
Dams Safety NSW

www.damsafety.nsw.gov.au



Regulatory Policy



Acknowledgement of Country

Dams Safety NSW acknowledges that it stands on Aboriginal land. We acknowledge the Traditional Custodians of the land and we show our respect for Elders past, present and emerging through thoughtful and collaborative approaches to our work, seeking to demonstrate our ongoing commitment to providing places in which Aboriginal people are included socially, culturally and economically.

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More information

Dams Safety NSW

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Table 1 – Document change history

Version	Approved date	Approved by	Notes
1	March 2020	Dams Safety NSW Board	Approved for publication at Dams Safety NSW meeting 25 February 2020
2	December 2021	Chief Executive Officer	Updated to reflect that the regulation is past the transition period and minor additions, clarifications, figure updates, and edits.
3	November 2022	Chief Executive Officer	Updated to reflect changes introduced by the 2022 Strategic Plan and other minor updates.

1. Introduction

Dams Safety NSW is an independent regulator established under the *Dams Safety Act 2015* (the Act). Dams Safety NSW ‘declares’ those dams which have a potential to threaten life or cause major infrastructure, environmental, health or social damage.

Once a dam is declared under the Act, the dam owner must comply with the requirements of the Act and the *Dams Safety Regulation 2019* (the Regulation).

In line with its legislative objectives, Dams Safety NSW will:

- seek to ensure that any risks to people and to environmental, economic and social assets from dams are of a level that is acceptable to the community
- formulate measures to ensure the safety of dams
- encourage the application of risk management and the principles of cost benefit analysis in relation to dams safety
- encourage proper and efficient management in matters relating to dams safety
- encourage voluntary compliance with the Act and Regulation
- take a risk-based and outcome-focused approach to regulation
- provide transparency in regulating dams safety and strive for maximum transparency on enforcement action decisions
- guide decision-making and regulatory action by officers through the adoption of a graduated and proportionate response to legislative non-compliance
- achieve best practice regulation of dams safety.

Dams Safety NSW seeks to maintain community confidence and trust as an effective, efficient, transparent, fair and ethical regulator. Application of this policy will guide Dams Safety NSW’s administration of the dams safety legislation to achieve those aims. It will enable Dams Safety NSW to better mitigate dams safety risks while delivering greater certainty for dam owners.

Dams Safety NSW expects declared dam owners to manage dams safety risks and recognises that the majority of dam owners will voluntarily meet their dams safety obligations. Dams Safety NSW will encourage and assist dam owners to manage dams safety risks through appropriate education, guidance and regulatory advice. However, when a dam safety risk is not appropriately addressed, Dams Safety NSW will not hesitate to direct a dam owner to take corrective or preventive action to address the risk. When serious instances of non-compliance are detected, Dams Safety NSW will take enforcement action, including prosecution, where appropriate.

1.1. Purpose of this document

The Act and Regulation commenced on 1 November 2019 with some requirements of the Regulation commencing on 1 November 2021, after a two-year transition period.

The Act and Regulation contain provisions and powers that allow Dams Safety NSW to regulate how declared dam owners are managing dam safety risks.

This policy sets out how Dams Safety NSW will administer the legislation through:

- declaring dams that meet the criteria in the Regulation
- educating dam owners on how to manage dams safety risks and comply with the requirements
- monitoring dams safety risks and
- responding to non-compliance with the legislation.

The policy adopts an outcomes-focused and risk-based regulatory approach that aligns with the requirements of the NSW Quality Regulatory Services Initiative (QRSI).

Provisions of the legislation:

Dams Safety NSW may:

- direct the owner of a dam or a proposed dam to conduct a preliminary assessment of the dam to determine whether it is of a class that may be a declared dam
- declare a dam and classify each declared dam in a consequence category
- direct a declared dam owner to address a safety risk if a declared dam is unsafe or is in danger of becoming unsafe
- direct a person to address a safety risk if anything done or proposed to be done by the person in relation to a declared dam may endanger the safety of the dam
- require a declared dam owner to report to Dams Safety NSW on such matters relating to the safety, operation or maintenance of a declared dam
- issue a ‘stop work’ direction or an emergency order
- investigate and enforce the Act and Regulation
- issue compliance notices
- conduct inquiries
- declare mining notification areas and raise matters regarding mining activities in the vicinity of declared dams
- enter into an arrangement with public authorities.

