

Dams Safety Act 2015

As at 1 August 2018

See also:

Local Government Amendment (Parliamentary Inquiry Recommendations) Bill 2016

[Non-government Bill: Rev the Hon F J Nile, MLC]

Government Sector Finance Legislation (Repeal and Amendment) Bill 2018

Note:

Amending provisions are subject to automatic repeal pursuant to sec 30C of the *Interpretation Act 1987 No 15* once the amendments have taken effect.

Long Title

An Act to constitute Dams Safety NSW and to confer functions on it relating to the safety of dams; and for related purposes.

Part 1 – Preliminary

1 Name of Act

This Act is the *Dams Safety Act 2015*.

2 Commencement

(1) This Act commences on a day or days to be appointed by proclamation, except as provided by subsection (2).

(2) Clause 5 of Schedule 2 commences on the date of assent to this Act.

3 Objects of Act

The objects of this Act 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.

4 Definitions

(1) In this Act: "**authorised officer**" means a person appointed as an authorised officer under Part 4. "**Chief Executive Officer**" means the Chief Executive Officer of Dams Safety NSW. "**Dams Safety NSW**" means Dams Safety NSW constituted under this Act. "**dams safety standards**" means the standards prescribed by the regulations under section 14. "**declared dam**" means a dam or proposed dam that is declared by order under section 5. "**Department**" means the Department of Industry, Skills and Regional Development. "**function**" includes a power, authority or duty, and "**exercise**" a function includes perform a duty. "**owner**", in relation to a dam, means any person or public authority who, whether solely or with some other person or public authority, owns, controls, operates, manages or maintains the dam and includes, in relation to a proposed dam, any person or public authority who, whether solely or with some other person or public authority, proposes to build the dam. "**premises**" includes:

- (a) a building or structure, and
- (b) land or a place (whether built on or not).

"public authority" means any of the following:

- (a) a Minister,
- (b) a Public Service agency within the meaning of the *Government Sector Employment Act 2013*,
- (c) a statutory body representing the Crown,
- (d) a statutory State owned corporation (or any of its subsidiaries) within the meaning of the *State Owned Corporations Act 1989*,
- (e) a local council, a county council or a joint organisation within the meaning of the *Local Government Act 1993*,

but does not include Dams Safety NSW or any person or body declared by the regulations not to be a public authority for the purposes of this definition. **"Secretary"** means the Secretary of the Department. The *Interpretation Act 1987* contains definitions and other provisions that affect the interpretation and application of this Act.

(2) Notes included in this Act do not form part of this Act.

5 Declaration of dams

- (1) Dams Safety NSW may, by order published in the Gazette, declare a dam or proposed dam to be a declared dam for the purposes of this Act.
- (2) A dam or proposed dam may not be declared under this section unless it is of a type or class of dam prescribed by the regulations. The regulations may provide for dams to be classified into different categories for the purposes of this Act (including the dams safety standards).
- (3) An order under this section is to specify the name and location of the dam or proposed dam to which the order relates.
- (4) Dams Safety NSW is to publish on its public website (or, if no such website is available, the public website of the Department) an up-to-date list of declared dams.

Part 2 – Dams Safety NSW

6 Constitution of Dams Safety NSW

(1) There is constituted by this Act a body corporate with the corporate name of Dams Safety NSW.

(2) Dams Safety NSW is, for the purposes of any Act, a NSW Government agency.

See section 13A of the *Interpretation Act 1987*.

7 Members of Dams Safety NSW

(1) Dams Safety NSW consists of the following members:

- (a) at least 5 members appointed by the Minister (the **"appointed members"**),
- (b) the Chief Executive Officer.

(2) The appointed members are to be persons who together have professional expertise, qualifications or experience in dam engineering, mine engineering, emergency management, dam operations and management, public safety risk analysis and best practice regulation (including cost benefit analysis and business case development).

(3) Of the appointed members, one is to be appointed as the Chairperson of Dams Safety NSW and another is to be appointed as the Deputy Chairperson of Dams Safety NSW, whether in and by the relevant instrument of appointment as a member or in and by some other instrument executed by the Minister.

(4) A person who is the owner of a declared dam is not eligible to be appointed or hold office as a member of Dams Safety NSW. However, an employee of any such owner may be appointed if otherwise eligible for appointment.

(5) Schedule 1 contains provisions relating to the members and procedure of Dams Safety NSW.

8 Ministerial control of Dams Safety NSW

Dams Safety NSW is, in the exercise of its functions, subject to the control and direction of the Minister, except in relation to the following:

- (a) the contents of any advice, report or recommendation made by Dams Safety NSW to the Minister or any other person,
- (b) any decision that relates to proceedings for offences under this Act or the regulations.

9 Functions of Dams Safety NSW

(1) Dams Safety NSW has the following functions:

- (a) to provide advice or make recommendations to the Minister on the types and classes of dams that may be the subject of regulations under section 5,
- (b) to provide advice or make recommendations to the Minister on the development, implementation and modification of the dams safety standards,
- (c) to keep the owners of declared dams and the public informed about the dams safety standards and to regulate compliance with those standards,
- (d) to audit compliance by the owners of declared dams with operations and maintenance plans under section 16 and emergency plans under section 17,
- (e) to provide guidance to owners of declared dams in complying with the requirements of this Act relating to the safety, operation and maintenance of dams (including guidance in applying total risk management and the principles of cost benefit analysis for that purpose),
- (f) to formulate measures (including the development of guidelines) to ensure the safety of dams,
- (g) to collect information, carry out research and keep records on matters relating to dams safety,
- (h) to enter into arrangements with any person or body with respect to the conduct of any study or research that may be necessary or desirable for the purposes of this Act,
- (i) to make such other reports or recommendations to the Minister or any other person in relation to the safety of dams as Dams Safety NSW considers necessary or appropriate.

(2) Dams Safety NSW has such other functions as are conferred or imposed on it by or under this or any other Act.

(3) In exercising its functions, Dams Safety NSW is:

- (a) to have regard to the objects of this Act, and
- (b) to apply, as far as is reasonably practicable, best practice regulatory principles (including cost benefit analysis) in regulating dams safety.

10 Chief Executive Officer

(1) The Chief Executive Officer of Dams Safety NSW is the person employed in the Department as the Chief Executive Officer.

(2) The Chief Executive Officer is responsible for the day to day management of the operations of Dams Safety NSW in accordance with any directions of Dams Safety NSW.

11 Staff of Dams Safety NSW

Persons may be employed in the Public Service under the *Government Sector Employment Act 2013* to enable Dams Safety NSW to exercise its functions.

Section 59 of the *Government Sector Employment Act 2013* provides that the persons so employed (or whose services Dams Safety NSW makes use of) may be referred to as officers or employees, or members of staff, of Dams Safety NSW. Section 47A of the *Constitution Act 1902* precludes Dams Safety NSW from employing staff.

12 Committees

(1) Dams Safety NSW may:

- (a) establish committees for the purpose of advising Dams Safety NSW in the exercise of its functions under this Act, and
 - (b) appoint as a member of any such committee any person who, in the opinion of Dams Safety NSW, appears to be qualified to be a member of that committee.
- (2) It does not matter that any or all of the members of a committee are not members of Dams Safety NSW.
- (3) The procedure for the calling of meetings of a committee and for the conduct of business at those meetings is to be determined by Dams Safety NSW or (subject to any determination of Dams Safety NSW) by the committee.

