



Community consultation on Dams Safety Regulation 2019

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Introduction

The introduction of the Dams Safety Regulation 2019 ushers in a new era in dams safety in NSW. It lays out enforceable operational requirements associated with the *Dams Safety Act 2015*, and defines a new regulator to monitor and enforce compliance.

A 2013 review of the *Dams Safety Act 1978* found that the Act lacked associated regulations and had limited enforceable penalty provisions.

This prompted the development of the *Dams Safety Act 2015*, and subsequently the draft Dams Safety Regulation 2019 that sets out the operational details of the new Act.

The NSW Government publicly exhibited the proposed Regulation across the state in June and July 2019. Communities and industry stakeholders had the opportunity to voice their feedback during face-to-face and phone consultations, before making written submissions.

This document provides an overview of the legislation changes, and summarises the community consultation undertaken.

Overview of legislation and changes

For 41 years dams safety in NSW was governed by the *Dams Safety Act 1978* and administered by the NSW Dams Safety Committee (DSC).

However, an independent 2013 review found that the 1978 Act had limited penalty and enforcement provisions.

The response to the review was the creation of the NSW *Dams Safety Act 2015* and the subsequent proposed associated Regulation drafted in June 2019.

This new chapter for Dams Safety in NSW builds on the work of the DSC, which provided a strong industry environment for the new Act and regulation to operate in.

The key principles guiding the proposed Regulation are that:

- the responsibility of declared dam owners for dam safety will be reinforced
- regulation will be principle-based to the greatest extent possible
- declared dam owners will implement a safety management system based on an internationally recognised asset management system
- declared dam owners will make safety risk decisions about their dams
- declared dam owners will mitigate dam safety risks 'so far as is reasonably practicable'
- a new body, Dams Safety NSW, will replace the DSC and take a regulatory oversight role by auditing declared dam owners' systems to determine if the regulation and standards are being complied with. The new body will enforce the regulation and standards through a proportionate response to non-compliance backed by a range of new penalties.

The *Dams Safety Act 2015* and the proposed Regulation aim to:

- help owners of declared dams improve their safety management practices
- enhance the regulator's ability to enforce requirements
- remove the potential for conflict of interest from having dam owners on a dams safety regulatory board.

The Regulation proposes the formation of a new regulatory body called Dams Safety NSW.

Dam Safety NSW will consist of experts from dam engineering, mine engineering, emergency management, dam operations and management, public safety risk analysis and best-practice regulation sectors.

The new legislation will come into force on 1 November 2019.

Summary of engagement

The department set up a special Dams Safety Reform team to manage the implementation of the Regulation and facilitate community and stakeholder engagement. The team prepared a comprehensive suite of material to inform the public consultation. Fact sheets, change summaries, answers to frequently asked questions and other information were published on the department's Dams Safety Reform website (damsafety.nsw.gov.au/reform).

The team arranged five community consultations sessions throughout NSW, with locations selected based on anticipated interest from the local community on dam safety issues. Sessions were held at Albury, Tamworth, Maitland, Penrith and Orange.

Letters were sent to all prescribed dam owners explaining the changes within the proposed legislation, including their proposed new responsibilities. The letters directed dam owners to the reform website, and alerted them to upcoming industry phone consultation sessions so they could learn more about, and provide feedback on, the proposed changes.

The Dams Safety Reform website formed the hub for all stakeholder engagement. It included information on the location and time of all consultation sessions, and provided information on how to make a submission on the proposed regulatory changes. The team created a dedicated reform email address to allow the community and stakeholders to directly ask questions or clarify information on the website.

To get the word out to everyone who might have an interest in dams safety, the team asked 75 councils across the state and the Water Directorate to post on their websites details of the community and industry consultations and the dam safety reform website address.

The team also placed public notices in local papers advertising the community consultations events. In addition, Floodplain Management Australia, a leading network of flood professionals in Australia, ran advertisements about the dams safety exhibition period.

Subject matter experts from the Dams Safety Reform team were on hand at community and industry consultations to provide answers to questions from attendees. Attendees could also email and/or send in a submission via the website.

Analysis of submissions

There were 27 relevant written submissions arising from the public exhibition period of 6 June to 12 July 2019. Submissions came from individuals, consultants, councils, special interest groups and dam owners.

One member of the general public made a submission specific to the regulations. Other members of the general public focused on mining around dams and the impact of mining on the environment, which was outside the remit of the proposed legislation.

Dam owners were the largest group of respondents (11) followed by councils (7).

Subject matter experts within the Dams Safety Reform team reviewed every submission to ensure that respondents' relevant and diverse points of view were considered. Those making submissions were acknowledged by email for their contribution.

This report only references those submissions that were applicable to dams safety and covered by the scope of the proposed legislation.

Table 1 and Table 2 provide a breakdown of the issues raised in the submissions.

Submissions by group

Local councils with smaller dams

Submissions from councils that owned small dams were mainly requests for guidance and assistance implementing the changes in those sections of the proposed Regulation covering them. The Dams Safety Reform team has assured stakeholders that the first priority of Dams Safety NSW will be to provide guidance material for stakeholders.

Individuals

Submissions from individuals were mainly from people who work within the dams industry, with many years of experience and knowledge about the industry in Australia.