Declared dam owners must:

- regularly assess the consequence category of their dam using competent persons
- prepare and implement:
 - an operations and maintenance plan
 - an emergency plan
- establish and implement a dam safety management system (ensuring competent persons are used for preparing risk reports)
- report dams safety incidents to Dams Safety NSW
- carry out safety reviews (ensuring teams of competent persons are used for higher consequence dams)
- notify Dams Safety NSW of any significant proposed configuration change to the dam that may affect the safety of the dam (before any change is made)
- carry out emergency exercises
- ensure that work involving designing, constructing, commissioning or decommissioning of the dam or a major modification to the dam is only carried out in accordance with the risk management framework forming part of the dam safety management system for the dam, and by a person who is subject to a quality management system
- ensure that competent persons review designs for extreme and high consequence dams (including panels of competent persons for higher consequence category dams)
- provide an annual dams safety standard report to Dams Safety NSW.
- keep records.

2. Vision, mission, core purpose statement

Dams Safety NSW has established a vision which recognises the community's expectation for dam safety. Dams Safety NSW's mission is derived from the objects of the Act to complement Dams Safety NSW's vision.

2.1. Dams Safety NSW's vision and mission

Vision: Safe dams for NSW

Mission: To empower, support and regulate dam owners in managing dams safety risks for the NSW community.

2.2. Regulatory core purpose

Dams Safety NSW's core purpose statement amplifies the mission statement to define what Dams Safety NSW must achieve to satisfy the objects of the Act. The regulatory core purpose statement provides the basis for Dams Safety NSW's regulatory outcomes¹ documented in this policy.

Dams Safety NSW regulates effectively, efficiently, transparently and ethically so that dam owners apply proper and efficient risk and asset management principles to manage dams safety risks² to a level acceptable to the community.

3. Dams Safety NSW's regulatory principles

Dams Safety NSW's regulatory principles support and influence the way we engage with dam owners and the NSW community, perform our functions and exercise our legislative powers.

We apply the following principles which complement:

- the behaviours in our Strategic Plan:
 - we will be open and transparent
 - we will establish cooperative and collaborative relationships with stakeholders to promote trust
 - we will listen and be responsive to requests
 - we will publish our performance results in a timely manner
- the NSW Public Sector's core values of integrity, trust, service and accountability
- the NSW Public Sector's customer commitments:
 - easy to access
 - act with empathy
 - respect my time
 - explain what to expect
 - resolve the situation
 - engage the community

3.1. Committing to excellence and regulatory best practice

We are committed to maintaining the trust of the NSW community and fostering mutual respect between Dams Safety NSW and declared dam owners.

¹ The NSW QRISI assigns specific meanings to 'core purpose' and 'regulatory outcomes' - refer to '[Guidance for regulators to implement outcomes and risk-based regulation](#)' from NSW Productivity Commission, October 2016

² Risks to people, environmental, social and economic assets

We will seek to understand the expectations of the community through engagement on key issues. We will strive to meet those expectations through the application of this policy.

We want our stakeholders to appreciate the value we provide to the NSW community.

We want our highly engaged staff to inform and challenge dam owners to implement effective dam safety management systems to prevent dam failure.

We commit to a process of continual improvement so that our skills, systems, processes and equipment are better able to implement our regulatory approach efficiently and effectively.

We aspire to being a leading dam safety regulator so that others seek our contribution to improving their regulatory frameworks.

We will periodically review our regulatory approach, systems and activities, based on feedback from the community, whether we have achieved our outcomes, results of regulator maturity assessments, and to reflect advances in regulatory best practice.

3.2. Taking a risk-based and strategic approach to regulation and decision-making

We will employ a risk-based and intelligence-led approach to regulation to enable us to apply our finite resources to their greatest effect. We will focus where the consequences of dam failure are greatest and where the likelihood of non-compliance is highest.

Taking a risk-based approach to administering the legislation will result in dam owners not being inconvenienced by unnecessary regulatory activities.

3.3. Taking an outcomes-focused approach to regulation

We will clearly define regulatory outcomes to guide the application of regulatory activities to achieve our regulatory core purpose.

We will consider innovative approaches to achieve our regulatory core purpose and to solve regulatory problems.

We will invest in the development of our people so that we have the skills and the knowledge of the desired regulatory outcomes to be able to choose an appropriate and proportionate response to non-compliance.

We will regularly report on progress towards the achievement of regulatory outcomes.

3.4. Accepting accountability

We are accountable for our regulatory activities which means we are answerable for our decisions, including when we act on non-compliance, the type of action we take, or when we decide not to act.

We will take decisions within an effective corporate governance process to maintain objectivity, independence, and integrity. We will employ processes that provide procedural fairness and natural justice.

We will make decisions based on evidence and will keep appropriate records of our regulatory activities so that decisions can be readily accessed and scrutinised.

We commit to reporting on, and promoting awareness of, our regulatory activities and we will publish our performance results in a timely manner.

3.5. Being transparent

We will publish our policies and priorities and provide information that explains what the community and declared dam owners should expect from a regulatory process.