13 Delegation of functions

- (1) Dams Safety NSW may delegate to an authorised person or body any of its functions, other than this power of delegation.
- (2) A delegate may sub-delegate to another authorised person or body any function delegated by Dams Safety NSW if the delegate is authorised in writing to do so by Dams Safety NSW.
- (3) The following functions of Dams Safety NSW may not be delegated under this section:
- (a) declaring a dam to be a declared dam,
 - (b) making recommendations to the Minister on the development, implementation and modification of the dams safety standards.
- (4) The function of Dams Safety NSW to make an emergency order under section 21 may not be delegated or subdelegated to an authorised person unless that person is the Chief Executive Officer.
- (5) In this section, "**authorised person or body**" means any of the following:
- (a) a member of Dams Safety NSW (including the Chief Executive Officer),
 - (b) a committee of Dams Safety NSW or a member of a committee,
 - (c) a member of staff of Dams Safety NSW,
 - (d) an authorised officer,
 - (e) a person, or person of a class, prescribed by the regulations.

Part 3 – Safety of declared dams

Division 1 – Safety standards, reports and plans

14 Dams safety standards

- (1) The regulations may prescribe standards for or with respect to any matter relating to the safety, operation or maintenance of declared dams.
- (2) Before any such regulation is made, the Minister is to ensure:
- (a) that a cost benefit analysis of the proposed regulation is carried out, and
 - (b) that, as far as is reasonably practicable, consultation takes place with those persons or bodies likely to be affected by the proposed regulation.
- (3) The owner of a declared dam must comply with the requirements of the dams safety standards that apply to the dam. Maximum penalty:
- (a) in the case of a corporation--10,000 penalty units and, in the case of a continuing offence, a further penalty of 1,200 penalty units for each day the offence continues, or
 - (b) in the case of an individual--2,250 penalty units and, in the case of a continuing offence, a further penalty of 600 penalty units for each day the offence continues.
- (4) The owner of a declared dam is to publish on an annual basis a report demonstrating the owner's compliance with the dams safety standards. Any such report is to be made publicly available at the main office of the owner and on the owner's public website (if any).

15 Reports and records relating to declared dams

- (1) Dams Safety NSW may, by notice in writing, require the owner of a declared dam to report to Dams Safety NSW, within the time specified in the notice, on such matters

relating to the safety, operation or maintenance of the dam as are specified in the notice.

(2) The owner of a declared dam must comply with the requirements of any such notice. Maximum penalty: 2,500 penalty units in the case of a corporation or 500 penalty units in the case of an individual.

(3) The owner of a declared dam must keep such records on matters relating to the safety, operation or maintenance of the dam as may be prescribed by the regulations. Maximum penalty: 2,500 penalty units in the case of a corporation or 500 penalty units in the case of an individual.

16 Operations and maintenance plans for declared dams

(1) The owner of a declared dam must prepare and implement an operations and maintenance plan for the dam that complies with the requirements specified in the regulations. Maximum penalty:

(a) in the case of a corporation--10,000 penalty units and, in the case of a continuing offence, a further penalty of 1,200 penalty units for each day the offence continues, or

(b) in the case of an individual--2,250 penalty units and, in the case of a continuing offence, a further penalty of 600 penalty units for each day the offence continues.

(2) A copy of the plan is to be provided to Dams Safety NSW and may be audited by Dams Safety NSW.

(3) The operations and maintenance plan for a declared dam must be updated by the owner of the dam on an annual basis or at such other intervals as may be required by the regulations.

17 Emergency plans for declared dams

(1) The owner of a declared dam must prepare and implement an emergency plan for the dam that complies with the requirements specified in the regulations. Maximum penalty:

(a) in the case of a corporation--10,000 penalty units and, in the case of a continuing offence, a further penalty of 1,200 penalty units for each day the offence continues, or

(b) in the case of an individual--2,250 penalty units and, in the case of a continuing offence, a further penalty of 600 penalty units for each day the offence continues.

(2) A copy of the plan is to be provided to Dams Safety NSW and may be audited by Dams Safety NSW.

(3) The emergency plan for a declared dam must be updated by the owner of the dam on an annual basis or at such other intervals as may be required by the regulations.

(4) In auditing compliance by the owner of a declared dam with the emergency plan for the dam, Dams Safety NSW may obtain the advice of the State Emergency Service.

18 Compliance notices

(1) Dams Safety NSW may, if of the opinion that the owner of a declared dam has failed to comply with any requirement under this Division (whether or not the failure to comply constitutes an offence), give the owner a notice in writing (a "**compliance notice**") requiring the owner to take such action as is specified in the notice.

(2) Without limiting subsection (1), a compliance notice may:

(a) require the owner to remedy the consequences of the failure to comply, and

(b) include monitoring and reporting requirements to ensure that the notice is complied with.

(3) The owner of a declared dam who is given a compliance notice must comply with the requirements of the notice. Maximum penalty:

(a) in the case of a corporation--10,000 penalty units and, in the case of a continuing offence, a further penalty of 1,200 penalty units for each day the offence continues, or

(b) in the case of an individual--2,250 penalty units and, in the case of a continuing offence, a further penalty of 600 penalty units for each day the offence continues.

(4) If the owner of a declared dam fails to take the action specified in a compliance notice given to the owner, Dams Safety NSW may take that action and recover from the owner as a debt in any court of competent jurisdiction the costs and expenses incurred by it in taking that action.

Division 2 – Directions and emergency orders

19 Directions by Dams Safety NSW to ensure safety of declared dams

(1) If Dams Safety NSW is of the opinion that a declared dam is unsafe or is in danger of becoming unsafe, Dams Safety NSW may, by order in writing given to the owner of the dam, direct the owner to do such things as are specified or described in the order as may be reasonably necessary to ensure the safety and proper maintenance and operation of the dam.

(2) If Dams Safety NSW is of the opinion that anything done or proposed to be done by a person to or in relation to a declared dam (including the water or other material impounded by the dam) or in the vicinity of a declared dam may endanger the safety of the dam, Dams Safety NSW may, by order in writing given to the person, direct the person to do such things as are specified or described in the order as may be reasonably necessary to ensure the safety of the dam.

(3) A person who does not comply with a direction under this section is guilty of an offence. Maximum penalty:

(a) in the case of a corporation--10,000 penalty units and, in the case of a continuing offence, a further penalty of 1,200 penalty units for each day the offence continues, or

(b) in the case of an individual--2,250 penalty units and, in the case of a continuing offence, a further penalty of 600 penalty units for each day the offence continues.

(4) If the owner of a declared dam does not comply with a direction under this section, Dams Safety NSW may do all such things as may be necessary to give effect to the direction and recover the costs and expenses incurred in doing any such thing from the owner of the dam as a debt in any court of competent jurisdiction.

20 "Stop work" directions

(1) If Dams Safety NSW is of the opinion that anything being done or proposed to be done to or in relation to a declared dam or in the vicinity of a declared dam by any person may endanger the safety of the dam, Dams Safety NSW may, by order in writing given to the person, direct the person to cease or refrain from doing the thing.

