



# Memo

To: Chair, Board of Inquiry, NPS Freshwater      File ref: PD-WP-01-07-02  
From: Craig Mallett, Manager Natural Systems Policy      Date: 14 October 2009  
CC: Viv Smith  
Re: Request for information about the status of the 'preamble'

---

## **Purpose**

The Board of Inquiry (the Board) for the National Policy Statement for Freshwater Management (NPS) asked for an explanation of what 'status' the preamble had in the document. This memo is the Ministry for the Environment's response.

## **Background**

The Ministry for the Environment cannot give formal legal advice to the Board. If the Board considers that it would be helpful, the Ministry for the Environment (via the secretariat) could assist the Board to engage an independent legal expert to provide an opinion on the legal status of the preamble to the NPS.

We can, however, offer guidance in a very generic sense. The preamble was drafted on the understanding that, because it is not formally part of the NPS as dictated by statute, its legal status was minimal – other than being an additional piece of guidance to help clarify the government intention as reflected in the NPS. The preamble is possibly one of the more publicly accessible components of the NPS and was, accordingly, intended to provide some context to the objectives and policies of the NPS – to assist interpretation.

We had presumed that, in order to present the Minister with a coherent package, the Board would make consequential amendments to the preamble to maintain consistency with their recommendations on the statutory content of the NPS.

If the Board, however, recommends amending the objectives and policies of the NPS but chooses not to recommend amendments to the preamble to maintain consistency, and if the Minister accepts those recommendations, it is likely that the Minister would need to update the preamble to avoid confusion.