

# Review of Dams Safety Act 1978

SUBMISSION

October 2013



CENTRAL NSW  
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Centroc's Mission is to be recognised as the lead organisation advocating on agreed regional positions and priorities for Central NSW whilst providing a forum for facilitating regional co-operation and sharing of knowledge, expertise and resources; effectively nurturing sustainable investment and infrastructure development.

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29 October 2013

Reference: kk:vp 101329  
Enquiries: Ms M Macpherson : 0427 451 085

Dams Safety Review  
NSW Trade and Investment  
GPO Box 5477  
Sydney NSW 2001

Dear Committee,

### Re: Dams Safety Act 1978 Review

Centroc is a large and long standing voluntary association of councils of varying sizes ranging from populations of around 2500 to populations of close to 40,000. It has received national recognition for its work in delivering measurable benefits to the members it serves. This recognition includes commentary and awards at the State and National levels for example the Productivity Commission and most recently the Minister for Local Government for NSW, The Hon Don Page. Most importantly, it is valued by its members.



Central NSW Councils (Centroc) comprises the Local Government Areas of Bathurst, Blayney, Boorowa, Cabonne, Cowra, Forbes, Lachlan, Lithgow, Oberon, Orange, Parkes, Upper Lachlan, Weddin, Young and Central Tablelands Water.

It has two objectives, one around advocacy and the other around supporting members operations.

For more detailed advice on Centroc activities please find attached the recent Annual Report 2011/2012.

The Centroc Board is made up of the 34 Mayors, elected representatives and General Managers of its member Councils who determine priority for the region. These priorities are then progressed via sponsoring Councils.

For more advice on Centroc programming and priorities, please go to our website at [www.centroc.com.au/publications](http://www.centroc.com.au/publications)

**Response regarding Dam Safety Review**

Centroc members applaud the review by the State of the Dam Safety Committee.

The following advice is based on the key principles of:

- Using the most appropriate governance arrangements for a compliance based program;
- Keeping costs to a minimum;
- Public servants provide objective, transparent, accountable and independent service in the public interest;
- Keeping risks in the sector to a minimum by ensuring the dam safety compliance function is well informed while independent.

Centroc members believe there is an opportunity to do two things through this process:

1. Improve the governance arrangement of Dam Safety in NSW; and
2. Consider a more far reaching and integrated strategic approach to dam safety including advocacy for better guidelines at the Federal level and inclusion of other legislative impacts over dam safety activity.

**1. Improving the governance arrangement of Dam Safety in NSW**

Please find advice below regarding the KPMG report and recommendations.

**KPMG - List of recommendations**

<p><b>Recommendation 1:</b> The Act should be amended to provide clarity in relation to the objectives of the legislation and the role and powers of the dam safety regulator. The objective should be to achieve socially acceptable levels of public safety risk in relation to stored waters in NSW and the regulatory framework should enable risk management to be achieved in the most efficient manner possible (i.e., consideration being required to be given to the broadest range of relevant operational strategies and thereby avoiding a singular focus on dam engineering solutions).</p>	Agreed
<p><b>Recommendation 2:</b> The dam safety regulator should be responsible for monitoring the compliance of dams with standards and guidelines. The regulator should determine the level of monitoring necessary for each dam based on the likelihood of non-compliance.</p> <p>Dam owners should be responsible for compliance with standards and guidelines. The regulator should not be involved in the development of compliance strategies or in identifying particular dam safety upgrade strategies. Dam owners should report to the regulator annually on the level of compliance being achieved by their maintenance and upgrade programs.</p>	Agreed

<p>If dam owners do not comply with standards, the regulator should have clear powers to compel dam owners to implement changes necessary to meet required standards and guidelines.</p>	
<p><b>Recommendation 3:</b> The government should change the composition of the dam safety regulator so that it:</p> <ul style="list-style-type: none"> <li>• is independent of the businesses it regulates;</li> <li>• is composed of representatives of relevant government agencies to ensure integration, complementarity and efficiency in risk reduction strategy development (for example, NSW Treasury, Department of Planning and Infrastructure, Department of Trade and Investment Resources and Energy and the NSW State Emergency Service (SES); and</li> <li>• has relevant independent expertise, including dam engineering, public safety risk management and benefit cost analysis.</li> </ul>	<p>In the first instance, the necessity of a board entity to regulate dams is questioned.</p> <p>In the report by KPMG the DSE in Victoria uses a State agency model. The advantages to this model are analysed in the report and come out favourably.</p> <p>KPMG claims that best practice suggest that a regulator be independent of industry and government.<sup>1</sup> There is no advice as to where this claim comes from. Further the governance arrangements suggested by KPMG constitutes the regulator with government departments, removing any independence from government. Centroc suggests – why bother? Keep it simple and have regulation administered through a State Department.</p> <p>Centroc suggests that the regulator be a state agency function that recognises cross departmental needs as they currently stand between State Water and Office of Water.</p> <p>This recommendation is based on the expense and challenges posed in the administration of the KPMG suggested governance arrangements. For the KPMG suggestions to be effective it would entail:</p> <ul style="list-style-type: none"> <li>• administering the Board and</li> <li>• ensuring the Board is ready willing and able to make informed decisions.</li> </ul> <p>Should the review recommend along the lines of KPMG for a regulator with a Board structure, Centroc recommends the membership be independent of industry and dam owners. Further the regulator must be informed by experts in the industry and stakeholders through statutory advisory committees.</p>