(2) A person who does not comply with a direction under this section is guilty of an offence. Maximum penalty:

(a) in the case of a corporation--10,000 penalty units and, in the case of a continuing offence, a further penalty of 1,200 penalty units for each day the offence continues, or

(b) in the case of an individual--2,250 penalty units and, in the case of a continuing offence, a further penalty of 600 penalty units for each day the offence continues.

21 Emergency orders

(1) Dams Safety NSW may, by order in writing (an "**emergency order**"), declare that an emergency exists in respect of a declared dam if:

(a) the dam has collapsed or failed in whole or in part, or

(b) Dams Safety NSW is of the opinion that:

(i) the dam is liable to collapse or fail in whole or in part, or

(ii) 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.

(2) An emergency order has effect on and from the date specified in the order.

(3) Unless it is sooner revoked, an emergency order continues in force for such period as is specified in the order.

(4) An emergency order must be published in the Gazette as soon as practicable after it is made.

(5) If an emergency order is in force in relation to a declared dam, Dams Safety NSW may do any one or more of the following things in relation to the dam:

(a) take full charge and control of the dam, the area under, over and surrounding the dam and the water or other material impounded by the dam,

(b) release or discharge the whole or such part as Dams Safety NSW thinks fit of the water or other material impounded by the dam,

(c) carry out all such works and do all such things as, in the opinion of Dams

- Safety NSW, are necessary to make the dam safe,
- (d) demolish or remove the whole or any part of the dam or any work or structure on the dam, the water or other material impounded by the dam or the area under, over or surrounding the dam,
 - (e) direct the owner of the dam, by order in writing, to take such measures as may be specified in the direction,
 - (f) take such other measures as Dams Safety NSW thinks fit.
- (6) The owner of a declared dam who does not comply with a direction under subsection (5) (e) is guilty of an offence. Maximum penalty:
- (a) in the case of a corporation--10,000 penalty units and, in the case of a continuing offence, a further penalty of 1,200 penalty units for each day the offence continues, or
 - (b) in the case of an individual--2,250 penalty units and, in the case of a continuing offence, a further penalty of 600 penalty units for each day the offence continues.
- (7) If the owner of a declared dam does not comply with a direction under subsection (5) (e), Dams Safety NSW or a person authorised by Dams Safety NSW may do all such things as may be necessary to give effect to the direction.
- (8) Dams Safety NSW may recover the costs and expenses incurred by it in the exercise of its functions under this section in respect of a declared dam from the owner of the declared dam as a debt in any court of competent jurisdiction.

Division 3 – General

22 Appeals to Land and Environment Court

- (1) A person given a compliance notice under section 18 or a direction under section 19 or 20 may, within 28 days (or such other period as is prescribed instead by the regulations) after being given the notice or direction, appeal to the Land and Environment Court against the notice or direction.
- (2) The lodging of an appeal does not, except to the extent that the Land and Environment Court otherwise directs in relation to the appeal, operate to stay the notice or direction appealed against.

23 Provisions relating to directions

A direction given by order under section 19 or 20:

- (a) takes effect on the day on which the order is given to the person or on such later date (following the date on which the order is given to the person) as may be specified in the order, and
- (b) is subject to such conditions as Dams Safety NSW may specify in the order, and
- (c) remains in force until whichever of the following happens first:
 - (i) the order is revoked by Dams Safety NSW,
 - (ii) the period (if any) for which the direction is expressed in the order to be in force ends.

Part 4 – Investigation and enforcement powers

24 Purposes for which powers under Part may be exercised

Powers may be exercised under this Part for the following purposes:

- (a) for determining whether there has been compliance with or a contravention of this Act or the regulations,
- (b) for obtaining information or records for purposes connected with the administration of this Act,
- (c) in connection with exercising the functions of an authorised officer under this Act.

25 Appointment and identification of authorised officers

- (1) Dams Safety NSW may appoint any of the following persons as an authorised officer for the purposes of this Act:

- (a) a member of Dams Safety NSW,
 - (b) a member of staff of Dams Safety NSW or any other Public Service employee,
 - (c) a person of a class prescribed by the regulations.
- (2) Every authorised officer is to be provided by Dams Safety NSW with an identification card.
- (3) The identification card must:
- (a) state that it is issued under this Act, and
 - (b) give the name of the person to whom it is issued and include a photograph of that person, and
 - (c) state any conditions, limitations or restrictions on the authorised officer's functions, and
 - (d) state the date (if any) on which it expires, and
 - (e) include the signature of the person who issued the card and state the capacity in which the person is acting in issuing the card.
- (4) A power conferred on an authorised officer under this Part to enter premises, or to search or take other action on premises, may not be exercised unless the authorised officer proposing to exercise the power is in possession of the identification card issued to the authorised officer and produces the identification card if required to do so by the occupier of the premises.

26 Scope of authority

- (1) An authorisation of a person as an authorised officer can be given generally, or subject to conditions, limitations or restrictions or only for limited purposes.
- (2) The authority of an authorised officer may be limited by the relevant instrument of appointment to the functions specified in the instrument of appointment.
- (3) If such authorisation is given subject to conditions, limitations or restrictions or only for limited purposes, nothing in this Act authorises or requires the authorised officer to act in contravention of the conditions, limitations or restrictions or for other purposes.

27 Power to enter premises

- (1) An authorised officer may enter any premises.
- (2) The authorised officer may enter the premises with such assistants (including police officers) as may reasonably be required. In the case of premises comprising a mine or petroleum site within the meaning of the *Work Health and Safety (Mines and Petroleum Sites) Act 2013*, the authorised officer may be accompanied by a person nominated by the regulator within the meaning of that Act.
- (3) The authorised officer must notify the occupier of the premises before entering the premises unless:
 - (a) the entry is made with the permission of the occupier, or
 - (b) the entry is made to a part of the premises open to the public, or
 - (c) notifying the occupier would defeat the purpose for which the premises were entered or would unreasonably delay the authorised officer in a case of urgency.
- (4) Entry under the power conferred by this section may only be made at a reasonable time. This subsection does not apply to a power conferred by a search warrant.
- (5) The powers of entry conferred by this Part are not exercisable in relation to any part of premises used only for residential purposes except:
 - (a) with the permission of the occupier of the premises, or
 - (b) under the authority conferred by a search warrant.

28 Search warrants

- (1) An authorised officer under this Act may apply to an issuing officer for a search warrant if the authorised officer has reasonable grounds for believing that a provision of this Act or the regulations has been or is being contravened in or about any premises.
- (2) An issuing officer to whom such an application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an authorised officer

named in the warrant, and any other person named in the warrant:

(a) to enter the premises concerned, and

(b) to exercise any function of an authorised officer under this Part.

(3) Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002* applies to a search warrant issued under this section.

(4) In this section: "**issuing officer**" means an authorised officer within the meaning of the *Law Enforcement (Powers and Responsibilities) Act 2002*. "**premises**" includes a vehicle.

