



NSW & ACT

IPWEA

INSTITUTE OF PUBLIC WORKS
ENGINEERING AUSTRALASIA

IPWEA (NSW and ACT)

ABN: 35 093 562 602

Level 12, 447 Kent St

Sydney NSW, 2000

Email: nsw@ipweansw.org

Phone: 02 8267 3001

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NSW Department of Climate Change, Energy, the
Environment and Water

By email water.enquiries@dpie.nsw.gov.au

Dear Water Team,

DAMS SAFETY ACT 2015 STATUTORY REVIEW

I write on behalf of the **Institute of Public Works Engineering Australasia (NSW & ACT)** ("the Institute") in response to the statutory review of the *Dams Safety Act 2015* and the Department's invitation for feedback from interested parties.

The Institute has a long-standing commitment to supporting public works professionals and engaging constructively with government on infrastructure policy and regulation. Our membership includes a significant number of engineers and asset managers responsible for local government water infrastructure across NSW and the ACT. Notably, **37 councils operate water supply dams**, and a further **21 councils manage stormwater and recreational dams**.

We appreciate the opportunity to contribute to this important review and have prepared the attached submission to reflect the views and concerns of our members. If you have any questions regarding the feedback provided, or would like to discuss any aspect of our submission further, please do not hesitate to contact us. We would welcome the opportunity to engage in more detail.

Yours sincerely,

The Hon David Elliott
Chief Executive Officer
IPWEA NSW and ACT

Mr Joshua Devitt
Chief Engineer
IPWEA NSW and ACT

Question 1: Are the policy objectives for the Dams Safety Act still valid? If not, what changes to the policy objectives would you suggest, and why?

Yes, the five policy objectives outlined in the second reading speech for the Dams Safety Bill 2015 remain valid and relevant. They continue to provide a sound foundation for the regulation of dam safety in NSW.

Question 2: Are the objects of the Act sufficient to achieve the policy objectives? If not, what would you change about the objects of the Act, and why?

Yes, the objects of the Act are sufficient and remain appropriate for achieving the policy objectives.

Question 3: Do the terms of the Act adequately describe the scope of dams safety risks to be managed? If not, what could be made clearer?

Yes, the terms of the Act adequately describe the scope of dam safety risks. The Act appropriately allows for a broad and performance-based approach to risk management, which is preferable to a prescriptive model.

Question 4: Are the terms of the Act suitable and sufficient for achieving the risk management policy objectives? If not, what changes would you suggest and why?

Yes, the terms of the Act are suitable and sufficient. As noted in the response to Question 3, the Act's broad and flexible language allows for effective implementation of risk management principles without unnecessary prescription.

Question 5: Does the term 'encourage' in the Act's objects convey a suitable degree of intent to effectively support the risk management policy objectives? If not, what changes would you suggest and why?

Yes, the use of the term "encourage" is appropriate. It provides sufficient intent while allowing dam owners the flexibility to adopt risk management practices that are proportionate to their resources and risk profile. This is particularly important for local government dam owners who operate under constrained budgets and existing regulatory frameworks.

Question 6: Does managing risks to a level acceptable to the community achieve the policy objectives? If not, can you please share your point of view?

Yes, managing risks to a level acceptable to the community aligns well with the policy objectives. Local government dam owners are already subject to robust community engagement, public reporting, and risk management obligations under the Local Government Act, particularly through Integrated Planning and Reporting frameworks.

Question 7: Do the terms in the Act guide how to manage risks to a level acceptable to the community? If not, what other terms might be needed?

Yes, the current terms in the Act provide sufficient guidance. The Act's performance-based approach allows dam owners to apply risk management principles in a way that is contextually appropriate.

Question 8: Should the Act provide greater guidance on how these terms should be implemented? Can you please share your point of view?

No, we do not believe the Act itself needs to provide greater guidance. The existing framework is appropriately flexible. Implementation guidance should be provided through supporting documents, such as guidelines and factsheets issued by Dams Safety NSW, rather than embedded in legislation.

Question 9: Are there any objects which should be specifically considered when developing dams safety standards?

No. The current objects of the Act are sound and sufficiently broad to inform the development of safety standards.

Question 10: Should the Act include provisions relating to the sharing of risk management and safety documents upon a change in ownership of a declared dam?

Yes, provisions for the transfer of risk management and safety documents upon a change in ownership would be beneficial.

