



New South Wales

Dams Safety Bill 2015

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are as follows:

- (a) to ensure that any risks that may arise in relation to dams (including any risks to public safety and to environmental and economic assets) are of a level that is acceptable to the community,
- (b) to promote transparency in regulating dams safety,
- (c) to encourage proper and efficient management in matters relating to dams safety,
- (d) to encourage the application of risk management and the principles of cost benefit analysis in relation to dams safety.

The Bill constitutes Dams Safety NSW as a continuation of the Dams Safety Committee constituted under the *Dams Safety Act 1978*. That Act will be repealed by the proposed Act.

Outline of provisions

Part 1 Preliminary

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation, except for a provision establishing the Interim Dams Safety Advisory Committee which will commence on the date of assent to the proposed Act.

Clause 3 specifies the objects of the proposed Act, which are listed in the above Overview. In exercising its functions, Dams Safety NSW is to have regard to the objects of the proposed Act.

Clause 4 defines words and phrases used in the proposed Act.

Clause 5 provides:

- (a) for Dams Safety NSW, by order published in the Gazette, to declare a dam or proposed dam to be a *declared dam* for the purposes of the proposed Act, but only if the regulations prescribe it as a type or class of dam that can be so declared, and
- (b) for the regulations to provide for dams to be classified into different categories for the purposes of the proposed Act (including the dams safety standards).

Part 2 Dams Safety NSW

Clause 6 constitutes Dams Safety NSW as a body corporate and provides that it is a NSW Government agency (which has the effect of conferring the status, privileges and immunities of the Crown on Dams Safety NSW).

Clause 7 provides that Dams Safety NSW:

- (a) consists of the Chief Executive Officer of Dams Safety NSW and at least 5 other persons appointed by the Minister (who are required to together have the professional expertise, qualifications or experience in dam engineering, mine engineering, emergency management, dam operations and management, public safety risk analysis and best practice regulation), and
- (b) will be independent of owners of declared dams who are ineligible to be members.

Clause 8 provides that Dams Safety NSW is, in the exercise of its functions, subject to the control and direction of the Minister (except in relation to the contents of any advice, report or recommendation made by it or any decision relating to proceedings for offences under the proposed Act).

Clause 9 specifies the functions of Dams Safety NSW, which include the following:

- (a) to provide advice or make recommendations to the Minister on the types and classes of dams that may be the subject of regulations prescribing dams as a class that can be declared a declared dam and on the development, implementation and modification of the dams safety standards,
- (b) to keep the owners of declared dams and the public informed about the dams safety standards and to regulate compliance by the owners of dams with those standards,
- (c) to provide information and other guidance concerning the operation of the proposed Act.

Clause 10 provides that the Chief Executive Officer, who is employed in the Department of Industry, Skills and Regional Development (*the Department*), is responsible for the day to day management of the operations of Dams Safety NSW in accordance with any directions of Dams Safety NSW.

Clause 11 provides that staff may be employed in the Public Service to enable Dams Safety NSW to exercise its functions.

Clause 12 provides that Dams Safety NSW may establish committees for the purposes of advising Dams Safety NSW in the exercise of its functions.

Clause 13 provides for Dams Safety NSW to delegate any of its functions (other than the powers to declare dams, to make recommendations on the dams safety standards or to delegate powers) to certain authorised persons or bodies and for those functions to be sub-delegated.

Part 3 Safety of declared dams

Division 1 Safety standards, reports and plans

Clause 14 provides for the regulations to prescribe standards for or with respect to any matter relating to the safety of declared dams (called *dams safety standards* in the proposed Act) and creates an offence if the owner of a declared dam fails to comply with the requirements of the dams safety standards that apply to the dam.

Clause 15 requires the owner of a declared dam to report to Dams Safety NSW on such matters in relation to the dam as Dams Safety NSW may require by notice in writing to the owner. The owner of a declared dam is also required to keep the records in relation to the safety of the dam that are required by the regulations.

Clause 16 requires the owner of a declared dam to prepare and implement an operations and maintenance plan for the declared dam.

Clause 17 requires the owner of a declared dam to prepare and implement an emergency plan for the declared dam.

Clause 18 provides for Dams Safety NSW to issue a compliance notice requiring the owner of a declared dam to take the action specified in the notice if the owner of the declared dam has failed to comply with any requirement under the proposed Division. The proposed section creates an obligation on the owner to comply with the requirements of the notice.

Division 2 Directions and emergency orders

Clause 19 provides for Dams Safety NSW to issue directions requiring actions to ensure the safety and proper maintenance of declared dams if of the opinion that a declared dam is unsafe or is in danger of becoming unsafe.