29 Powers to inspect and seize things

(1) An authorised officer may, on any premises lawfully entered, do anything that, in the opinion of the officer, is necessary to be done for the purposes of this Part, including (but not limited to) the following:

(a) examine and inspect any part of the premises or any article or thing on the premises,

(b) take and remove samples,

(c) make such examinations, inquiries, tests and surveys as the officer considers necessary,

(d) take such photographs, films, audio, video and other recordings as the authorised officer considers necessary,

(e) require records to be produced for inspection,

(f) examine and inspect any records,

(g) copy any records,

(h) seize anything that the officer has reasonable grounds for believing is connected with an offence under this Act or the regulations,

(i) do any other thing that the officer is empowered to do under this Part.

(2) If the authorised officer takes any document or thing under this section, the authorised officer must:

(a) give notice of the taking of the document or thing to the person apparently in charge of it or to a manager of the premises, and

(b) return the document or thing to that person or the premises within 7 days after taking it.

(3) A person may accompany an authorised officer and take all reasonable steps to assist an authorised officer in the exercise of the authorised officer's functions under this section if the authorised officer is of the opinion that the person is capable of providing assistance to the authorised officer in the exercise of those functions.

(4) For the purpose of enabling an authorised officer to exercise any of the functions of an authorised officer under this section in connection with any premises, Dams Safety NSW may, by notice in writing given to the owner or occupier of the premises, require the owner or occupier to provide such reasonable assistance and facilities as are specified in the notice within a specified time and in a specified manner.

30 Powers to require information and records

(1) An authorised officer may, by notice in writing given to the owner of a declared dam, require the owner to furnish to the officer such information or records (or both) as the officer requires by the notice in connection with any matter arising under or in connection with this Act.

(2) Any such notice must specify the manner in which information or records are required to be furnished and a reasonable time by which the information or records are required to be furnished.

(3) A notice under this section may only require the owner of a declared dam to furnish records that are in the owner's possession or that are within the owner's power to obtain lawfully.

(4) The authorised officer to whom any record is furnished under this section may take

copies of it.

(5) If any record required to be furnished under this section is in electronic, mechanical or other form, the notice requires the record to be furnished in written form, unless the notice otherwise provides.

(6) This section applies whether or not a power of entry under this Part is being or has been exercised.

31 Powers of authorised officers to require answers

An authorised officer may require a person whom the authorised officer suspects on reasonable grounds to have knowledge of any matter in respect of which information is reasonably required for the purposes of this Act to answer questions in relation to that matter.

32 Powers of authorised officers to require surveys and assessments

An authorised officer may, by notice in writing given to the owner of a declared dam, require the owner to carry out such surveys and assessments, at the expense of the owner, in relation to the dam as are required by the authorised officer.

33 Offences

A person who:

- (a) prevents an authorised officer from exercising the authorised officer's functions under this Act, or
- (b) hinders, obstructs, threatens or assaults an authorised officer in the exercise of such a function, or
- (c) without lawful excuse, fails to comply with a requirement made of the person under this Part, or
- (d) provides an authorised officer with a document or information knowing that it is false or misleading in a material particular, or
- (e) impersonates an authorised officer or falsely represents that the person is an authorised officer,

is guilty of an offence.

Maximum penalty: 100 penalty units.

34 Provisions relating to requirements to provide information or records or answer questions

(1) A person is not guilty of an offence of failing to comply with a requirement under this Part to furnish information or records or to answer a question unless the person was warned on that occasion that a failure to comply is an offence.

(2) A person is not excused from a requirement under this Part to provide information or records or to answer a question on the ground that the information, record or answer might incriminate the person or make the person liable to a penalty.

(3) However, any information furnished or answer given by a natural person in compliance with a requirement under this Part is not admissible in evidence against the person in criminal proceedings (except proceedings for an offence under this Part) if:

- (a) the person objected at the time to doing so on the ground that it might incriminate the person, or
- (b) the person was not warned on that occasion that the person may object to providing the information or giving the answer on the ground that it might incriminate the person.

(4) Any record furnished by a person in compliance with a requirement under this Part is not inadmissible in evidence against the person in criminal proceedings on the ground that the record might incriminate the person.

(5) Further information obtained as a result of a record or information furnished or an answer given in compliance with a requirement under this Part is not inadmissible on the ground:

- (a) that the record or information had to be furnished or the answer had to be given, or
- (b) that the record or information furnished or answer given might incriminate the person.

Part 5 – Formal inquiries into safety of declared dams

35 Inquiries

- (1) Dams Safety NSW may, and if directed to do so by the Minister must, conduct an inquiry into any matter relating to the safety of a declared dam.
- (2) Dams Safety NSW may determine the matters to be examined in the course of an inquiry under this Part.
- (3) This Part does not limit the power of Dams Safety NSW to conduct an inquiry into any matter even though it has appointed another person or body to do so.
- (4) This Part does not affect any law relating to immunity of an individual from self-incrimination.

36 Person or body conducting inquiries

- (1) Dams Safety NSW may appoint any of the following to conduct an inquiry under this Part:
 - (a) a committee of Dams Safety NSW,
 - (b) with the approval of the Minister, any other person or body Dams Safety NSW considers appropriate to conduct the inquiry.
- (2) Dams Safety NSW may appoint one or more persons to assist the inquiry.
- (3) Dams Safety NSW may, in the case where 2 or more persons are appointed to conduct the inquiry, appoint one of those persons to preside at any meeting of those persons for the purposes of the inquiry.
- (4) A person appointed by Dams Safety NSW to conduct or assist the inquiry may be paid such remuneration and allowances (if any) as the Minister determines in respect of the person.

37 Procedures at inquiries

- (1) The procedure to be followed at an inquiry under this Part is to be determined by the person or body conducting it, subject to this Act and the regulations.
- (2) The person or body conducting the inquiry may, by notice in writing given to any person, require the person within such reasonable time as may be specified in the notice:
 - (a) to furnish to that person or body such information, and
 - (b) to produce to that person or body such documents in the person's possession or under the person's control,as may be required for the purposes of the inquiry and as may be specified in the notice, whether generally or otherwise.
- (3) The person or body conducting the inquiry may, by notice in writing given to any person, require the person:
 - (a) to attend at a specified time and place before that person or body and at such other times as may be required by that person or body, and
 - (b) to give evidence concerning any matter the subject of the inquiry, and
 - (c) to produce all such documents in the person's possession or under the person's control as may be required for the purposes of the inquiry and as may be specified in the notice, whether generally or otherwise.
- (4) The person or body conducting the inquiry may require any such evidence to be given in writing or orally.
- (5) The person or body conducting the inquiry may, subject to section 13 of the *Oaths Act*

1900, require any such evidence to be given on oath, and for that purpose the person presiding may administer an oath.

(6) A person who fails to comply with the requirements of a notice given to the person under this section is guilty of an offence. Maximum penalty: 100 penalty units.

(7) A person who:

(a) furnishes any information pursuant to subsection (2) knowing that it is false or misleading in a material particular, or

(b) gives any evidence pursuant to subsection (3) knowing that it is false or misleading in a material particular,

is guilty of an offence. Maximum penalty: 100 penalty units.

(8) The person or body conducting the inquiry is not bound by the rules of evidence, and may be informed in such manner as the person or body thinks fit.

38 Public nature of inquiries

(1) An inquiry under this Part is to be held in public.