<sup>1</sup> KPMG Review of Dams Safety Act Page 41  
Page 5 –Centroc Submission

	<p>The guidelines should be set at the National level. Members recognise that this is currently ANCOLD and that the regulator needs to review its guidelines to ensure they are sensible.</p> <p>See more advice in this regard below at point 2.</p>
<p><b>Recommendation 4:</b> It is recommended that the dam safety regulator be funded by relevant risk creators, which in this case are all the owners of prescribed dams in NSW.</p>	<p>Centroc suggests that the regulator be funded by the State Department/s who make up its membership. In this way the regulator has an active interest in keeping its costs to a minimum.</p> <p>Dam owners already incur significant costs in operating dams to address key risk issues.</p>
<p><b>Recommendation 5:</b> The regulator should be required to achieve high levels of public transparency with respect to the basis of its regulatory standards and the respective roles of dam owners versus government. This transparency will make clear the legal liability of dam owners and in so doing encourage levels of private investment in dam safety that align, as far as possible, with the risk preferences of the broader community.</p>	<p>Agreed</p>
<p><b>Recommendation 6:</b> Where the dam safety regulator proposes changes to dam safety regulation, these changes should be subject to consultation with dam owners. Best practice principles suggest a consultation phase of at least 28 days.</p>	<p>Agreed – though a longer consultation period is preferred Centroc suggests 3 months.</p> <p>Unworkable – need more governance around consultation</p>
<p><b>Recommendation 7:</b> The dam safety regulator should consider the views of industry and other stakeholders when making final decisions to implement changes to dam safety regulation.</p> <p>When reaching its decision, the regulator should release a report explaining its decision-making process and the information it considered in making its decision.</p>	<p>Agreed</p>
<p><b>Recommendation 8:</b> The NSW Government should seek comment from the community on its willingness to accept the risk of dam failure and the appropriate level of dam safety investment. Community feedback should be considered when the regulator sets safety standards for dams. This should be reviewed periodically to ensure that safety standards continue to be consistent with community expectations. This outcome could also be achieved through high levels of transparency with respect to benefit cost analyses undertaken to identify efficient risk reduction strategies, with community input encouraged to that process.</p>	<p>Agreed – it should be noted that Local Government consults in depth with its community every four years and could include community appetite for dam safety risk as part of this process.</p> <p>Centroc members note that consultation needs to be careful where questions are phrased to reflect the tension between risk and costs.</p>

<p><b>Recommendation 9:</b> Consideration by a dam owner of whether a potential dam safety investment is appropriate should explicitly include assessment of the benefits and costs of the proposed investment and alternate options to reduce the public safety risk associated with stored waters.</p>	<p>Agreed</p>
<p><b>Recommendation 10:</b> A systematic and proactive approach should be implemented to inform dam owners of potential developments downstream from their dams that could influence the consequence category of their dams and the cost of complying with public safety requirements. The approach should be incorporated into the planning approval process or through an alternate process considered appropriate by the NSW Government.</p>	<p>Agreed. It is noted that this issue could become a significant trigger for the community, through demand/pressure for development, to seek changes to public safety requirements particularly if these are seen as too onerous and an impediment to development. Assistance is requested around how the state is going to help LG indemnify against this problem. It may require legislative support.</p>
<p><b>Recommendation 11:</b> The NSW Government should consider options to address dam safety considerations much earlier in the planning approval process, particularly for state significant developments and state significant infrastructure.</p>	<p>Agreed</p>
<p><b>Recommendation 12:</b> The NSW Government should seek public comment on:</p> <ul style="list-style-type: none"> <li>• whether the regulator's role in the approval of mining near prescribed dams is clearly defined; and</li> <li>• whether the dam safety regulator should consider the economic impacts of water loss due to mining activities or whether the dam safety regulator should only be concerned with the safety of the prescribed dam.</li> </ul>	<p>Agreed</p>
<p><b>Recommendation 13:</b> The NSW Government should consider whether the dam safety regulator or another government agency should be required to approve Dam Safety Emergency Management Plans (DSEPs). The relevant agency should have sufficient resources to make such assessments.</p>	<p>Agreed</p>
<p><b>Recommendation 14:</b> The NSW Government should evaluate whether existing DSEP trigger points for alerts result in unnecessary evacuation warnings.</p> <p>The implementation of these recommendations could be achieved through modification of the existing dam safety regulator (i.e. the DSCI and the regulatory framework (i.e. the Dams Safety Act 1978 and other relevant legislation).</p>	<p>Agreed</p>