Clause 20 provides for Dams Safety NSW to issue a “stop work” direction, directing a person to cease or refrain from doing anything in relation to a declared dam or in the vicinity of a declared dam that may endanger the safety of the dam.

Clause 21 provides for Dams Safety NSW to make orders declaring that an emergency exists in respect of a declared dam if the declared dam has collapsed or failed in whole or in part or Dams Safety NSW is of the opinion that the declared dam is liable to collapse or failure in whole or in part or that an emergency exists that constitutes an immediate threat to public health or public safety or that is causing or is likely to cause damage to property. It also specifies the functions of Dams Safety NSW that may be exercised in connection with an emergency order.

Division 3 General

Clause 22 provides for appeals to the Land and Environment Court against any of the following:

- (a) a notice under proposed section 18 (Compliance notices),
- (b) a direction under proposed section 19 (Directions by Dams Safety NSW to ensure safety of declared dams),
- (c) a direction under proposed section 20 (“Stop work” directions).

Clause 23 contains provisions relating to directions given by Dams Safety NSW under proposed sections 19 and 20.

Part 4 Investigation and enforcement powers

Clause 24 specifies the purposes for which investigative powers under the proposed Part can be exercised, including for determining whether there has been compliance with or a contravention of the proposed Act or the regulations.

Clause 25 provides for the appointment and identification of authorised officers.

Clause 26 provides that an authorisation by Dams Safety NSW of a person as an authorised officer can be given generally, or subject to conditions, limitations or restrictions or only for limited purposes and may be limited by the instrument of appointment.

Clause 27 empowers authorised officers to enter premises. The power of entry is not exercisable in relation to any part of premises used only for residential purposes except with the permission of the occupier of the premises or under the authority conferred by a search warrant.

Clause 28 provides for an authorised officer to apply for a search warrant if the authorised officer has reasonable grounds for believing that the proposed Act or regulations has been or is being contravened.

Clause 29 empowers authorised officers to inspect and seize certain things.

Clause 30 empowers authorised officers to require information and records to be furnished.

Clause 31 provides that an authorised officer may require a person whom the authorised officer suspects on reasonable grounds to have knowledge of certain matters to answer questions relating to those matters.

Clause 32 empowers an authorised officer to require the owner of a declared dam to carry out surveys and assessments.

Clause 33 creates certain offences relating to the enforcement of the proposed Act.

Clause 34 contains provisions relating to requirements to provide information or records or answer questions.

Part 5 Formal inquiries into safety of declared dams

Clause 35 provides for the Minister to direct Dams Safety NSW to conduct an inquiry into any matter relating to the safety of a declared dam.

Clause 36 provides for the appointment of persons or bodies to conduct inquiries.

Clause 37 specifies that the procedure at an inquiry is to be determined by the person or body conducting it, subject to some limitations.

Clause 38 provides that inquiries are to be public.

Clause 39 requires reports of inquiries to be prepared and provided to the Minister in certain cases.

Part 6 Finance

Clause 40 establishes a Dams Safety Fund in the Special Deposits Account.

Clause 41 provides for the regulations to make provision for or with respect to the payment by owners of declared dams of a dams safety levy to meet the costs incurred in the administration of the proposed Act.

Part 7 Criminal proceedings and related matters

Clause 42 provides for proceedings for an offence under the proposed Act or the regulations to be dealt with summarily before the Local Court or the Land and Environment Court in its summary jurisdiction.

Clause 43 specifies that proceedings for an offence under the proposed Act or the regulations may be commenced not later than 12 months after the offence was alleged to have been committed or after Dams Safety NSW or the Secretary of the Department became aware of the alleged offence.

Clause 44 provides for continuing offences.

Clause 45 provides for directors to be personally liable for offences by corporations, in certain circumstances.

Clause 46 provides for certain offences under the proposed Act to be dealt with by penalty notice.

Part 8 Miscellaneous

Clause 47 provides that the proposed Act binds the Crown.

Clause 48 requires a consent authority, before granting development consent for carrying out mining operations in a notification area declared by Dams Safety NSW, to refer the application to Dams Safety NSW and to take into consideration any matter raised by Dams Safety NSW. Any such area may only be declared if it surrounds, or is in the vicinity of, a declared dam.

Clause 49 provides that Dams Safety NSW may enter into agency arrangements or agreements with public authorities.

Clause 50 limits personal liability for matters or things done or omitted to be done in good faith for the purposes of executing the proposed Act.

Clause 51 provides for the service of documents under the proposed Act.

Clause 52 provides for the service of documents on Dams Safety NSW under the proposed Act.

Clause 53 provides for the making of regulations for the purposes of the proposed Act.

Clause 54 repeals the *Dams Safety Act 1978*.

