

Water Legislation (Dam Safety) Amendment Bill 2016

Explanatory Notes

FOR

Amendments To Be Moved During Consideration In Detail By The Honourable Mark Bailey MP

Title of the Bill

Water Legislation (Dam Safety) Amendment Bill 2016.

Objectives of the Amendments

On 30 November 2016, the Water Legislation (Dam Safety) Amendment Bill 2016 (the Bill) was introduced into Parliament. The Bill was referred to the Public Works and Utilities Committee (the Committee), formerly the Transportation and Utilities Committee, for examination.

The Committee tabled its report (No. 35) on the Bill in Parliament on 21 February 2017. The report made a number of recommendations to amend the Bill.

The amendments address several issues identified from submissions and during the Committee's public hearing, and implement the Committee's recommendations to amend the Bill.

Definitions for 'dam hazard event', 'emergency event' and 'relevant entity'

The Committee recommended that the Bill be amended to clarify particular requirements for emergency action plans including:

- what constitutes an increase in the likelihood of a dam hazard event or an emergency event;
- what is a dam hazard event versus an emergency event; and
- when an emergency event ends for the purpose of post emergency event reporting.

There is a need to clarify the difference between a ‘dam hazard event’ and an ‘emergency event’ to allow emergency action plans to identify and plan for events of different severity without triggering the requirement for post event reporting for those lower consequence events.

There is also a need to clarify the obligation on dam owners to warn particular persons who may be harmed and notify other persons who may be impacted by an event but not necessarily harmed, such as residents that may be temporarily cut off because of road closures.

Under the Bill, an ‘emergency event’ is an event that is likely to require a coordinated response involving one or more relevant entities to respond to the event. The amendments will provide that an emergency event occurs if a coordinated response is likely to be required by two or more relevant entities other than persons who may be impacted by the event and by inserting additional criteria for defining an emergency event, linked to the *Disaster Management Act 2003*.

The definition for ‘relevant entity’ is amended to require notifications to be given to all persons who may be affected or whose property may be affected by a dam hazard event or emergency event, rather than only those who may be harmed. The expanded definition also expressly lists local governments as relevant entities, as they may have a specific function under the emergency action plan.

Requirements for emergency action plans

Section 352H(1)(b)(ii) specifies that emergency action plans should ‘identify each circumstance that indicates an increase in the likelihood of the dam hazard event or emergency event happening’. The Committee recommended that the Bill be amended to clarify what constitutes an ‘increase in likelihood’. Submissions to the Committee argued that this section could be read very broadly, as no definition is currently provided.

The provision is intended to provide for identification of events that may escalate through low levels of severity and consequence to high levels of severity and consequence so that appropriate actions can be taken in response to each circumstance and can also be escalated in line with the unfolding situation. The amendments will limit this section to a ‘material increase’ and insert examples for additional clarity.

‘End’ of emergency events

The Committee recommended that the Bill be amended to clarify when an emergency event ‘ends’ for the purpose of emergency event reporting. This was in response to several submissions which argued that under the current definition, an emergency event may never end, as dams rarely, if ever, pose no risk.

Definition of ‘unacceptable risk’ in reducing supply levels

The Committee noted that there is no definition provided for ‘acceptable risk’ and ‘unacceptable risk’ when deciding to reduce the full supply level of a dam for safety reasons. As such, the provision may impose a subjective test on the dam owner. In the absence of a definition for ‘unacceptable risk’ there is potential for different interpretations and different

standards to apply potentially exposing the dam owner to liability risk or necessitate bringing forward upgrade works.

The Committee recommended that the Bill clarify that acceptable risk and unacceptable risk be defined by reference to the Queensland dam safety guidelines made under the *Water Supply (Safety and Reliability) Act 2008*.

The Queensland guidelines on acceptable flood capacity provide upgrade schedules for completion of necessary works by 2035 in order to reduce long-term risks (such as spillway inadequacy) within ‘tolerable risk’ levels. Long-term risks above the tolerable risk limits are considered ‘acceptable’ if they satisfy these schedules.

Shorter term risks arising from emergent circumstances such as embankment instabilities or concentrated leaks are not considered to be acceptable long-term risks and need to be investigated and addressed on much shorter timeframes. Providing guidance within the dam safety guidelines will clarify that these shorter term risks are outside the limits of acceptable risk and should be addressed separately to scheduled upgrades to improve the flood capacity of a dam.

