

State Penalties Enforcement (Dam Safety) Amendment Regulation 2022

Explanatory notes for SL 2022 No. 165

made under the

State Penalties Enforcement Act 1999

General Outline

Short title

The short title of the subordinate legislation is the *State Penalties Enforcement (Dam Safety) Amendment Regulation 2022* (SPE Dam Safety Regulation).

Authorising law

Section 165 of the *State Penalties Enforcement Act 1999*

Sections 352F, 352L(2), 352O(3), 352S(2), 352T(2), 352U(3), 353(3), 356(4), 383(2) and 384(3) of the *Water Supply (Safety and Reliability) Act 2008*

Policy objectives and the reasons for them

A referable dam is decided by the Chief Executive, Dam Safety Regulator (Regulator), of the Department of Regional Development, Manufacturing and Water (DRDMW). A dam is referable if a failure impact assessment demonstrates there would be two or more people at risk if the dam were to fail.

The *Water Supply (Safety and Reliability) Act 2008* (Water Supply Act) gives DRDMW the authority to enforce dam safety standards and conditions. DRDMW has a compliance strategy which is based on five strategies: guide, inform, enable, monitor, and enforce. The strategy includes a range of statutory and non-statutory escalation actions. Non-statutory actions include:

- no action (engagement and dialog if there is a reasonable excuse or statutory time limits expire);
- training and education;
- reminder letters/emails; and
- warning letters.

Statutory actions include:

- information request;
- notices (refusal, show cause and compliance);
- investigation; and
- prosecution.

Referable dam owners have specific reporting requirements that must be provided to the Regulator, and have offence provisions associated with them under the Water Supply Act for non-compliance.

In 2021, the Queensland Audit Office (QAO) conducted the *Regulating dam safety* audit. The audit examined how DRDMW collects and uses information from dam owners to manage risks to dam safety. The final audit report included nine recommendations. Four of the recommendations related to opportunities for improvement around dam safety compliance matters, including:

1. two recommendations to improve the capturing and documenting of compliance information within appropriate timeframes (recommendations 7 and 8); and
2. two recommendations specifically to act on non-compliance (recommendations 1 and 9).

Actioning the recommendations from the QAO report, the Regulator undertook a review of all existing offences in the Water Supply Act to determine which offences may be suitable for Penalty Infringement Notices (PINs) to provide DRDMW with a mid-level compliance tool for dam safety offences.

The Water Supply Act includes provisions for certain dam safety offences, however, not all these offences have been subjected to review by the Department of Justice and Attorney-General for inclusion into the *State Penalties Enforcement Regulation 2014* (SPE Regulation) as PINs. There are 17 offences under the Water Supply Act already prescribed in Schedule 1 of the SPE Regulation, but these are insufficient to adequately cover the recommendations in the QAO report.

Consequently, there is a need to increase the number of available compliance tools, including PINs, to allow the Regulator to act on non-compliance and use the full range of enforcement measures at its disposal to address serious or persistent non-compliance.

The amendments to the SPE Regulation relate to the recommendations made by QAO. Changes are required to Schedule 1 to include additional PINs for sections 352F, 352L(2), 352O(3), 352S(2), 352T(2), 352U(3), 353(3), 356(4), 383(2) and 384(3) of the Water Supply Act. These particular offences were chosen as being suitable for PINs as they are objectively defined in the Water Supply Act with clearly stated criteria for offending behaviour for which a PIN may be issued. The offences have a reasonable excuse clause which does not of itself preclude the prescription of the offence as a PIN.

DRDMW is responsible for implementing both the QAO recommendations and enforcing compliance with dam owners.

Achievement of policy objectives

To achieve its policy objective, the SPE Dam Safety Regulation will amend Schedule 1 of the SPE Regulation to include 10 additional infringement notice offences for existing offences in the Water Supply Act.

The amendments include specific PINs for the following administrative provisions:

- Sections 352F, 352L(2), 352O(3) and 352S(2) which relate to Emergency Action Plans (EAP) and the requirement for dam owners to:
 - prepare an EAP within set timeframes;
 - comply with a notice to prepare an EAP;
 - comply with the notice and submit a new EAP; and
 - renew the approved EAP, two months before the end of the approval period.
- Sections 352T(2), 352U(3), 383(2) and 384(3) which relate to emergency events and flood events, and the requirement for dam owners to:
 - prepare and submit an emergency event report within set timeframes;
 - comply with a notice to prepare and submit an emergency event interim report within set timeframes;
 - prepare and submit a flood event report within set timeframes; and
 - comply with a notice to prepare and submit a flood event interim report within set timeframes.
- Sections 353(3) and 356(4) relate to dam owners complying with notices requesting information and fees to help in determining the application of safety conditions or the changing of safety or development conditions for existing referable dams.

The inclusion of the additional PINs in the SPE Regulation reflect the actions required by the QAO Report and its recommendations for both finding opportunities for improvement to the management of dam safety and increasing the effectiveness of the compliance tools.

Consistency with policy objectives of authorising law

The SPE Dam Safety Regulation is consistent with the objective of the Water Supply Act.

The SPE Dam Safety Regulation supports the objectives of the Water Supply Act set out in the “Achievement of policy objectives” section through providing additional opportunities to provide mid-level compliance tools for the Regulator to encourage voluntary compliance.

Inconsistency with policy objectives of other legislation

The SPE Dam Safety Regulation is not inconsistent with any policy objectives of any legislation.

Alternative ways of achieving policy objectives

There is no alternative mechanism to prescribe the additional PINs for the Water Supply Act.

Benefits and costs of implementation

As outlined above, the benefits of this amendment regulation are to:

- implement the QAO recommendations to increase the effectiveness of existing compliance tools;
- recognise PINs in the SPE Regulation that are objectively defined in the Water Supply Act with clearly stated criteria for offending behaviour; and
- allow the Regulator to address a wider range of additional offences.

Costs to implement the mid-level compliance tools (PINs) in the SPE Dam Safety Regulation will be met within existing resources. Any other costs associated with the amendments to this Regulation will be minimal and met from within existing budget allocations.

Consistency with fundamental legislative principles

The SPE Dam Safety Regulation is consistent with fundamental legislative principles.

Consultation

In accordance with the *Queensland Government Guide to Better Regulation*, the Office of Best Practice Regulation (OBPR) was consulted in relation to the regulatory proposal.

OBPR advised that the proposal will not add to the burden of regulation and is unlikely to result in significant adverse impacts. No further regulatory impact analysis is required under the *Queensland Government Guide to Better Regulation*.

The Regulator consulted with Seqwater, Sunwater and all other referable dam owners, all which had no issues with the inclusion of the additional PINs in the SPE Regulation. A Dam Safety Newsletter was circulated to all dam owners and interested parties detailing the amendments for the inclusion of PINs as mid-level compliance tools to encourage voluntary compliance, no issues were raised as a result of the circulation of the newsletter.

All parties consulted agree with the amendments to the SPE Regulation.

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