Clause 55 provides for the review of the proposed Act 5 years after its commencement.

Schedule 1 Provisions relating to members and procedure of Dams Safety NSW

Schedule 1 contains standard provisions relating to the members and procedure of Dams Safety NSW (including terms of office for appointed members and the requirement to disclose pecuniary interests at meetings).

Schedule 2 Savings, transitional and other provisions

Schedule 2 provides for the making of savings and transitional regulations consequent on the enactment of the proposed Act and any Act that amends it. It also makes provisions consequent on the enactment of the proposed Act, including continuing the Dams Safety Committee as Dams Safety NSW and establishing an interim advisory committee until such time as the provision constituting Dams Safety NSW is commenced.

Schedule 3 Amendment of other legislation

Amendment of Environmental Planning and Assessment Act 1979 No 203

Schedule 3.1 amends the *Environmental Planning and Assessment Act 1979* to insert a note referring to section 48 of the proposed Act which will require a consent authority, before granting development consent for carrying out mining operations in a notification area declared under that section, to refer the application to Dams Safety NSW.

Amendment of Land and Environment Court Act 1979 No 204

Schedule 3.2 amends the *Land and Environment Court Act 1979* to include appeals against compliance notices or directions to ensure the safety and other aspects of declared dams, or against “stop work” directions, under the proposed Act in Class 1 of the jurisdiction of the Land and Environment Court.

Amendment of Law Enforcement (Powers and Responsibilities) Act 2002 No 103

Schedule 3.3 amends the *Law Enforcement (Powers and Responsibilities) Act 2002* to provide that the provisions of that Act applying to search warrants will extend to search warrants issued under the proposed Act.

Amendment of Local Government Act 1993 No 30

Schedule 3.4 [1] amends the *Local Government Act 1993* to remove the requirement that a local council must have the approval of the Minister for Primary Industries to construct or extend a dam for the impounding or diversion of water for public use or any associated works or to construct or extend flood retarding basins. The construction or use by a local council of water supply works or flood works requires approval under the *Water Management Act 2000* and **Schedule 3.4 [2]** inserts a note referring to that requirement.

Schedule 3.4 [3] removes the power of the Minister for Primary Industries to direct a local council to take measures to ensure the proper safety, maintenance and working of dams for the impounding or diversion of water for public use or any associated works. Dams Safety NSW will, under the proposed Act, be able to give such a direction to a local council (as the owner of a declared dam) and **Schedule 3.4 [4]** inserts a note referring to that power.

Schedule 3.4 [5] provides that the Minister for Primary Industries cannot give a direction to a local council to take measures with respect to a dam during an emergency. Dams Safety NSW will, under the proposed Act, be able to give such a direction to a local council (as the owner of a declared dam) to take measures with respect to the dam during the period that an emergency order is in force and the amendment also inserts a note referring to that power.

Amendment of Local Government (General) Regulation 2005

Schedule 3.5 amends the *Local Government (General) Regulation 2005* as a consequence of the amendment made by Schedule 3.4 [1].

Amendment of Mining Act 1992 No 29

The amendments made by **Schedule 3.6** remove existing notification and consultation requirements relating to mining operations and the granting of mining leases in notification areas declared by the Dams Safety Committee under the *Mining Act 1992*. These requirements will be replaced by the provision to be inserted into the proposed Act that will require a consent authority, before granting development consent for carrying out mining operations in a notification area declared under that provision, to refer the application to Dams Safety NSW and to take into consideration matters raised by Dams Safety NSW.

Amendment of Mining Regulation 2010

Schedule 3.7 replaces a reference to the Dams Safety Committee in a provision relating to the use of certain information and protected documents under the *Mining Act 1992* so that the provision refers instead to Dams Safety NSW.

Amendment of Public Finance and Audit Act 1983 No 152

Schedule 3.8 amends the *Public Finance and Audit Act 1983* to provide for financial auditing and annual reporting in relation to Dams Safety NSW.

Amendment of Water Management Act 2000 No 92

Schedule 3.9 [1] inserts an object of ensuring that matters relating to safety are taken into consideration in granting approvals under the *Water Management Act 2000* for the construction and use of dams and other similar works.

Schedule 3.9 [2] requires Dams Safety NSW to be consulted before a water supply work approval is granted for the construction or use of a dam or other similar work. The Minister administering the *Water Management Act 2000* is required to take any submission by Dams Safety NSW into consideration before granting such a water supply work approval.

Schedule 3.9 [3] is a savings provision that preserves existing approvals under section 60 of the *Local Government Act 1993* in relation to dams constructed by local councils.

Amendment of Water Management (General) Regulation 2011

Schedule 3.10 ensures that Ministerial approval will be required under the *Water Management Act 2000* for declared dams.