We will use plain language and be clear and concise in our communications.

We will engage the dam owner and wider community when formulating policies for administering the legislation

When we detect non-compliance, we will be clear about what is required to achieve compliance, when it is required and the consequences of continuing non-compliance.

3.6. Providing service

We will listen and be responsive to requests. We will respond to stakeholder enquiries about the dams safety regulatory regime in a timely and thorough way.

We will structure our website so that stakeholders are easily able to access our contact details, regulatory framework and guidance material.

We will conduct our regulatory activities to meet the expectations of the community and our quality objectives. Our professional standards in service delivery will reflect declared dam owners' expectations. This will mean that declared dam owners should expect that, where possible, we will minimise disruption to their operations and provide certainty about what to expect from us.

We will strive to meet or exceed our stakeholder expectations of professional service when we carry out dam declaration processes and when we provide advice on mining activities near dams.

We commit to timely compliance and enforcement action to maintain the principle of fairness to those involved.

3.7. Fostering respect

We are committed to fostering mutual respect between Dams Safety NSW officers and declared dam owners. Our communication with dam owners and other stakeholders will reflect that respect.

We understand that respect is earned through consistent application of our regulatory policy, delivered with a high level of expertise.

3.8. Balancing the need for consistency with the need for flexibility

We aim for high levels of consistency in the decision-making process, based on the use of clear policies and processes that consider the specific circumstances of a situation, to produce sensible, predictable, and fair results.

3.9. Exercising discretion and proportionality in regulatory decision-making

We expect declared dam owners to manage dams safety risks and to comply with legislative requirements. We commit to taking regulatory action that is proportionate to the circumstances of non-compliance with the legislation. We commit to resolving non-compliance in the most effective way for dam owners and the community.

The more serious the non-compliance, the more serious should be the response, and we will not hesitate to take strong enforcement action when required.

3.10. Acting within the law

We will consider innovative approaches to achieve our regulatory core purpose and to solve regulatory problems.

However, we will not require declared dam owners to do things that are not authorised by law and will always act within our statutory power when considering enforcement activity.

4. Dams Safety NSW's risk-based and outcome-focused approach

4.1. Dams Safety NSW is a risk-based regulator

DSNSW will carry out community engagement activities to confirm the level of dam safety risk that is acceptable to the community

Dams Safety NSW's risk-based regulatory approach applies risk principles to:

- prioritise regulatory activities and focus Dams Safety NSW's operational efforts
 - through the risk-based regulatory framework established by the Regulation
- guide regulatory decisions when responding to non-compliance.

Dam Safety NSW's risked-based approach to regulation:

- uses information to focus Dams Safety NSW resources where the consequences of non-compliance are greatest and where the likelihood of non-compliance is highest
- deploys Dams Safety NSW's finite resources to the greatest effect
- applies the best available regulatory tools based on the required outcomes
- promotes flexible and innovative responses to non-compliance
- reduces the compliance burden by tailoring regulatory intervention to match the assessed risks
- results in dam owners not being inconvenienced by unnecessary regulatory activities.

Dams Safety NSW also takes a risk-based approach when:

- prioritising reports and incidents for audit or investigation, based on the potential impact of the incident
- monitoring higher risk dams³
- responding to non-compliance generally
- classifying audit non-compliances.

4.2. Dams Safety NSW defines and documents intended regulatory outcomes

The desired regulatory outcomes for Dams Safety NSW's regulatory activities are documented in 'outcome statements'⁴ in section 5 of this policy. These outcome statements relate to Dams Safety NSW's regulatory core purpose and describe what Dams Safety NSW expects to achieve by employing that regulatory activity. Section 5 also includes the risk-based prioritisation basis and the rationale⁵ for each activity.

Dams Safety NSW may also identify specific regulatory problems which will require a project approach, using a mix of activities, to achieve (sometimes innovative) solutions and outcomes. The desired outcomes for each regulatory project will be documented in regulatory project plans that aim to solve the regulatory problem or issue.

