

DAMS SAFETY BILL 2015

Bill introduced on motion by Mr Anthony Roberts, read a first time and printed.

Second Reading

Mr ANTHONY ROBERTS (Lane Cove—Minister for Industry, Resources and Energy) [4.15 p.m.]: I move:

That this bill be now read a second time.

I introduce this bill on behalf of the Minister for Primary Industries, and Minister for Lands and Water in the other place. As the bill contains money provisions it must be introduced in the Legislative Assembly. Dams are the lifeline of rural and metropolitan New South Wales. They provide safe drinking water in our cities and towns, allow farmers to irrigate their paddocks and play a vital role in containing contaminated run-off from mining activities. The New South Wales Government is committed to the safety of dams and the safety of the people of New South Wales.

The Dams Safety Bill 2015 replaces the Dams Safety Act 1978. This bill will modernise the regulatory framework for dam safety in New South Wales and ensure that the Act reflects the outcomes of the review of the dams safety regime conducted in 2013. The bill establishes new objects that seek to balance the risks arising from dams, encourage the proper and efficient management of dam safety together with promoting greater transparency, and encourage the application of risk management and cost-benefit analysis in regulating dams. The Dams Safety Act 1978 constitutes the Dams Safety Committee and confers on the committee functions and powers to ensure the safety of prescribed dams in New South Wales. While the Act constitutes and sets down the functions and procedures of the Dams Safety Committee, the current standards and prescriptions are in the form of guidelines that sit outside the regulation. This is inconsistent with current best practice regulation.

Following a recommendation by the Commission of Audit, the New South Wales Government conducted an independent review of the Dams Safety Act and the Dams Safety Committee. The primary reason for this review was to address the Commission of Audit's finding that there are relatively high levels of spending on dam safety in New South Wales that are not commensurate with risk reduction. KPMG were engaged to conduct the independent review. In its report KPMG found evidence that the current approach may result in a disproportionate level of investment on infrastructure for limited safety gains. KPMG suggested that a regulatory approach where the regulator has appropriate independence and dam owners are more clearly responsible for ensuring and demonstrating compliance with safety standards could reduce compliance costs. It would also bring greater clarity to the respective roles and responsibilities of dam owners and government.

KPMG identified a number of weaknesses in the current approach, including a lack of clear objectives in the Act, resulting in a primary focus on engineering solutions to achieve public safety. They noted a lack of transparency for dam owners in regard to what they are required to do in terms of upgrading dam infrastructure to reduce the risk of dam failure beyond the "limit of tolerability". There appeared to be a limited focus on applying cost-benefit analysis to identify the most efficient dam safety risk reduction options. KPMG also noted that the dam safety regulator, being comprised, in part, of representatives of the same dam owners that it was regulating, was inconsistent with best practice and open to concerns regarding conflict of interest.

The current approach to dam safety does not clearly establish the point at which compliance has been reached and has contributed to a strong focus on engineering measures over alternative approaches to risk reduction. The lack of a clear minimum standard and the focus on engineering

solutions has, in some cases, resulted in large capital expenditures without appropriate consideration of whether alternative risk management methods may have achieved improved safety outcomes at a lower cost. The interagency Dams Safety Review Steering Committee observed that the Dams Safety Committee, despite being a regulatory authority, does not in practice establish clear standards against which dam owners can simply assess their compliance. They also observed that the Dams Safety Committee currently has only very limited enforcement powers.

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Community and stakeholder input was sought throughout the review. Workshops were held with large dam owners, relevant agencies and representative organisations. A community consultation process was also undertaken on the findings of the review during which 39 submissions were received. Overall, these submissions indicated broad support for the reform direction identified in the review. The review steering committee reviewed the results from the consultations and identified a number of reform proposals to give effect to many of the KPMG recommendations. The bill seeks to retain important elements of the current dam safety regime, to modernise and address gaps in the current legislation and provide a best practice framework for the ongoing regulation of dam safety in New South Wales. In so doing, the proposed reforms will achieve the desired public safety outcomes more efficiently.