Their submissions largely focused on improving the technical aspects of the proposed Regulation and methodologies.

Water organisations

Water organisations have long indicated their readiness for the changes the proposed Regulation brings into force.

Their submissions focused on improvements to the Regulation across a broad range of issues.

List of respondents

The following people and organisations provided written submissions:

- Norm Himsley
- City of Newcastle
- Mr Kristian Brockman
- Campbelltown City Council
- Shellharbour City Council
- Mr Raj Jairaj
- Kyogle Council
- NSW Resources Regulator
- Gavin Workman (Illawarra Residents for Responsible Mining)
- Australian National Committee on Large Dams
- Julie Marlow
- Glencore
- GHD
- WaterNSW
- Brian Cooper
- Deidre Stuart
- NSW Minerals Council
- Steve Knight
- George Samios
- Ian Landon-Jones
- Snowy Hydro
- Len McDonald
- Hunter Water
- Shoalhaven Water
- Goulburn Mulwaree Council
- Jeffrey Gleeson
- Wollongong City Council

Each respondent received an email acknowledging their submission and the submissions were logged and tracked to ensure none were missed.

Changes resulting from consultation

How issues were considered

In considering each submission, the Dams Safety Reform team referred to the scope of the proposed legislation, its intent to refine and strengthen dams safety in NSW, and the NSW Government's ultimate aim that all risks arising from dams are acceptable to the community.

The Interim Dams Safety Advisory Committee (IDSAC) and the Dams Safety reforms team reviewed submissions and determined if the issues raised necessitated changes to the regulation.

General issues raised

Some issues raised by respondents were general in nature and did not relate to a particular clause in the regulation or methodologies. Table 1 gives a breakdown of the general issues raised.

Table 1. Response summary—general issues raised

Issue	Number of respondents	Number of responses
Principles based regulation	1	2
Training	2	2
Transition and phasing-in the requirements	5	7
Regulatory impact statements	3	5
Dams Safety NSW operations	6	9
Risk management	3	4
History and background	2	2
Guidance material	10	10
Dams safety levy	1	1
Dams Safety NSW board members	2	2
Definition of a dam	2	3
Operations and maintenance plans	3	3
Emergency plans	7	8
Declaring a dam	1	1
Small dams versus large dams	2	2
Annual reporting	2	3
Safety reviews	2	2
Cost-benefit analysis	1	1
The term 'so far as is reasonably practicable'	3	5
Management systems	11	14

Mining	5	9
Competence	4	5
Support for the proposal	8	8

Issues about a particular Regulation clause or methodology

Many of the issues raised by respondents related to specific details in the proposed Regulation clauses and the methodologies. Table 2 summarises the number of responses received and the number of resulting changes made to the regulation and methodologies.

Table 2. Responses summary by regulation clause and methodology

Regulation part/clause	Number of responses	Number of changes made
Part 1 Preliminary	-	-
3 Definitions	12	4
Part 2 Declaration of dams	-	-
4 Declared dams	17	3
5 Preliminary assessment	1	0
Part 3 Consequence category of dam	-	-
6 Classification of dams by consequence category	2	0
7 Assessment of consequence category	8	1
8 Part is safety standard	0	0
Part 4 Plans	-	-
9 Operations and maintenance plans	3	1
10 Emergency plans	6	1
11 Guidance material	0	0
Part 5 Safety management system	-	-
12 Duty to establish and implement safety management system	4	2
13 Content of safety management system document	2	1
14 Risk management framework	10	2
15 Assessment of societal risk rating of dam or proposed dam	11	4
16 Maintenance	2	0
17 Reviews	1	0

18 Part is safety standard	0	0
Part 6 Other safety requirements	-	-
19 Incident reporting	5	2
20 Safety review	6	6
21 Notification of changes to dam	1	1
22 Emergency exercises	4	4
23 Certain work to be carried out by person subject to quality management system	4	1
24 Competent person must check work involving dam design	1	0
25 Part is safety standard	0	0
Part 7 Miscellaneous	-	-
26 Dams safety standards report to be provided to Dams Safety NSW	0	0
27 Records	3	1
28 Authorised officers	0	0
29 Directions to be in writing	0	0
30 Savings and transitional provisions consequent on commencement of Act	3	1
General comments on regulation	9	0
Methodologies	24	21
Totals	139	56

Next steps

Some aspects of the new legislation will come into force immediately on commencement of the *Dams Safety Act 2015* and its associated Regulation on 1 November 2019. However, declared dams owners will have a two-year transition period to comply with most of the changes to current dam safety practice introduced by the new legislation.

Owners of declared dams that do not have operations and maintenance plans or emergency plans in place must develop and establish these plans within six months of commencement.

During this time, it is anticipated that Dams Safety NSW will conduct site visits and trial audits to help declared dam owners develop their systems and processes to meet the new legislative requirements.

In addition, a new website will be established to provide updated guidance material to guide dam owners as they begin their transition to their new responsibilities under the legislation.

Work has started on the formation of Dams Safety NSW, the regulator replacing the Dams Safety Committee. The department has received applications from a wide cross-section of stakeholders for membership of Dams Safety NSW.