³ Especially those dams with societal or individual risk ratings above the safety threshold

⁴ Refer to '[Guidance for regulators to implement outcomes and risk-based regulation](#)' from NSW Productivity Commission, October 2016

⁵ The "rationale" describes how Dams Safety NSW activities contribute to the outcome. The NSW 'Guidance for regulators to implement outcomes and risk-based regulation' calls this a "contribution story" (2016, p. 8)

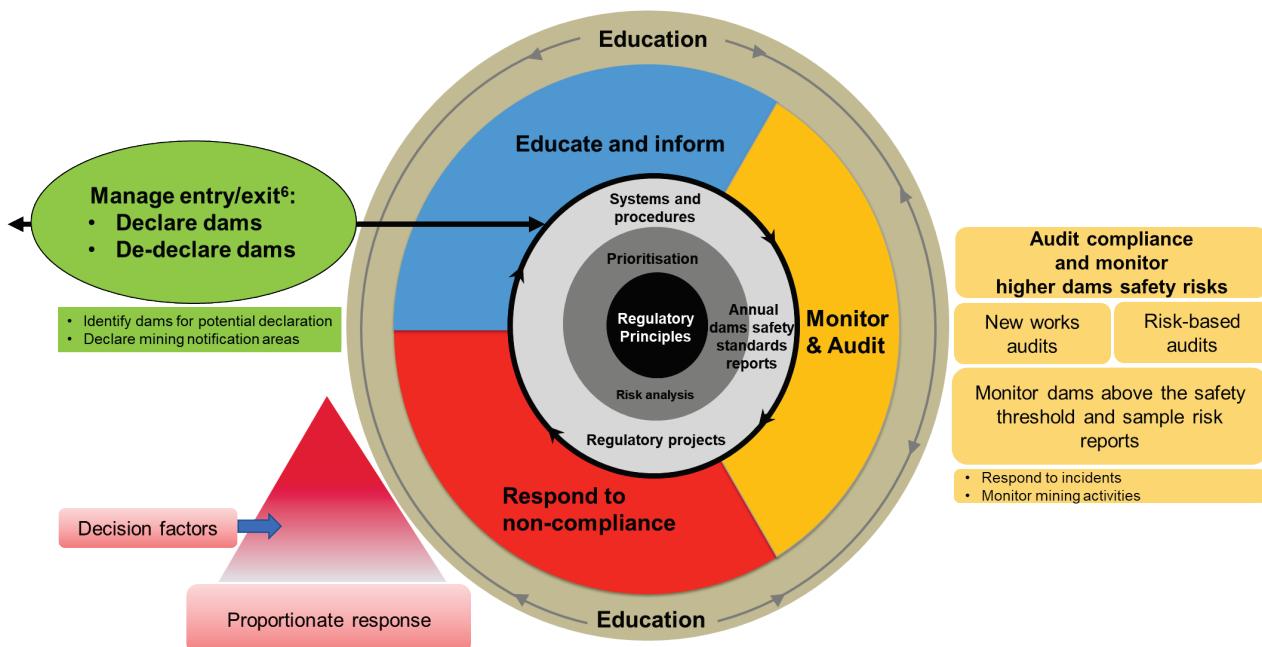
4.3. Dams Safety NSW measures and reports on achievement of outcomes

Dams Safety NSW will establish a set of effectiveness and efficiency measures and will regularly report regulatory achievements and progress towards achieving the regulatory outcomes.

5. Dams Safety NSW's regulatory activities

Dams safety NSW's regulatory activities are illustrated in the following regulatory lifecycle model.

Figure 1 Dams Safety NSW regulatory lifecycle



Dams Safety NSW carries out the following regulatory activities:

manages entry/exit⁶:

- declares dams that fit the criteria in the Regulation
- revokes the declaration of dams that no longer meet the criteria for declaration ('de-declare' dams)
- manages mining notification areas in the vicinity of a declared dam
- raises matters regarding mining in those areas with consent authorities

educates and informs dam owners:

- educates dam owners on the requirements of the legislation
- visits dam owners to explain the requirements
- produces guidelines and factsheets on the legislative requirements

audits compliance, monitors higher dams safety risks, and responds to incidents:

- audits dam owners to determine if they are managing dam safety risks:
 - risk-based audits

⁶ - 'entry' refers to managing entry to the legislative regime through the declaration process, in accordance with Act section 5 and Regulation clause 4, 'Declaration of dams'

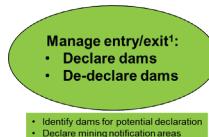
- 'exit' refers to managing the exit from the legislative regime by revoking a dam's declaration

- new works audits (audits of new dam and major modification projects)
- monitors the actions that dam owners take to reduce their declared dam's societal and individual risk rating to below the safety threshold
- samples risk reports to check report quality and to determine if dam safety risks have been reduced as far as is reasonably practicable
- responds to dam safety incidents
- monitors mining activities near dams
- maintains formal arrangements with other regulators to foster efficiency and effectiveness

responds to non-compliance:

- takes a proportionate and responsive approach to non-compliance with the legislation
- directs a person to address a safety risk.

5.1. Manage entry to the legislative regime



5.1.1. Dam declaration

5.1.1.1. Activity description

Dams Safety NSW ‘declares’ a dam when the consequences of failure of the dam (the potential to threaten life or cause major infrastructure, environmental, health or social damage) are sufficiently high. Once a dam is declared under the Act, the dam owner must comply with the requirements of the Act and the Regulation.