(2) Before the inquiry starts, the person or body conducting it is required to give notice, by advertisement in the Gazette and in such other manner as the person or body thinks appropriate, of the intention to hold the inquiry, of its subject and of the time and place at which it is to start.

(3) However, if the person or body conducting the inquiry is satisfied that it is desirable in the public interest to do so because of the confidential nature of any evidence or matter or for any other reason, the person or body may do either or both of the following:

(a) direct that the inquiry or any part of it take place in private and give directions as to the persons who may be present,

(b) give directions prohibiting or restricting the publication of evidence given at the inquiry or of matters contained in documents provided for the inquiry.

(4) A person who publishes any evidence or matter in contravention of any such direction of the person or body conducting the inquiry is guilty of an offence unless:

(a) the publication of the evidence was made with the consent of the person who gave the evidence or the publication of the matter was made with the consent of the person who provided the document, or

(b) the evidence or matter has already been lawfully published, or

(c) the person became aware of the evidence or matter otherwise than by reason, directly or indirectly, of the giving of the evidence at the inquiry or the provision of the document at the inquiry, or

(d) the person had any other lawful excuse to do so.

Maximum penalty: 100 penalty units.

(5) If evidence is given by written statement, the person or body conducting the inquiry is to make available to the public in such manner as the person or body thinks fit the contents of the statement. This does not apply to matter the publication of which, in the opinion of the person or body, would be contrary to the public interest because of its confidential nature or for any other reason.

39 Report of inquiry

(1) The person or body conducting an inquiry under this Part is to prepare a report to Dams Safety NSW of its findings and recommendations.

(2) The report is to be provided to the Minister by Dams Safety NSW if the Minister directed that the inquiry be conducted.

Part 6 – Finance

40 Dams Safety Fund

(1) There is to be established in the Special Deposits Account a Dams Safety Fund (the "**Fund**") into which is to be paid the following:

(a) any money advanced to Dams Safety NSW by the Treasurer or appropriated

- by Parliament for the purposes of Dams Safety NSW,
 - (b) any dams safety levy paid under section 41,
 - (c) the proceeds of the investment of money in the Fund,
 - (d) any money required or authorised to be paid into the Fund by or under this or any other Act.
- (2) There is to be paid from the Fund:
- (a) all amounts required to meet expenditure incurred by Dams Safety NSW in exercising its functions and in the administration of this Act, and
 - (b) all other payments required by or under this or any other Act to be paid from the Fund.
- (3) Dams Safety NSW may invest money in the Fund:
- (a) in the manner authorised by the *Public Authorities (Financial Arrangements) Act 1987*, or
 - (b) if that Act does not confer power on Dams Safety NSW to invest the money, in any other manner approved by the Minister with the concurrence of the Treasurer.

41 Dams safety levy

- (1) The regulations may 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 this Act to the extent that it relates to declared dams.
- (2) Any such dams safety levy is payable to Dams Safety NSW.
- (3) The amount of a dams safety levy, and the times or intervals at which it is to be paid, are to be determined in accordance with the regulations.

Part 7 – Criminal proceedings and related matters

42 Nature of proceedings for offences

- (1) Proceedings for an offence under this Act or the regulations may be dealt with summarily before:
- (a) the Local Court, or
 - (b) the Land and Environment Court in its summary jurisdiction.
- (2) The maximum monetary penalty that may be imposed by the Local Court in proceedings for an offence under this Act or the regulations is:
- (a) the lesser of the following:
 - (i) 200 penalty units,
 - (ii) the maximum monetary penalty specified in respect of the offence, and
 - (b) in the case of a continuing offence, 10 per cent of the further monetary penalty specified in respect of the offence for each day the offence continues.
- (3) The maximum penalty that may be imposed by the Land and Environment Court in proceedings for an offence against this Act or the regulations is the maximum penalty specified in respect of the offence.

43 Time for commencing proceedings

- (1) Proceedings for an offence under this Act or the regulations may be commenced not later than 12 months after the offence was alleged to have been committed.
- (2) Proceedings for an offence under this Act or the regulations may also be commenced within, but not later than, 12 months after Dams Safety NSW or the Secretary became aware of the alleged offence.
- (3) If subsection (2) is relied on for the purpose of commencing proceedings for an offence, the court attendance notice must contain particulars of the date on which evidence of the alleged offence first came to the attention of Dams Safety NSW or the Secretary and need not contain particulars of the date on which the offence was alleged to have been committed.
- (4) The date on which evidence first came to the attention of Dams Safety NSW or the

Secretary is the date specified in the court attendance notice, unless the contrary is established.

(5) This section applies despite anything in the *Criminal Procedure Act 1986* or any other Act.

(6) In this section: "**evidence**" of an offence means evidence of any act or omission constituting the offence.

44 Continuing offences

(1) A person who is guilty of an offence because the person contravenes a requirement made by or under this Act or the regulations (whether the requirement is imposed by a notice or otherwise) to do or cease to do something (whether or not within a specified period or before a particular time):

(a) continues, until the requirement is complied with and despite the fact that any specified period has expired or time has passed, to be liable to comply with the requirement, and

(b) is guilty of a continuing offence for each day the contravention continues.

(2) This section does not apply to an offence if the relevant provision of this Act or the regulations does not provide for a penalty for a continuing offence.

(3) This section does not apply to the extent that a requirement of a notice is revoked.

45 Offences by corporations

(1) If a corporation contravenes, whether by act or omission, any provision of this Act or the regulations, each person who is a director of the corporation or who is concerned in the management of the corporation is taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.

(2) A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the corporation has been proceeded against or convicted under that provision.

(3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation under this Act or the regulations.

46 Penalty notices

(1) An authorised officer may issue a penalty notice to a person if it appears to the officer that the person has committed a penalty notice offence.

(2) A penalty notice offence is an offence against this Act or the regulations that is prescribed by the regulations as a penalty notice offence.

(3) The *Fines Act 1996* applies to a penalty notice issued under this section. The *Fines Act 1996* provides that, if a person issued with a penalty notice does not wish to have the matter determined by a court, the person may pay the amount specified in the notice and is not liable to any further proceedings for the alleged offence.

(4) The amount payable under a penalty notice issued under this section is the amount prescribed for the alleged offence by the regulations (not exceeding the maximum amount of penalty that could be imposed for the offence by a court).

(5) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.

Part 8 – Miscellaneous

47 Act to bind Crown

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of the Parliament of New South Wales permits, the Crown in all its other capacities.

48 Mining in notification areas--requirement for consent authorities to consult with Dams Safety NSW

(1) Dams Safety NSW may, by order published in the Gazette, declare an area of land that:

- (a) surrounds, or is in the vicinity of, a declared dam, and
 - (b) is described in the order,
- as a notification area for the purposes of this section.
- (2) The order under which an area of land is declared as a notification area must identify the area by map.
- (3) The map identifying land declared as a notification area must be published on the public website of Dams Safety NSW or, if no such website is available, the public website of the Department. Dams Safety NSW may also arrange for any such map to be published on the NSW planning portal.
- (4) A consent authority must, before granting development consent for the carrying out of any mining operations under the *Mining Act 1992* in a notification area:
- (a) refer the application for development consent to Dams Safety NSW, and
 - (b) take into consideration any matters that are raised by Dams Safety NSW in relation to the application within 28 days (or such other period as is agreed between the consent authority and Dams Safety NSW) after the application is referred to Dams Safety NSW.
- (5) A reference in this section:
- (a) to an application for development consent includes a reference to an application to modify an existing development consent, and
 - (b) to the granting of development consent includes a reference to the modification of a development consent.
- (6) In this section, "**consent authority**", "**development consent**" and "**NSW planning portal**" have the same meanings as in the *Environmental Planning and Assessment Act 1979*.