I now outline the provisions of the bill: first, the proposed objects of the Act. The current Act has no objects, which the review found may have contributed to a lack of clear direction and a blurring of the functions of the Dams Safety Committee. Clause 3 sets out the proposed objects, which are centred on ensuring that the risks imposed by dams are appropriately and transparently managed by the regulator and by dam owners. They provide a definitive basis on which the proposed new regulator will operate. The bill introduces the process of declaring dams, which replaces the current process of prescribing dams. Under clause 5, Dams Safety NSW will declare a dam through a gazettal notice. The list of declared dams will also be available on the department's website, making it more readily accessible to the public. The regulations will prescribe the type, class and categories of the declared dams.

The Dams Safety Committee previously developed the criteria for prescribed dams outside the legislation; however, the list of prescribed dams is contained in schedule 1 to the current Act, creating inefficiencies when changes were required. Gazetting the declared dams as outlined in the bill should reduce this inefficiency. Those dams on the current prescribed list will be recognised as declared dams once the Act comes into effect. The Interim Dams Safety Advisory Committee will be tasked with developing the criteria for declaring dams; however, it is not anticipated that the criteria or number of dams that are to be regulated will differ markedly from what is currently in place. The bill replaces the "Dams Safety Committee" with "Dams Safety NSW", updating the name of the regulator, and marking the beginning of the reformed regulation.

As mentioned previously, the review found that the inclusion of dam owner representatives on the Dams Safety Committee was not in keeping with regulatory best practice, creating the risk of concerns regarding conflict of interest. Consequently, the bill proposes that Dams Safety NSW will be comprised of at least five members who collectively have professional expertise in: dam engineering; mine engineering; emergency management; dam operations and management; and best practice regulation, including cost-benefit analysis and business case development. It is intended that the new composition and the broad range of expertise of Dams Safety NSW will better equip the regulator to meet the objects of the Act and undertake all its required functions informed by a best practice and modern risk management approach. These functions are set out in clause 9 of the bill.

A key recommendation from the review was that the dam safety regulator should be responsible for monitoring compliance of dams with public safety standards and, while the regulator should have

powers to compel owners to comply with the standards, there should be no blurring of the fundamental legal responsibility of dam owners in the provision of public safety. It was further proposed that the regulator should have powers to enforce compliance with standards, but should not take a prescriptive approach in determining particular dam safety investment strategies that dam owners may choose to achieve compliance. Rather, dam owners should have flexibility to explore a broad array of options to deliver the required level of public safety and should apply a risk management framework and cost-benefit analysis to identify the most efficient dam safety risk reduction strategy. This concept lies at the heart of best practice regulation and paves the way for effective and efficient risk reduction solutions for dams.

As a result, the functions of Dams Safety NSW include recommending to government the dams safety standard, or standards, that dam owners must meet. This differs from the current approach, which directly references Australian National Committee on Large Dams [ANCOLD] guidelines. Under these guidelines dam owners are required to meet a defined minimum standard in relation to public safety risk, known as the "limit of tolerability". They are also expected to strive to achieve the largely undefined target of public safety risk being "as low as reasonably practicable". The current situation creates a lack of clarity for dam owners on whether they have met their statutory responsibilities, and it also means that changes to the ANCOLD guidelines, over which the New South Wales Government has no control, are translated into the New South Wales regulatory system without the filter of normal regulatory impact assessment processes. In forming recommendations regarding minimum public safety risk standards, Dams Safety NSW will take into consideration the relevant Australian and international standards and dam safety guidelines. Once established by regulation, the standards will be enforced by the regulator, which is consistent with the functions outlined in the bill. Dam owners will be required to demonstrate how they have complied with the standards on an annual basis.

Another key finding of the review was that the functions of the regulator need to extend beyond the physical safety of the dam wall to the way the dam is operated and managed, including emergency plans. In this regard, the Dams Safety Committee's current role in approving the operational and emergency management plans for dams is considered to be open to improvement. More rigour is required on the completion and review of these plans. It is therefore proposed that the regulations will specify the requirements for the plans. Dam owners will be required to submit plans that must meet these requirements and be updated on an annual basis. It is proposed that Dams Safety NSW will be a compliance-driven regulator with the onus on the dam owner to prove compliance and the regulator will have the power to take action to ensure that compliance is achieved.