Dams Safety NSW declares those dams that meet the following criteria listed in clause 4 of the Regulation:

- having a wall that is more than 15 metres high, or
- if a dam failure would:
 - endanger the life of a person⁷
 - cause a major or catastrophic level of severity of damage or loss⁸.

Dams Safety NSW revokes the declaration of declared dams that no longer meet the declaration criteria ('de-declares a dam').

Dams Safety NSW also has processes to identify those dams that are not yet declared but are likely to have at least a significant consequence of failure and may need to be declared.

5.1.1.2. Regulatory outcome statement – dam declaration

Outcome:

- seek to ensure that dams safety risks are of a level that is acceptable to the community by including dams which have a significant consequence of failure (or higher) in the regulatory regime.

⁷ Dams Safety NSW considers that a dam endangers the life of a person if a dam failure would put 1 or more person(s) at risk or has a potential loss of life more than 0.1 (refer to the 'Declared dams consequence category assessment and determination methodology').

⁸ Refer to the 'Declared dams consequence category assessment and determination methodology'

Prioritisation basis:

- Dams Safety NSW will require a dam owner to assess the severity of dam failure damage or loss (if reasonably satisfied that a dam will likely be declared). Priority will be given to dams which are likely to have a relatively higher consequence category.

Rationale:

- an effective process for:
 - identifying proposed dams that have significant failure consequences and
 - declaring those dams
- will provide confidence that dam safety risks to the community are identified and included in the regulatory regime. Inclusion in the regulatory regime allows Dams Safety NSW to oversight the dam owners' systems for managing dams safety risks. This should lead to better management of dams safety risks for NSW.
- revoking the declaration of dams that no longer meet the criteria removes unnecessary regulatory burden from dam owners whose dams no longer present sufficient risk to the community.

5.1.2. Declaring a dam mining notification area and raising matters regarding mining in those areas with consent authorities

5.1.2.1. Activity description

Dams Safety NSW declares mining notification areas that surround, or are in the vicinity of, declared dams.

A consent authority must refer an application for development consent for the carrying out of any mining operations in a notification area to Dams Safety NSW.

Dams Safety NSW raises dam safety matters with the consent authority, which must take these matters into account before granting development consent for mining operations under the *Mining Act 1992*.

5.1.2.2. Regulatory outcome statement – mining near declared dams

Outcome:

- ensure declared dam notification areas are appropriate to the dams safety risks associated with mining activities, and consent authorities take into account those risks when granting mining development consents.

Prioritisation basis:

- Dams Safety NSW will provide all relevant declared dams with an appropriate notification area. Priority will be given to those dams that are more vulnerable to mining and those dams where it is likely mining consent applications will be sought.

Rationale:

- an effective notification area process and the provision of timely, risk-based advice to consent authorities will provide confidence that dam safety risks due to mining are addressed appropriately.

5.2. Educate and inform dam owners



5.2.1.1. Activity description

Dams Safety NSW seeks to maximise voluntary compliance through a cooperative and collaborative approach and recognises that engagement with declared dam owners is an important way to influence safety behaviours.

Education activities aim to build declared dam owners' capacity to comply with the legislation. Activities include the provision of information resources and tools to help declared dam owners become aware of their rights, to make sure they are aware of their obligations, and to provide certainty for their future planning. This helps declared dam owners meet their obligations and avoid inadvertent non-compliance.

Education activities may include:

- visiting dam owners to educate dam owners on the requirements
- engaging with declared dam owners to build capacity, such as through workshops, webinars and sharing of good dam safety practice
- promoting and reinforcing good dam risk management practices
- promoting the benefits of complying with legislation
- highlighting the potential consequences of not complying with legislation
- providing guidelines and factsheets
- ensuring consultants are aware of the requirements so they can assist with educating dam owners.

Dams Safety NSW will use the website as the primary means of providing information, will seek ways to make it easier for the community to access this information and will collaborate with other organisations that support education activities, including relevant government agencies and local government.

Wherever possible, Dams Safety NSW will work in partnership with peak bodies and stakeholder groups to gain support for, and achieve, appropriate dam safety risk management and compliance with the legislation.

5.2.1.2. Regulatory outcome statement - education

Outcomes:

- encourage proper and efficient management in matters relating to dams safety and encourage the application of risk management and the principles of cost benefit analysis
- reduce dams safety risks by encouraging increased compliance with the legislation.