49 Arrangements with public authorities

- (1) Dams Safety NSW may enter into an arrangement or agreement with any public authority that:
- (a) the public authority may act as agent of Dams Safety NSW for the purposes of this Act, or
 - (b) Dams Safety NSW may act as agent of the public authority for the purposes of this Act,
- on such terms and conditions as may be agreed on by Dams Safety NSW and the public authority.
- (2) Despite anything in any other Act, a public authority may enter into such an arrangement or agreement and may do or suffer anything necessary or expedient for carrying out any such arrangement or agreement.

50 Exclusion of personal liability

An act or omission of any of the following:

- (a) the Minister,
 - (b) a member of Dams Safety NSW or a committee of Dams Safety NSW,
 - (c) a member of staff of Dams Safety NSW,
 - (d) an authorised officer,
 - (e) any individual acting under the direction of a person or body referred to above,
 - (f) any individual acting as the delegate of a person or body referred to above,
- does not subject the Minister or any such member, officer or individual so acting personally to any action, liability, claim or demand if the act or omission was done, or omitted to be done, in good faith for the purpose of executing this Act.

51 Service of documents

- (1) A document that is authorised or required by this Act or the regulations to be served on any person may be served by:

- (a) in the case of a natural person:
 - (i) delivering it to the person personally, or
 - (ii) sending it by post to the address specified by the person for the giving or service of documents or, if no such address is specified, the residential or business address of the person last known to the person giving or serving the document, or
 - (iii) sending it by facsimile transmission to the facsimile number of the person, or
- (b) in the case of a body corporate:
 - (i) leaving it with a person apparently of or above the age of 16 years at, or by sending it by post to, the head office, a registered office or a principal office of the body corporate or to an address specified by the body corporate for the giving or service of documents, or
 - (ii) sending it by facsimile transmission to the facsimile number of the body corporate.

(2) Nothing in this section affects the operation of any provision of a law or of the rules of a court authorising a document to be served on a person in any other manner.

52 Service of documents on Dams Safety NSW

(1) A document may be served on Dams Safety NSW by leaving it at, or by sending it by post to:

- (a) the office of Dams Safety NSW, or
- (b) if it has more than one office, any one of its offices.

(2) Nothing in subsection (1) affects the operation of any provision of a law or of the rules of a court authorising a document to be served on Dams Safety NSW in a manner not provided for by subsection (1).

53 Regulations

(1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) A regulation may create an offence punishable by a penalty not exceeding 50 penalty units.

54 Repeal of Dams Safety Act 1978 No 96

The *Dams Safety Act 1978* is repealed.

55 Review of Act

(1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.

(2) The review is to be undertaken as soon as possible after the period of 5 years from the commencement of this Act.

(3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

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

(Section 7 (5))

1 Definitions

In this Schedule:

"appointed member" means a member of Dams Safety NSW appointed by the Minister.

"**member**" means any member of Dams Safety NSW.

2 Terms of office

Subject to this Schedule and the regulations, an appointed member holds office for such period (not exceeding 4 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

3 Part-time appointments

Appointed members hold office as part-time members.

4 Remuneration

An appointed member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister, in consultation with the Public Service Commissioner, may from time to time determine in respect of the member.

5 Acting members

- (1) The Minister may, from time to time, appoint a person to act in the office of an appointed member during the illness or absence of the member, and the person, while so acting, has and may exercise all the functions of the member and is taken to be a member.
- (2) The Minister may remove a person from the office to which he or she was appointed under this clause.
- (3) For the purposes of this clause, a vacancy in the office of a member or the suspension of a member is to be regarded as an absence from office of the member.

6 Suspension of members

- (1) The Minister may, by order in writing, suspend an appointed member of Dams Safety NSW for a period specified in the order.
- (2) A copy of an order given under this clause must be served on the member.
- (3) The member, while suspended from office under this clause:
 - (a) is not entitled to exercise any functions of the office, and
 - (b) is not entitled to any fee or other remuneration to which the member would otherwise be entitled as the holder of the office.
- (4) The period of suspension under an order made under this clause commences on the date the order is served on the member or the date specified in the order for the commencement of the period of suspension, whichever is the later.

7 Vacancy in office of member

- (1) The office of an appointed member becomes vacant if the member:
 - (a) dies, or
 - (b) completes a term of office and is not re-appointed, or
 - (c) resigns the office by instrument in writing addressed to the Minister, or
 - (d) is removed from office by the Minister under this clause, or
 - (e) is absent from 4 consecutive meetings of Dams Safety NSW of which reasonable notice has been given to the member personally or by post, except on leave granted by the Minister or unless the member is excused by the Minister for having been absent from those meetings, or
 - (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
 - (g) becomes a mentally incapacitated person, or
 - (h) becomes the owner of a declared dam, or
 - (i) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South

Wales of an offence that, if committed in New South Wales, would be an offence so punishable.

(2) The Minister may remove an appointed member from office at any time for any or no stated reason and without notice.

8 Filling of vacancy in office of appointed member

If the office of any appointed member becomes vacant, a person is, subject to this Act and the regulations, to be appointed to fill the vacancy.

9 Chairperson and Deputy Chairperson

(1) The Chairperson or Deputy Chairperson of Dams Safety NSW vacates office as Chairperson or Deputy Chairperson if he or she:

- (a) is removed from that office by the Minister under this clause, or
- (b) resigns that office by instrument in writing addressed to the Minister, or
- (c) ceases to be a member of Dams Safety NSW.

(2) The Minister may at any time remove the Chairperson or Deputy Chairperson from office as Chairperson or Deputy Chairperson.

10 Conduct of members

(1) A member must:

- (a) act honestly and exercise a reasonable degree of care and diligence in carrying out the member's functions, and
- (b) act for a proper purpose in carrying out the member's functions, and
- (c) not use the office of member for personal advantage, and
- (d) not use the office of member to the detriment of Dams Safety NSW, and
- (e) disclose any interest (whether pecuniary or otherwise) that could conflict with the proper performance of the member's functions and avoid performing any function that could involve such a conflict of interest.

(2) This clause applies to a member of a committee of Dams Safety NSW and the committee in the same way as it applies to a member of Dams Safety NSW and Dams Safety NSW.

11 Disclosure of pecuniary interests

(1) If:

- (a) a member has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of Dams Safety NSW, and
- (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,

the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of Dams Safety NSW.

(2) A disclosure by a member at a meeting of Dams Safety NSW that the member:

- (a) is a member, or is in the employment, of a specified company or other body, or
- (b) is a partner, or is in the employment, of a specified person, or
- (c) has some other specified interest relating to a specified company or other body or to a specified person,

is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).