Many council submissions indicated that they traditionally rely heavily on engineering expertise and information provided by the Dams Safety Committee, and argued for a future regulator to retain this role. While provision of general information on dam engineering and safety issues and information on what is required to meet regulatory requirements would be within scope for a regulatory authority, it is considered that a direct advisory role of the nature proposed would not be appropriate. Therefore, a specific function is proposed that Dams Safety NSW is to provide guidance to dam owners in complying with the Act, including guidance on applying risk management and the principles of cost-benefit analysis. It is proposed that one of the first tasks of the new regulator will be the development of an appropriate cost-benefit analysis framework and process to be incorporated into dam safety regulator guidelines. The analysis will be standardised in line with New South Wales Treasury requirements and guidance will be provided for dam owners on this process.

The proposed penalties in the bill have been significantly increased from those in the current Act, where the penalty for failure to comply is only 10 penalty units. This penalty is not considered commensurate with the potential consequences of dam failure—which, as members would be aware, can be catastrophic. The new penalties have been framed through consideration of the penalty regime for tier two offences under the Water Management Act, and are within the range of dam safety

non-compliance penalties in the Australian Capital Territory and Queensland.

As I mentioned previously, a key function of Dams Safety NSW will be to prescribe dam safety standards. The provisions in the bill acknowledge that the introduction and subsequent amendment of dam safety standards will have a significant impact on declared dam owners, so there is a specific requirement that consultation occur with those affected by the proposals. Further, the bill requires that Dams Safety NSW conduct a cost-benefit analysis on the proposed standards before they are enshrined in legislation. These amendments recognise the recommendations from KPMG, that the regulator should achieve high levels of public transparency with respect to the basis of its regulator standards and the roles of the dam owner versus government to ensure that the legal liability is clear and rests firmly with dam owners. KPMG also found that the regulator should consider the views of industry and stakeholders when making decisions on changing regulation and should advise industry and stakeholders once decisions have been made.

The bill provides that dam owners must submit operations and maintenance, and emergency plans in accordance with a more compliance-based regulatory model. Dams Safety NSW will have the power to audit plans, and this power will be enhanced by the emergency management and dam operations and management expertise that will be available through the membership of Dams Safety NSW. The bill enables compliance notices to be issued where Dams Safety NSW is of the opinion that an owner of a declared dam has not met the requirements in relation to the dam safety standards or dam operations and management, and emergency management plans.

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These notices provide a useful mechanism by which Dams Safety NSW can require dam owners to address the failure to comply. In addition, Dams Safety NSW will also have the power to undertake an action specified in the compliance notice, if the owner has failed to take action, and to recover any costs from the owner.

The bill proposes that Dams Safety NSW will have the power to order a person to do such things that are necessary to ensure the safety of a dam, when the safety of the dam is in question. Importantly, Dams Safety NSW also has the power to issue stop work directions where Dams Safety is of the opinion that anything being done or proposed to be done may endanger the safety of the dam. These two powers are significant but equip the regulator with the means to properly ensure the safety of declared dams. The bill recognises that there is a continuing need for emergency powers in situations where there is an immediate threat to public health or public safety or in situations where a dam has collapsed or is liable to collapse.

The Government has undertaken an extensive process of consultation on the proposed reforms with dam owners and the community. The Government is committed to further consultation with affected owners during the implementation of the Act. In summary, this bill introduces important reforms to improve transparency in the regulation of dams safety in New South Wales and ensures that the regulator is properly equipped to enforce the new safety standards. Not only does the bill provide for clear safety standards for dams, it will provide dam owners with better flexibility in how they achieve it. The New South Wales Liberal-Nationals Government's number one objective remains protecting the community from the risk of dam failure. In commending this bill to the House I acknowledge and pay tribute to the Minister for his fine work in this area. It is work that is long overdue and it is to his great credit that it is before this House. I commend the bill to the House.

Debate adjourned on motion by the Hon. Clayton Barr and set down as an order of the day for a future day.