormwater management activities provided outside of the council area.

The NRM Act allows NRM Boards to impose a levy based on land ownership. Such a levy is to be collected by local councils as if it were a rate under the Local Government Act. The levy, and hence the rate collected by councils, may be imposed by the Board on factors including landuse, land area and location. Factors which could be used as a better proxy for pollution (such as impervious area) could not be adopted without amendment of the NRM Act. The administrative burden involved in implementing ratings based on proportion of impervious area could be expected to be significant.

The levy imposed by an NRM Board is collected in order to fund the range of activities specified in the Board's NRM Plan, not just stormwater management. Accordingly, a levy collected through this mechanism would not be properly described as a stormwater pollution levy, and would not be able to be hypothecated solely for stormwater management. It would not be effective as a market based instrument as there could be no incentive for altering stormwater management practices.

NRM Boards are able to offer rebates on the landholder's levy through setting out either in the NRM Plan or Regulations under the NRM Act, management practices which are designed to conserve, protect, maintain or improve the quality or state of specified natural resources (for example stormwater quality) and providing that a person who has undertaken the practices may apply for a refund of the whole or part of a levy. The Act includes as examples of the type of management practice that may be specified, the establishment of, or participation in, a drainage scheme, the establishment or maintenance of infrastructure, or other initiatives.

Water supply charges are imposed by SA Water under the Waterworks Act on all rateable land—properties that are connected to the mains supply infrastructure or abut land on which the mains supply is located. Rates may be imposed for the right of supply, the water actually supplied, and the 'Save the River Murray' levy. An amendment of the Act would be required to impose a stormwater pollution charge as part of the water rates.

Without legislative change any attempt to impose a charge through water rates could be expected to be resisted due to the absence of a link with stormwater quality.

#### **b Subsidy program by competitive tender**

The SMA was established with a range of roles including administering the Stormwater Management Fund. The Fund is comprised of appropriations from Parliament, contributions received from NRM Boards, money received from the Local Government Disaster Fund, any other money paid to the Fund with the approval of the Minister or Treasurer, gifts, grants and bequests, income from investment of the Fund, and any money paid into the Fund under any other Act.

The Fund may be used for projects or measures relating to water quality or pollution abatement. The SMA would have the ability under the Local Government Act (Schedule 1A) to apply the Fund by inviting bids from landholders for conservation works on their properties. The 2005 Policy on funding arrangements indicate however that funding would be directed to activities identified in stormwater management plans rather than at the SMA's absolute discretion.

NRM Boards could also use their funds to subsidise stormwater management activities or works through competitive bidding.

#### **c Stormwater offset contribution scheme**

An offset contribution scheme would require the establishment of a liability to pay the contribution, and appropriate an entity to receive, hold and invest the contributions and to ensure that investments delivered intended benefits.

### **3 Liability to pay the offset contribution**

Liability would have to be established through legislation. Suitability of the different statutes depends mainly on their respective coverage (on whom the contribution could be imposed).

Legislation that could be considered for amendment to sustain an offset contribution are:

- Development Act—this Act could be amended to impose offset contributions (or the option of either an offset or offset contribution) on new developments. The legislation already provides for developers to be required to provide open space or car parking, or pay a contribution into a designated fund in lieu thereof. The Act could not be used to raise a contribution from existing landholders
- Local Government Act—amendment could allow an offset contribution to be imposed on existing landholders through the rating system. If the contribution were to be paid on to a third party to pool and invest the contributions (ie such as the SMA or an NRM Board), amendments would also need to specify this obligation. Resistance to such a proposal would be expected on the basis that local government rejects any perceived role as ‘tax collector’ for other (state) bodies
- NRM Act—amendment of this Act could allow an offset contribution to be imposed on existing landholders in addition to, or possibly as a separate component of, the existing levy. As presently, the levy would be collected through the local government rating system. Establishing a system which allowed a stormwater levy to be calculated on the basis of factors not presently available under the Local Government Act or NRM Act (namely, impervious area) would be expected to be complex and costly. Complexity and therefore cost would be greatly amplified if such a levy were to be collected as a ‘part’ of the existing levy, the other part of which is calculated on a different basis (in most cases, property value)
- Waterworks Act—amendment of this Act could allow an offset contribution to be imposed through the water rating system on existing landholders. Resistance may stem from the lack of linkage between water supply and stormwater drainage.

#### **4 Entity to receive, hold and invest contributions**

Funds raised through a stormwater offset contribution would need to be hypothecated for that purpose. An appropriate entity would need to be entitled to receive the contributions, hold them and invest them in offset activities. In South Australia, appropriate entities would be the SMA and NRM Boards. Both control statutory funds that would be appropriate to receive a stormwater offset contribution. Both have powers to spend money from the funds for the purposes of improving stormwater quality or manage stormwater quantity, enter contracts, and acquire, deal with and dispose of real and personal property.

The SMA has authority throughout the state, whereas each regional NRM Board operates predominantly within its region. However, the greater metropolitan Adelaide is under the jurisdiction of a single regional NRM Board, the Adelaide and Mount Lofty Ranges NRM Board.

Amendments required to establish the liability to pay would also need to establish the obligation on the collecting agency to pay the contributions to the managing entity. If the entity had other functions apart from stormwater management (such as the NRM Boards), amendments could also be made requiring the entity to keep and account for expenditure of the contribution separate from other funds.

#### **Summary**

The main statutory capacity to ensure the implementation of nutrient reductions of the ACWQIP rests with the EPA. It is well placed and resourced to enable the implementation to proceed—subject to the availability of cost-effective solutions.

The cooperative arrangements that exist legislatively between the Development Act, and Environment Protection Act enables the consideration of individual developments in Adelaide’s coastal waters catchment from planning through to operation. This is with a view to the ability of large areas of Adelaide’s coastal waters to regain their function as a viable seagrass habitat. Prevention of further deterioration of Adelaide’s coastal waters is well within the capacity of these Acts.

With the ability of the AMLR NRM Board to invest with local councils and other groups to protect and enhance the quality of water from Adelaide’s coastal waters catchment, including urban areas, the capacity exists for the ACWQIP to be implemented with respect to local discharges derived from the stormwater system.

A major part of the ACWQIP: reductions from the wastewater treatment plants through extra reuse cannot currently be managed via statutory means. Continued stakeholder support for an integrated reuse strategy for the Adelaide region is required to allow this increase in wastewater reuse to be achieved.