Prioritisation basis:

- education and information resources are aimed at all declared dam owners and cover topics that are likely to be of interest to most dam owners. Education resources will initially be aimed at declared dam owners who might find it difficult to comply. For example, owners of more than one large dam are likely to have the ability to establish and implement the safety management systems needed to comply with the legislation. Owners of smaller dams may need more guidance on the required management systems.

Rationale:

- education activities motivate dam owners to voluntarily comply with the legislative requirements by focusing declared dam owners on the need for compliance, promoting

- the benefits of complying with the requirements and by making it easier to understand and follow the requirements.
- education also aids in deterring non-compliance by highlighting the consequences of not complying with the requirements.

5.3. Audit compliance, monitor higher dam safety risks, and respond to incidents



5.3.1. Audit compliance

5.3.1.1. Activity description

Dams Safety NSW audits declared dam owners' dam safety management systems throughout the full dam safety lifecycle:

- design and construction ('new works' audits for new dam and major modification projects)
- operation and maintenance ('risk-based' audits)
- risk report sampling to check report quality and to determine if dam safety risks have been reduced as far as is reasonably practicable
- decommissioning

5.3.1.2. Regulatory outcome statement

Outcome:

- seek to ensure that dams safety risks are of a level that is acceptable to the community by assessing dams safety risks through risk-based audits of declared dam owners.

Prioritisation basis

- visits to dam owners are prioritised according to dam consequence category, dam societal risk rating, the likelihood that dams safety risks are not being managed and if a dam is in the design and construction phase.

Rationale:

- audits have been shown to be effective in detecting risks. The combination of detection and reinforcement of legislative requirements will lead to a reduction in dams safety risks. Audits have also been shown to be an effective way to educate dam owners in appropriate dam safety risk management and compliance with the legislative requirements. Audits are a rich source of information and Dams Safety NSW will use this and the annual dams safety standards report to provide an assessment of dam owner safety maturity across NSW. Successive audits of dam owners, and successful acquittal of identified non-compliances, will lead to an increase in dam owner safety maturity.

5.3.2. Annual dams safety standards report

5.3.2.1. Activity description

Dams Safety NSW requires each declared dam owner to provide an annual dams safety standards report every March. The report demonstrates the dam owner's level of compliance with the dams safety standards as at the end of the previous year.

5.3.2.2. Regulatory outcome statement

Outcome:

- seek to ensure that dams safety risks are of a level that is acceptable to the community by assessing dam owners' state of compliance with the Regulation through analysis of dam owners' annual dams safety standards reports.

Prioritisation basis

- all declared dam owners are required to compile an annual dams safety standards report.

Rationale:

The annual dams safety standards report reinforces the dam owners' accountability for dams safety. It is an important source of information on a dam owner's compliance with the safety standards in the Regulation and informs Dams Safety NSW's operational priorities. It allows a picture of dam risk ratings to be monitored over time.

5.3.3. Monitor dams above the safety threshold and sample risk reports

5.3.3.1. Activity description

Dam owners are required to complete risk reports for their dams according to a risk-based schedule; all declared dams will have at least one risk report completed by December 2026. Dams Safety NSW monitors the actions that dam owners take to reduce their declared dam's societal or individual risk rating to below the safety threshold.

Dams Safety NSW also samples declared dam owners' risk reports, across consequence categories, to determine if risk reports are compliant with the regulatory requirements and dam safety risks have been reduced so far as is reasonably practicable.

5.3.3.2. Regulatory outcome statement

Outcome:

- seek to ensure that dams safety risks are of a level that is acceptable to the community by monitoring the actions that dam owners are taking to reduce their declared dam's safety risks to below the safety threshold and so far as reasonably practicable.

Prioritisation basis

- all declared dams that are above the safety threshold are monitored, with regular reports on the progress of dam owner remedial works and actions provided to the Dams Safety NSW Board
- acceptance and tracking of dam owner actions is based on the potential harm to people, environmental and economic assets, the declared dam owner's cooperation and their approach to the required remediation, and the public interest

Rationale:

Dams with societal and individual risk ratings above the safety threshold present a community risk that must be addressed by declared dam owners and therefore actions to address the risks must be actively monitored by Dams Safety NSW.

5.3.4. Respond to incident reports

5.3.4.1. Activity description

The owner of a declared dam must report dam safety incidents to Dams Safety NSW in accordance with clause 19 of the Regulation.

Dams Safety NSW has established systems and procedures for logging incident reports received from declared dam owners. The information in the incident reports is assessed and prioritised according to risk-based principles. Dams Safety NSW prioritises those issues that have the potential to cause serious harm and looks for patterns of similar incidents that may suggest ongoing or broader issues.

Dams Safety NSW will apply just culture principles so that dam owners feel confident in the reporting system and to encourage the reporting of all incidents.