No compensation provision

The Committee recommended the inclusion of a ‘no compensation’ provision for section 399B. The Committee noted concerns that dam owners could potentially face claims for compensation from customers or third parties if a dam owner could not meet water supply commitments as a result of lowering a dam’s full supply level. Although customers do not have the right to be compensated if they do not receive all of their water allocations, there is no express statutory provision which makes this clear in these circumstances.

Section 399B provides for dam owners to reduce the full supply level if there is an unacceptable risk of dam failure, without the need to balance emergent safety issues with water security. Therefore, a ‘no compensation’ provision will be included to clarify that dam owners are not liable if customers and other third parties are impacted by the decision to reduce the level of the dam below the full supply level.

Achievement of the Objectives

The amendments clarify the operation, effect and intent of particular provisions of the Bill including key definitions.

Alternative Ways of Achieving Policy Objectives

The policy objectives can only be achieved through primary legislation.

Estimated Cost for Government Implementation

Any costs to government can be met from within existing departmental budgets.

Consistency with fundamental legislative principles

The amendments to be moved during consideration in detail are consistent with fundamental legislative principles.

Consultation

Key stakeholders, Seqwater and SunWater, have been consulted on a number of occasions and provided an opportunity to comment on the proposed amendments.

NOTES ON PROVISIONS

Amendment 1 replaces the definition of a ‘dam hazard event’ to remove the circularity of the definition when read in conjunction with the emergency action plan requirements under section 352H; and makes a change to the definition in paragraph (b) to provide that the event is one that is unlikely to require a coordinated response involving 2 (rather than 1) or more relevant entities mentioned in paragraphs (b) to (d) of the definition of relevant entities.

Amendment 2 replaces the definition of ‘emergency event’ to remove the circularity of the definition when read in conjunction with the emergency action plan requirements under section 352H; and to provide additional criteria for determining when an event is an emergency event rather than the lower consequence dam hazard event. An emergency event triggers post event reporting to the dam safety regulator. It is not intended that routine releases from referable dams or weirs should trigger post event reporting. An emergency event means an event arising from a dam hazard if –

- (a) persons or property may be harmed because of the event; and
- (b) any of the following apply—
 - (i) a coordinated response involving 2 or more of the relevant entities mentioned in paragraphs (b) to (d) of the definition *relevant entity* is required to respond to the event;
 - (ii) the event may be caused by a disaster situation declared under the Disaster Management Act;
 - (iii) an entity performing functions under the State disaster management plan may, under that plan, require the owner of the dam to give information about the event.

In relation to new paragraph (b)(ii) an ‘emergency event’ may happen if there is a declared disaster situation under the Disaster Management Act and the emergency action plan is activated. If the dam is within the area or scope of a declaration, this will trigger the requirement for an emergency event report after the event ends.

In relation to new paragraph (b)(iii) this criterion recognises that dam owners may be required to give reports about the status of particular dams, known as situation reports or ‘SitReps’ when the State Disaster Coordination Centre (SDCC) is activated. However, the

SDCC can be activated without a disaster situation being declared, therefore this criterion will capture those situations that are not declared disaster situations. If the emergency action plan is activated and the dam owner provides situation reports to the SDCC or another entity during an event, this will trigger the requirement for an emergency event report after the event ends.

Amendment 3 amends the definition of ‘relevant entity’ to replace paragraph (a) ‘persons who may be harmed, or whose property may be harmed’ with ‘persons who may be affected or whose property may be affected’, if a dam hazard event or emergency event were to happen for the dam.

This does not remove the obligation on dam owners to identify and warn persons who may be harmed by an event, as these requirements sit within the emergency action plan requirements under section 352H. The additional group of persons included within the definition of a relevant entity will ensure that notification will be issued to appropriate persons, groups and entities as determined by the emergency action plan.

Amendment 4 amends the definition of ‘relevant entity’ to include ‘each local government for the emergency action plan’. Local governments are required under the amended provisions to assess a dam owner’s emergency action plan for consistency with the local disaster management plan and provide a report on its assessment. They may also have a function under the plan and therefore should be included within the definition of a relevant entity.