Question 11: Does the Act ensure sufficient transparency relating to publishing of reports to achieve the policy objectives? If not, how could the transparency of report publishing be improved?

Section 14(4) of the *Dams Safety Act 2015* requires the owner of a declared dam to publish an annual report demonstrating compliance with the dams safety standards. These reports must be made publicly available at the owner's main office and on their public website (if any). While this provision promotes transparency, it places the burden on stakeholders to locate and navigate individual dam owners' websites, which can be inconsistent and difficult to access.

To enhance transparency and accessibility, we recommend amending the Act to also require Dams Safety NSW to publish the annual compliance reports it receives for each declared dam on its public website. This would align with section 5(4), which already requires Dams Safety NSW to maintain an up-to-date list of declared dams online. Centralising access to these reports would significantly improve public visibility, streamline stakeholder engagement, and support informed community oversight of dam safety.

Question 12: Are the expertise requirements for Dams Safety NSW Members adequate? If not, what do you suggest needs changing?

Yes, the expertise requirements are adequate. However, we recommend that members with professional experience in dam safety management also be tasked with developing and supporting programs tailored to smaller regional dam owners. This would reflect a Community Service Obligation and help address the unique challenges faced by local government operators.

Question 13: Are the terms of the Act sufficient to create an appropriate level of separation between declared dam owners and the regulator? If not, what do you suggest needs to be changed?

Yes, the Act provides sufficient separation between declared dam owners and the regulator. The prohibition on dam owners being appointed as members of Dams Safety NSW is appropriate and supports the independence of the regulator.

Question 14: Are the functions assigned to Dams Safety NSW under the Act appropriate for achieving the policy objectives? If not, what changes to the functions of Dams Safety NSW would you suggest, and why?

Yes, the functions assigned to Dams Safety NSW are appropriate and well-aligned with the policy objectives.

Question 15: Does the Act contain sufficient terms about the declaration of dams? If not, what do you suggest needs changing?

We are satisfied that the Act, in conjunction with clause 4(1) of the *Dams Safety Regulation 2019*, provides a clear basis for declaring dams. The criteria, such as a dam wall height exceeding 15 metres or

a dam presenting a significant risk profile in the event of failure, are appropriate for identifying dams that warrant regulation.

However, the threshold for declaring a **proposed dam** requires further review. Declaring a dam before it is built imposes immediate regulatory obligations and financial burdens, including compliance responsibilities and the dams safety levy, on the owner. This can be disproportionate, especially when the dam is still in the planning or approval phase. We recommend that the Act be amended to differentiate between operational and proposed dams, and to consider a staged or conditional declaration process that reflects the dam's development status.

Question 16: Does the Act provide sufficient terms for Dams Safety NSW to identify dams which need to be declared? If not, what do you suggest needs changing?

The Act and Regulation provide a mechanism for Dams Safety NSW to identify dams for declaration. Clause 4(1) of the Regulation allows Dams Safety NSW to direct the owner of a dam or proposed dam to conduct a preliminary assessment to determine whether it meets the criteria for declaration.

While this is a reasonable approach, placing the onus on dam owners (or proposed owners) to notify Dams Safety NSW of potentially declarable dams would require broader legislative consideration. Such a requirement would need to be harmonised with other Acts governing land use, development, and infrastructure to ensure consistency and avoid unintended compliance conflicts. We recommend that any expansion of owner obligations be carefully assessed in consultation with stakeholders, including local government and planning authorities.

Question 17: Does the word 'encourage' in the objects of the Act convey the right degree of intent to effectively achieve the application of cost benefit analysis in dams safety matters? If not, what changes would you suggest and why?

Yes, the term "encourage" is appropriate in principle.

Question 18: Do authorised officers have sufficient powers to investigate compliance with the Act? If not, what changes would you suggest to ensure authorised officers have sufficient powers to investigate compliance?

Yes, authorised officers have sufficient powers under Part 4 of the Act to investigate compliance.

Question 19: Does the Act have sufficient powers to issue notices, directions, stop work directions and emergency orders to ensure dam safety? If not, what changes would you suggest to improve the Act's powers for notices, directions and orders?

Yes, the Act provides extensive powers for Dams Safety NSW to issue compliance notices, directions, stop work orders, and emergency orders. However, in the case of town water supply dams, emergency powers, such as the authority to demolish a dam or release its contents, may conflict with public health obligations to maintain a safe and continuous water supply.