5.3.4.2. Regulatory outcome statement – incident reports

Outcome:

- gather important dams safety risk information by logging, assessing and investigating dam incident reports.
- maintain confidence in Dams Safety NSW's administration of the legislation by ensuring that all reports are recorded and assessed.

Prioritisation basis:

- incident reports are prioritised according to the potential consequence of the incident.

Rationale:

- each dam safety incident report is an important source of information for Dams Safety NSW, as each report could lead to the detection of significant dams safety risks. Incident report information (aggregated and de-identified) can also be a source of information that is beneficial to the wider dam safety community. An incident reporting system that comprehensively reports incidents to Dams Safety NSW can also show how well dam owners are operating their safety management systems.

5.3.5. Monitor mining activities

Outcome:

- seek to ensure that dams safety risks are of a level that is acceptable to the community by monitoring mining activity through audits and mining information reports

Prioritisation basis:

- activities are prioritised according to dam consequence category and degree of hazard of the mining activity.

Rationale:

- Mining organisations are required to provide reports on their mining activity that may impact dam safety. Monitoring that information and auditing the activity provides assurance that the organisations are maintaining appropriate systems to achieve safe outcomes.

5.4. Respond to non-compliance



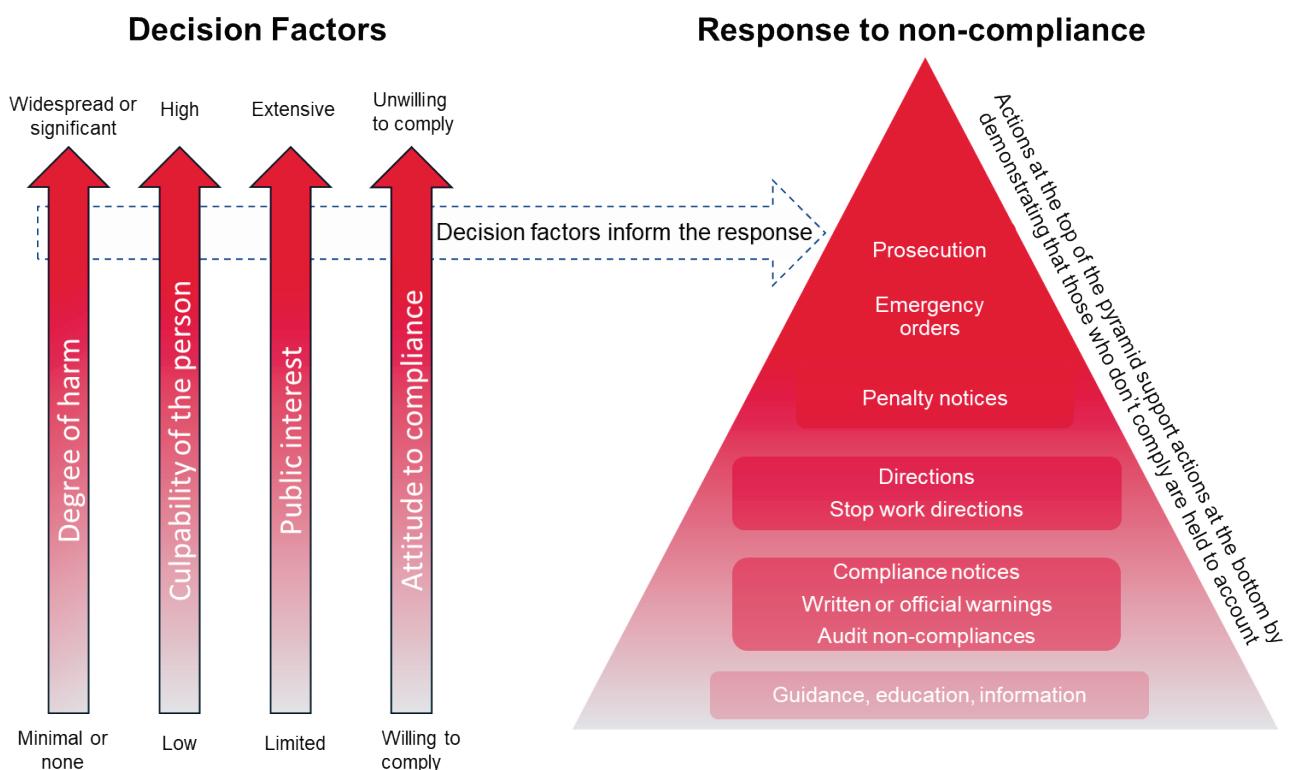
5.4.1. Regulatory decision-making

5.4.1.1. Activity description

Dams Safety NSW employs a graduated, proportionate, and responsive approach if a declared dam owner does not comply with a legislative requirement or does not comply with a direction. This is based on the severity of the non-compliance (its potential harm to people, environmental and economic assets), the declared dam owner's culpability, cooperation and approach to the non-compliance, and the public interest. See Figure 2.