Amendment 5 amends new section 352H(1)(ii) to provide that circumstances must indicate a ‘material’ increase in the likelihood of a dam hazard event or an emergency event happening to be identified in the emergency action plan. This will avoid the plans having to include weather forecasts as triggering an activation level in the emergency action plan. There is no expectation that forecast rain would trigger a requirement for notifications or warnings. Actual rainfall in the catchment of a dam however may lead to inflows into the dam and potentially subsequent releases from the dam.

Amendment 6 inserts two examples of circumstances that may indicate a material increase in the likelihood of a dam hazard event or emergency event happening, namely:

- an unusual amount of seepage from the dam; and
- rainfall in the catchment area of the dam.

Amendment 7 amends new section 352H(1)(iii) to include a requirement for the emergency action plan to state the order in which persons are to be warned under the emergency action plan.

Amendment 8 amends section 352H(2) to remove the word ‘agrees’ and recast the provision. The provision now states that the emergency action plan may provide for the dam owner to make ‘arrangements’ with a relevant entity (e.g. a local government or local or district disaster management group) for warnings to be given by the relevant entity on behalf of the dam owner in appropriate circumstances.

The extent to which a dam owner's obligation to warn persons downstream of the dam is determined by the emergency action plan and will differ for each dam, its location and the nature of the event. A minor release of water from a dam that is contained within the bed and banks of the watercourse may not trigger a requirement to issue warnings or notifications.

The plan must identify the area likely to be affected by a dam hazard event or emergency event and may do this by attaching maps showing areas vulnerable to flooding if the event were to happen. This delimits the area or areas for which the dam owner has responsibly to warn downstream communities. The amendments will enable the dam owner to have an arrangement with a relevant entity for those warnings to be given by that entity instead of the dam owner. This may be appropriate in catchments with few residents downstream of the dam and/or where the local government or the disaster management group has significant capacity to take on this role.

A major release, either a controlled release or where water flows automatically over the dam's spillway may contribute to flooding downstream of the dam. The affected communities should be identified in the emergency action plan and those persons given appropriate warnings should an event happen. However, the dam owner has no obligation to warn all persons within the broader catchment area of widespread flooding that is not caused by outflows from the dam.

There is a growing community perception that dam owners can and should operate dams to mitigate the impacts of downstream flooding and that dam owners should warn the broader community about hazards caused by weather events. This is not the role of dam owners; it is the responsibility of the Bureau of Meteorology to provide weather forecasts including flood warnings and the responsibly of emergency groups such as the local disaster management group to respond to and coordinate warnings about all hazards during disaster events and emergencies.

Amendment 9 amends section 352T to clarify when an emergency event happens and that an emergency event report is required if the event happens.

Amendment 10 inserts a subsection number '(2)' for the existing clause in the Bill, consequential to amendment 9.

Amendment 11 also amends section 352T to better define the 'end' of an emergency event, for the purpose of post event reporting.

Amendment 12 inserts new clause 25A which amends section 352U to clarify when an emergency event happens and that an interim emergency event report may be required if the event happens.

Amendment 13 inserts a new subsection (5) to provide that no compensation is payable to any person because of the operation of the section. Section 399B provides for dam owners to reduce the full supply level if there is an unacceptable risk of dam failure, without the need to balance emergent safety issues against water security considerations. New subsection (5) makes it clear that water customers or other third parties do not have the right to be

compensated if they do not receive all of their water allocations or are otherwise affected because of a decision to reduce the full supply level.

Amendment 13 also inserts new subsection (6) to define for the section what an ‘unacceptable risk’ of a dam failing means if it operates at the full supply level by reference to the Queensland dam safety guidelines for flood capacity.

The Queensland guidelines on acceptable flood capacity provide upgrade schedules for completion of necessary works by 2035 in order to reduce long-term risks (such as spillway inadequacy) within ‘tolerable risk’ levels. Long-term risks above the tolerable risk limits are considered ‘acceptable’ if they satisfy these schedules.

Shorter term risks arising from emergent circumstances such as embankment instabilities or concentrated leaks are not considered to be acceptable long-term risks and need to be investigated and addressed on much shorter timeframes. Providing guidance within the dam safety guidelines will clarify that these shorter term risks are outside the limits of acceptable risk and should be addressed separately to scheduled upgrades to improve the flood capacity of a dam.

Amendment 14 inserts a definition for the ‘State disaster management plan’ which is referenced in a number of the amendments to be moved in consideration in detail.