**2. Consider a more far reaching and integrated strategic approach to dam safety including advocacy for better guidelines at the Federal level and inclusion of other legislative impacts over dam safety activity.**

There are two aspects to this recommendation:

1. In line with the reform being suggested in this state, NSW should be advocating at the Federal level to ensure that ANCOLD sets standards that are sensible. Firstly we suggest the contemporising of the ANCOLD guidelines to a risk based standard.
2. Ensuring the fit with the changes to dam safety regulation with other legislation. A component not included in the report that was part of the entire review process was the implication of other Acts and Regulations and their impact upon the process and management of Dam Safety. In this regard, there are a number of other Acts that directly impact on the cost of Dam Safety works and, if given some of the changes to the Dam Safety Act and Committee proposed in the report are carried through, these other Acts would serve to reduce the likelihood of a Council acting to improve the safety of their dams due to regulatory hurdles and further cost burdens.

A specific example that comes to mind is Section 218 of the Fisheries Management Act. The pertinent parts of the section state:

**218 Fishways to be provided in construction of dams and weirs**

(1) The Minister may, by order in writing, require a person (other than a **public authority**) who constructs, alters or modifies a dam, weir or reservoir on a **waterway** to carry out, within the period specified in the order, such works as may be so specified to enable **fish** to pass through or over the dam, weir or reservoir.

(3) A person who fails to comply with an order under this section is guilty of an offence.

Maximum penalty: In the case of a corporation, 2,000 penalty units or, in any other case, 1,000 penalty units.

(4) If a person fails to carry out the work specified in an order under this section within the period so specified, the Minister:

(a) may cause the work to be carried out, and

(b) may, by proceedings brought in a court of competent jurisdiction, recover from the person as a debt the cost of carrying out the work.

(5) A **public authority** that proposes to construct, alter or modify a dam, weir or reservoir on a **waterway** (or to approve of any such construction, alteration or modification):

(a) must notify the Minister of the proposal, and

(b) must, if the Minister so requests, include as part of the works for the dam, weir or reservoir, or for its alteration or modification, a suitable **fishway** or **fish** by-pass.

(5A) This section does not apply to or in respect of any work or waters of a kind exempted from the operation of this section by the regulations.

(5B) A person (other than a **public authority**) must not construct, alter or modify a dam, weir or reservoir on a **waterway** unless the person ensures that the Minister is given notice in writing of the proposed works at least 28 days before the commencement of the works.

Maximum penalty: In the case of a corporation, 200 penalty units or in any other case, 100 penalty units.

(5C) Subsection (5B) does not apply in respect of any works approved by a **public authority** or approved by the Minister administering the *Environmental Planning and Assessment Act 1979* under Part 3A or Part 5.1 of that Act.

The wording in subsection (1) is very ambiguous when it says "constructs, alters or modifies a dam". The original intent of this section, and this opinion has been confirmed by some Office of Water staff, was to require the dam owner to improve fish passage and other associated works in the waterway when works were done on a dam that changed the nature of the waterway itself or if the capacity of the dam was increased to capture more water thereby potentially having a detrimental effect. The reality is that any works now trigger this section. As an example, on top of the mandatory dam safety works that Parkes Shire Council was required to do, at a cost of \$10M, the fisheries additional component will add a further \$3M to the figure, or an extra 30%. Given this large percentage increase, in the future with more discretion to perform safety works, a Council would determine that it is not cost effective based on the additional cost and potentially risk downstream landholders. This section needs amending to specifically exclude dam stabilization or safety works or, alternatively, include within the new Dam Safety Act a provision which overrides the Fisheries requirement for dam safety only works.

Once again, thank you for providing this opportunity to give thought to this issue. For further advice in regards to this submission please contact the Centroc Water Utilities Alliance Officer, Ms Meredith Macpherson on 0427 451 085.

Yours sincerely,

A handwritten signature in black ink that reads "Ken Keith". The signature is written in a cursive style with a horizontal line underlining the name.

Cr Ken Keith  
Chair  
Central NSW Councils (Centroc)