A non-compliance is a breach of the legislation and must be treated as such. While Dams Safety NSW has the discretion to address a non-compliance according to a graduated approach, every non-compliance detected requires a decision on what response to take.

Figure 2 - Dams Safety NSW response to non-compliance



Dams Safety NSW considers the following factors when deciding on the response to non-compliance:

- degree of harm:
 - the seriousness of the non-compliance, based on its materiality within the dam safety management system and its actual or potential impacts on people, environmental and economic assets
- culpability of the person:
 - compliance history of the person, in general and with respect to the specific event
 - evidence of motivation for committing the non-compliance

- whether the behaviour is deliberate, reckless or involving consistent carelessness
- whether the person has made false or misleading statements about the non-compliance
- any mitigating or aggravating circumstances
- public interest:
 - timeframe over which the non-compliance was committed
 - public interest and community expectation about the action taken
 - whether a decision not to act would undermine public confidence
 - whether action is necessary to provide specific or general deterrence
 - whether action is necessary to clarify a grey area in the law
- attitude to compliance:
 - voluntary remedial and corrective action taken to address the non-compliance, mitigate the risk and any mechanisms put in place to prevent a recurrence
 - cooperation demonstrated by the dam owner
 - the dam owner's willingness to comply with requirements
 - the dam owner's ability to comply with requirements.

Responses to non-compliance, in increasing severity, include:

- advisory letters
- audit non-compliance
- warnings (written and verbal)
- statutory directions such as Act section 19 directions, section 20 'stop work' directions
- penalty notices
- emergency orders
- prosecution

Audit non-compliances are classified using a risk-based prioritisation approach based on the severity of the audit non-compliance, the observed non-compliance (eg. whether it is repeated and common occurrence), the consequence category of the dam and whether it is above the safety threshold. The classification determines the time within which the dam owner must respond to the audit non-compliance,

These regulatory responses allow Dams Safety NSW to take a balanced approach to non-compliance that stops the improper conduct and promotes changes in attitudes and behaviours rather than simply applying a punishment.

Dams Safety NSW will, if necessary, direct a person to address a safety risk if anything done, or proposed to be done, by the person in relation to a declared dam may endanger the safety of the dam.

Enforcement decisions must be based on evidence which will be admissible and sufficient to establish that an offence has been committed. Combinations of actions may be taken, for example emergency orders and prosecutions. Wherever possible, Dams Safety NSW will provide reasons for decisions and will explain avenues for review.

5.4.1.2. Regulatory outcome statement – responding to non-compliance

Outcomes:

- seek to ensure dam safety risks are of a level that is acceptable to the community through:
 - a proportionate and responsive approach to non-compliance with the legislation
 - directing safety actions where necessary
- maintain community confidence in the Dams Safety NSW's regulatory oversight

Prioritisation basis:

- resources are prioritised according to the potential impact of the non-compliance, the likely culpability and attitude to compliance of the dam owner, and the public interest.

Rationale:

- a proportionate, transparent response will provide confidence to those complying with the law, and the community, that the legislation is being administered fairly
- a proportionate response to non-compliance, including a commitment to carry out prosecutions where warranted, has been shown to provide a specific and general deterrence against future non-compliance
- at the more severe end of the response spectrum, enforcement activities aim to deter non-compliant behaviour (by the declared dam owner involved and other declared dam owners), consistent with legislation.

5.5. Solving regulatory problems - regulatory projects

Some regulatory problems or events may not be able to be adequately addressed through application of Dams Safety NSW's programmed activities described in section 5.1 to 5.4 of this Policy.

Dams Safety NSW addresses these types of issues or problems by taking what is sometimes referred to in regulatory practice as a 'problem-solving approach'.

Dams Safety NSW applies a project approach to apply an appropriate mix of regulatory tools to solve each particular problem or issue.

Dams Safety NSW regulatory projects:

- are established to address emerging regulatory problems
- address regulatory problems (or issues) that cut across Dams Safety NSW's programmed activities or address particular events or risks
- are prioritised according to the potential impact of the risk or problem to people, environmental and economic assets
- are established through a project planning process that includes:
 - precisely defining the problem (through analysis of information)
 - documenting regulatory outcomes for the project
 - determining how to measure success (in achieving the outcomes)
 - allocating specific project resourcing
 - planning specific project operational processes and procedures
 - planning stakeholder engagement requirements
 - carrying out the project (adjusting plans as necessary)
 - evaluating and reporting results
 - project closure (including lessons learnt).