Question 20: Do you think the offences and penalty amounts are appropriate to achieve the policy objectives? If not, what changes do you suggest?

The penalty amounts are excessive, particularly the daily increments for continuing offences. These provisions risk disproportionate impacts on regional councils and water utilities, which often face resource constraints and limited access to dam safety expertise.

We recommend removing daily penalty escalations and introducing a more graduated enforcement

approach that prioritises education, support, and remediation before financial penalties are imposed.

Question 21: Does the Act have sufficient powers to hold inquiries? If not, what changes would you suggest to strengthen the Act's inquiry powers?

Dams Safety NSW has not conducted a formal inquiry under the *Dams Safety Act 2015* to date. As such, we do not have a position on whether the inquiry powers provided in the Act require amendment. We note that the existing provisions under Part 5 of the Act appear comprehensive, but their practical application has not yet been tested.

Question 22: Does the Act provide suitable terms for Dams Safety NSW to conduct its role when declaring mining notification areas? If not, what do you suggest needs to be changed?

We do not have a response regarding the powers of Dams Safety NSW in relation to declaring mining notification areas under the Act.

Other matters: Part 6 – Finance

While the Department's *Issues Paper* did not raise specific questions regarding Part 6 of the Act, the Institute believes it is important to raise several matters concerning the financial framework and the implementation of the Dams Safety NSW levy.

Cost Shifting to Local Government

The implementation of the Dams Safety NSW levy from **1 July 2025** marks a clear instance of **cost shifting from the State Government to local councils**. Despite the essential public safety role that declared dams play, particularly those owned by councils for **water supply and flood mitigation**, the financial responsibility for regulating these assets has now been transferred to local governments.

Councils were formally notified of the levy's commencement in early 2025, but many have expressed concern that the levy imposes **new costs without corresponding increases in funding or support**. This shift places additional pressure on already constrained council budgets, particularly in **regional and rural areas with limited rate bases**, and risks undermining councils' ability to maintain critical infrastructure and deliver core services to their communities.

Importantly, **several councils have already begun reducing the dimensions of their proposed or existing dams** to avoid declaration under the Act and the associated compliance costs. This trend reflects a concerning consequence of the legislation's financial impact, **leading to reduced service levels and/or increased risk to communities**, particularly in flood-prone or water-scarce areas.

1. Clarify and Limit the Scope of Recoverable Costs

Recommended Amendment:

Amend the Act to explicitly define which categories of Dams Safety NSW (DSNSW) costs are recoverable through the levy, and which must be funded by government.

Recommend:

- Include only direct regulatory costs such as audits, inspections, and compliance monitoring.
- Exclude costs such as:
 - Board remuneration
 - Corporate overheads not directly tied to dam regulation
 - Activities related to dam declaration/revocation or design-phase dams
 - General education and outreach not specific to declared dam owners

Rationale:

Many overheads and governance costs are not driven by dam owners and should be funded by the State.

2. Introduce a Fee-for-Service Model for Non-Standard Activities**Recommended Amendment:**

Add provisions allowing DSNSW to charge fees for specific services (e.g. dam declaration, technical reviews, mining-related assessments), separate from the general levy.

Rationale:

This avoids burdening all dam owners with costs for services they do not use and aligns with user-pays principles and cost reflectivity.

3. Require Transparent Cost Attribution and Public Reporting**Recommended Amendment:**

Mandate DSNSW to publish annual reports detailing:

- Breakdown of costs by activity
- Allocation of costs to levy vs government funding
- Efficiency metrics and performance outcomes

Rationale:

Assurance that DSNSW's costs are efficient and justified. This supports accountability and informed future levy reviews.

4. Allow Shared Funding for Indirect Costs**Recommended Amendment:**

Amend the Act to allow partial government funding of indirect costs (e.g. IT systems, strategic planning, stakeholder engagement).

Rationale:

These costs benefit broader public safety and environmental outcomes. Dam owners should not bear the full cost of DSNSW's institutional functions.

5. Exclude Costs Related to Non-Operational or Non-Revenue Dams**Recommended Amendment:**

Specify that costs associated with:

- Dams not yet constructed
- Dams out of service
- Dams used solely for flood mitigation or recreation should be excluded or treated separately.

Rationale:

Flood mitigation or recreation dams do not generate revenue and pose lower risk most of the time. Applying full levy costs to these assets is inequitable and discourages investment in public safety infrastructure.