(3) Particulars of any disclosure made under this clause must be recorded by Dams Safety NSW in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee determined by Dams Safety NSW.

(4) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Minister or Dams Safety NSW otherwise determines:

- (a) be present during any deliberation of Dams Safety NSW with respect to the

matter, or

(b) take part in any decision of Dams Safety NSW with respect to the matter.

(5) For the purposes of the making of a determination by Dams Safety NSW under subclause (4), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:

(a) be present during any deliberation of Dams Safety NSW for the purpose of making the determination, or

(b) take part in the making by Dams Safety NSW of the determination.

(6) A contravention of this clause does not invalidate any decision of Dams Safety NSW.

(7) This clause applies to a member of a committee of Dams Safety NSW and the committee in the same way as it applies to a member of Dams Safety NSW and Dams Safety NSW.

12 Effect of certain other Acts

(1) The provisions of the *Government Sector Employment Act 2013* relating to the employment of Public Service employees do not apply to an appointed member.

(2) If by or under any Act provision is made:

(a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or

(b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of an appointed member or from accepting and retaining any remuneration payable to the person under this Act as a member.

13 General procedure

The procedure for the calling of meetings of Dams Safety NSW and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by Dams Safety NSW.

14 Quorum

The quorum for a meeting of Dams Safety NSW is a majority of the appointed members for the time being.

15 Presiding

(1) The Chairperson of Dams Safety NSW (or, in the absence or at the request of the Chairperson, the Deputy Chairperson of Dams Safety NSW) is to preside at a meeting of Dams Safety NSW.

(2) The presiding member has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

16 Voting

(1) A decision supported by a majority of the votes cast at a meeting of Dams Safety NSW at which a quorum is present is the decision of Dams Safety NSW.

(2) The Chief Executive Officer is not entitled to vote on any matter considered by Dams Safety NSW.

17 Transaction of business outside meetings or by telephone

(1) Dams Safety NSW may, if it thinks fit, transact any of its business by the circulation of papers among all the members of Dams Safety NSW for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of Dams Safety NSW.

(2) Dams Safety NSW may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.

- (3) For the purposes of:
- (a) the approval of a resolution under subclause (1), or
 - (b) a meeting held in accordance with subclause (2),
- the Chairperson and each appointed member have the same voting rights as they have at an ordinary meeting of Dams Safety NSW.
- (4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of Dams Safety NSW.
- (5) Papers may be circulated among the members for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

18 First meeting

The Minister may call the first meeting of Dams Safety NSW in such manner as the Minister thinks fit.

Schedule 2 Savings, transitional and other provisions

Part 1 – General

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or any Act that amends this Act.
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as:
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Part 2 – Provisions consequent on enactment of this Act

2 Definitions

In this Part:

"former Act" means the *Dams Safety Act 1978* as in force immediately before its repeal by this Act.

"former Committee" means the Dams Safety Committee constituted by the former Act.

3 Continuation of former Committee and account

- (1) Dams Safety NSW is a continuation of, and the same legal entity as, the former Committee. Section 53 of the *Interpretation Act 1987* contains savings provisions in relation to the effect of the reconstitution of the former Committee under a new name.
- (2) The Dams Safety Fund established under this Act is a continuation of the Dams Safety Committee Account established under the former Act.

4 Members of former Committee cease to hold office

The persons who were members of the former Committee immediately before the repeal of the former Act cease to hold office as members and are not entitled to any remuneration or compensation because of the loss of that office.

5 Interim advisory committee

(1) Pending the commencement of section 6, there is to be an Interim Dams Safety Advisory Committee ("**interim advisory committee**") comprising persons appointed by the Minister to carry out such functions in relation to the administration of this Act as may be determined by the Minister.

(2) Without limiting subclause (1), the interim advisory committee is to have the following functions:

- (a) to identify criteria for declaring dams under this Act,
- (b) to develop dams safety standards,
- (c) to undertake other regulatory and policy development in relation to dams safety.

(3) In appointing persons as members of the interim advisory committee, the Minister is, as far as is practicable, to appoint only those persons who would be eligible for appointment as members of Dams Safety NSW.

(4) The procedure for meetings of the interim advisory committee may be determined by the Minister.

(5) The members of the interim advisory committee cease to hold office on the commencement of section 6 but are, subject to this Act, eligible for appointment as members of Dams Safety NSW.

(6) Dams Safety NSW is, in exercising its functions under this Act, to take into account any recommendations made by the interim advisory committee.

(7) The provisions of this clause are in addition to, and do not affect, the provisions of section 26 of the *Interpretation Act 1987*.

6 Saving of prescribed dams

A dam that was, immediately before the repeal of the former Act, a prescribed dam under that Act is, until such time as an order is made under section 5, taken to be a declared dam for the purposes of this Act.

7 Phasing-in of requirements for operations and maintenance plans and emergency plans

(1) The owner of a declared dam does not commit an offence under section 16:

- (a) if an operations and maintenance plan was in force in relation to the dam immediately before the commencement of that section--until after the date prescribed by the regulations for the purposes of this paragraph, or
- (b) if no such plan was in force in relation to the dam immediately before that commencement--until after the date prescribed by the regulations for the purposes of this paragraph.

(2) The owner of a declared dam does not commit an offence under section 17:

- (a) if an emergency plan was in force in relation to the dam immediately before the commencement of that section--until after the date prescribed by the regulations for the purposes of this paragraph, or
- (b) if no such plan was in force in relation to the dam immediately before that commencement--until after the date prescribed by the regulations for the purposes of this paragraph.

8 Existing notification areas under Mining Act

(1) A notification area declared under the *Mining Act 1992* (as in force immediately before the repeal of section 369 of that Act by this Act) is taken to be a notification area declared under section 48 of this Act.

(2) Maps of any such existing notification area must be published in accordance with section 48 (2) of this Act.

9 Consultation requirements under section 48--existing applications for development consent

Section 48 extends to an application for development consent (as referred to in that section) lodged, but not granted, before the commencement of that section.

Schedule 3 Amendment of other legislation

3.1 – Environmental Planning and Assessment Act 1979 No 203

Section 79B Consultation and concurrence

Insert at the end of section 79B (1):

See also section 48 of the *Dams Safety Act 2015* which requires the 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 and to take into consideration any matters raised by Dams Safety NSW.

3.2 – Land and Environment Court Act 1979 No 204

Section 17 Class 1--environmental planning and protection appeals

Insert after section 17 (aa):

(ab) appeals under section 22 of the *Dams Safety Act 2015*,

3.3 – Law Enforcement (Powers and Responsibilities) Act 2002 No 103

Schedule 2 Search warrants under other Acts

Insert in alphabetical order:

Dams Safety Act 2015, section 28

3.4 – Local Government Act 1993 No 30

[1] Section 60 Ministerial approval required for certain council works

Omit section 60 (a) and (d).

[2] Section 60, note

Insert at the end of the section:

Approval is required under Part 3 of Chapter 3 of the *Water Management Act 2000* for the construction or use by a council of water supply works or flood works within the meaning of that Act.

[3] Section 61 Ministerial directions concerning certain works

Omit section 61 (1) (a).

[4] Section 61 (1), note

Insert at the end of the subsection:

Under section 19 of the *Dams Safety Act 2015*, Dams Safety NSW may direct a council (as the owner of a declared dam within the meaning of that Act) to take measures to ensure the safety and proper maintenance of the dam.

[5] Section 62 Ministerial powers during emergencies

Insert after section 62 (3):

(4) A direction under this section may not be given to a council in respect of a dam. Under section 21 (5) of the *Dams Safety Act 2015*, Dams Safety NSW may direct a council (as the owner of a declared dam within the meaning of that Act) to take measures with respect to the dam during the period that an emergency order under that section is in force.

3.5 – Local Government (General) Regulation 2005

Clause 140 Flood retarding basins

Omit the clause.

3.6 – Mining Act 1992 No 29

[1] Section 80 Prevention of damage to prescribed dams

Omit the section.

[2] Section 89 Notification of Dams Safety Committee

Omit the section.

[3] Section 91 Objections to granting of proposed mining lease

Omit section 91 (2) and (4).

[4] Section 369 Notification areas

Omit the section.

[5] Schedule 1 Public consultation with respect to the granting of assessment leases and mining leases

Omit clauses 7 and 25.

[6] Schedule 1, clause 9 (1)

Omit "(other than the Dams Safety Committee)".

[7] Schedule 1, clause 9 (2) and (5)

Omit the subclauses.

[8] Schedule 6 Savings, transitional and other provisions

Insert at the end of the Schedule with appropriate Part and clause numbering:

Part – Provisions consequent on enactment of Dams Safety Act 2015

Continuation of notification and consultation requirements in relation to dams safety

(1) The amendments made to this Act by the *Dams Safety Act 2015* do not apply in relation to an application for a mining lease that:

- (a) was made but not granted before the commencement of this clause, or
- (b) is subsequently made after that commencement,

and accordingly this Act continues to apply in relation to any such application as if it had not been so amended.

(2) However, subclause (1) does not apply if an application for development consent for the carrying out of mining operations on land to which the proposed mining lease relates has been referred to Dams Safety NSW under section 48 of the *Dams Safety Act 2015*.

(3) This clause is subject to the regulations.

[9] Dictionary

Omit the definitions of "**Dams Safety Committee**", "**notification area**" and "**prescribed dam**".

3.7 – (Repealed)

3.8 – Public Finance and Audit Act 1983 No 152

Schedule 2 Statutory bodies

Omit "Dams Safety Committee". Insert instead "Dams Safety NSW".

3.9 – Water Management Act 2000 No 92

[1] Section 88A Application and objects of Part

Insert after section 88A (2):

(3) Without limiting section 3, the objects of this Part include ensuring that matters relating to safety are taken into consideration in granting water management work approvals for certain dams and flood retarding basins.

[2] Section 91AA

Insert after section 91:

91AA Consultation with Dams Safety NSW in relation to approvals for dams and flood retarding basins

(1) This section applies in relation to the following kinds of water management work approvals:

(a) a water supply work approval for the construction or use of a water supply work comprising:

(i) a declared dam within the meaning of the *Dams Safety Act 2015*, or

(ii) a dam or proposed dam that is of a class prescribed by the regulations,

(b) a flood work approval for the construction or use of a flood retarding basin that is of a class prescribed by the regulations.

(2) Without limiting any other provision of this Part, the Minister must, before granting a water management work approval to which this section applies or before amending any such approval:

(a) refer the application for the approval or amendment to Dams Safety NSW, and

(b) take into consideration any matters that are raised by Dams Safety NSW in relation to the application within 28 days (or such other period as is agreed between the Minister and Dams Safety NSW) after the application is referred to Dams Safety NSW.

(3) In this section:

(a) a reference to a water management work of any kind includes a reference to a corresponding kind of work to which Part 2 or 8 of the *Water Act 1912* extends, and

(b) a reference to a water management work approval includes a reference to an entitlement (within the meaning of clause 2 of Schedule 10) that confers a corresponding authority, and

(c) a reference to the Minister includes, in the case of any such entitlement that confers a corresponding authority, a reference to the Ministerial Corporation.

[3] Schedule 9 Savings, transitional and other provisions

Insert at the end of the Schedule with appropriate Part and clause numbering:

Part – Provision consequent on enactment of Dams Safety Act 2015

Existing approvals relating to dams and flood works constructed by local councils An approval under section 60 of the *Local Government Act 1993* relating to the construction or extension of a dam or flood work and in force immediately before the amendment of that section by the *Dams Safety Act 2015* is taken to be a water supply work approval or flood work approval (as the case requires) in force under Part 3 of Chapter 3 of this Act for the construction or use of that dam or flood work (unless any such water supply or flood work approval is already in force in respect of that dam or flood work or the dam or flood work is otherwise exempt from the requirement for such approval).

3.10 – Water Management (General) Regulation 2011

Clause 116 Ministerial approval not required for certain works

Omit "prescribed dams for the purposes of the *Dams Safety Act 1978* " from clause 116 (1) (b).

Insert instead "declared dams within the meaning of the *Dams Safety Act 2015* ".

Historical notes

The following abbreviations are used in the Historical notes:

Am	amended	LW	legislation website	Sch	Schedule
Cl	clause	No	number	Schs	Schedules
Cll	clauses	p	page	Sec	section
Div	Division	pp	pages	Secs	sections
Divs	Divisions	Reg	Regulation	Subdiv	Subdivision
GG	Government Gazette	Regs	Regulations	Subdivs	Subdivisions
Ins	inserted	Rep	repealed	Subst	substituted

Table of amending instruments *Dams Safety Act 2015 No 26*. Assented to 28.9.2015.

Date of commencement, cl 5 of Sch 2 excepted: not in force; date of commencement of cl 5 of Sch 2, assent, sec 2 (2). This Act has been amended as follows:

2015	No 40	<i>Mining and Petroleum Legislation Amendment (Harmonisation) Act 2015</i> . Assented to 2.11.2015. Date of commencement of Sch 3, 1.3.2016, sec 2 and 2016 (91) LW 26.2.2016.
	No 43	<i>Work Health and Safety (Mines and Petroleum) Legislation Amendment (Harmonisation) Act 2015</i> . Assented to 2.11.2015. Date of commencement, 1.2.2016, sec 2 and 2016 (46) LW 29.1.2016.
2017	No 22	<i>Statute Law (Miscellaneous Provisions) Act 2017</i> . Assented to 1.6.2017. Date of commencement of Sch 3, 7.7.2017, sec 2 (3).
	No 65	<i>Local Government Amendment (Regional Joint Organisations) Act 2017</i> . Assented to 30.11.2017. Date of commencement, 15.12.2017, sec 2 and 2017 (730) LW 15.12.2017.
2018	No 25	<i>Statute Law (Miscellaneous Provisions) Act 2018</i> . Assented to 15.6.2018. Date of commencement of Sch 2, 1.8.2018, sec 2 (3).

Table of amendments

Sec 4	Am 2017 No 65, Sch 2.5.
Sec 27	Am 2015 No 43, Sch 4.3.
Sec 38	Am 2018 No 25, Sch 2.5.
Sec 46	Subst 2017 No 22, Sch 3.15.
Sch 3	Am 2015 No 40, Sch 3.1.