Briefing for the
Transportation and Utilities Committee
on the

*Water Legislation (Dam Safety) Amendment Bill 2016*
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Purpose of briefing

This briefing has been prepared by the Department of Energy and Water Supply (the department) to provide information to the Transportation and Utilities Committee (the Committee) on the Water Legislation (Dam Safety) Amendment Bill 2016 (the Bill).

Objectives of the Bill

The objectives of the Bill are to amend the Water Act 2000 (Water Act) and the Water Supply (Safety and Reliability) Act 2008 (Water Supply Act) to:

- improve the integration of dam safety and disaster management
- improve the way dam owners manage dam safety
- simplify process and reduce regulatory burden.

Background on purpose of and proposals in the Bill


The Bill also responds to a recommendation of the Coroner, in December 2015, from the inquest into the death of Nelani Koefer, which had occurred when an inflatable rubber dam at Bedford Weir failed in November 2008. The recommendation identified the need for dam owners to have authority to erect appropriate signage on public land immediately downstream of dams and weirs to warn the public about potential dangers.

The Bill makes a range of amendments to the dam safety framework to meet policy objectives to refocus dam safety regulation on large referable dams that pose the most risk to public safety and reduce overlap with work health and safety regulations and reduce regulatory burden on owners of small dams.

New powers are provided for dam owners to reduce the full supply level of a dam, if the owner believes there is an ‘unacceptable risk’ of the dam failing if it operates at the full supply level. These provisions are a response to several situations when it has been desirable to reduce the full supply level of a water supply dam on safety grounds other than for flood mitigation purposes but a clear statutory authority to do so has not been available.

Improve the integration of dam safety and disaster management

The Water Supply Act was amended in 2012 following the Queensland Floods Commission of Inquiry into the floods of 2010-11, to legislate requirements for dam owners to prepare emergency action plans for each of their referable dams and for those plans to be approved by the dam safety regulator (the chief executive of the department). Under the current provisions of the Water Supply Act, emergency action plans must be referred to the chairperson of the relevant local or district disaster management group for review of the plan’s consistency with the group’s disaster management plan. However, the chairperson is not obligated to undertake a review or provide a report on consistency and most emergency action plans have been approved without the benefit of advice from local or district disaster management groups.

The flood events in February 2015 (when releases from SunWater’s Callide Dam occurred during Tropical Cyclone Marcia) and May 2015 (when controlled releases from Seqwater’s Wivenhoe Dam occurred) tested the effectiveness of emergency actions plans in managing risks during significant weather events.
The Minister for Energy, Biofuels and Water Supply requested the IGEM Review be undertaken following community and stakeholder criticisms about the timeliness and effectiveness of the dam owners’ communications during the two events.

A key recommendation of the IGEM Review (Recommendation 3) was that the department review the Water Supply Act and the Emergency Action Planning for Referable Dams guideline to enhance effective communication, with the review to consider:

- consistency between legislation, policy, guidelines and plans;
- the provision of definitions for key terms to eliminate inter-changeable use;
- that the guideline has the appropriate status; and
- the approval process the regulator applies to ensure emergency action plans comply with legislation and guideline requirements is strengthened and transparent. This includes the establishment of criteria for effectiveness and the requirement for testing of plans.

The IGEM Review found that the community expects dam owners to notify and warn the community as soon as possible when issues arise. The community also expects that they will be warned about the likely effects of dam releases and how they should respond in the circumstances, not merely notified that water is being released, whatever the circumstances of the release, i.e. the dam is spilling or a controlled release is occurring.

The IGEM Review also found that responsibility for the provision of notifications and warnings to the community must be location specific and agreed between the dam owner, disaster management groups and local governments.

In response to the recommendations and findings of the IGEM Review, the Bill will substantially replace the legislative provisions for emergency action plans by:

- inserting a purpose statement for emergency action plans;
- redefining key terms to provide clarity and consistency with emergency management planning;
- clarifying roles and responsibilities for giving warnings and notifications in different circumstances under emergency actions plans;
- requiring local governments to consider and report on an emergency action plan’s consistency with the local disaster management plans (rather than such reviews being discretionary);
- enabling district disaster management groups to consider emergency action plans;
- specifying criteria against which the chief executive’s assessment of emergency action plans must be made, including consideration of any disaster management standards made under the Disaster Management Act 2003;
- imposing a time frame for the assessment of emergency action plans of 30 business days after the plans are received by the chief executive—if a decision is not made within this period, the plan is taken to be approved for a period of two years or a longer period of not more than five years; and
- simplifying the process for amending plans by agreement to correct minor errors or make other changes that are not changes of substance.

**Improve the way dam owners manage dam safety**

*Reduced full supply level*

Dam owners subject to the Water Act must operate their infrastructure in accordance with rules and obligations stated in resource operations licences and resource operations plans under that Act. These
instruments deal primarily with water resource management issues rather than flooding and dam safety issues. The full supply level for these dams is now stated in the resource operations licence (previously in the resource operations plan) for the dam.

The Bill introduces an express power into the Water Supply Act to enable dam owners to temporarily reduce the full supply level of a dam to be able to manage the safety of the asset. These new provisions are a separate and distinct power for dam owners to manage unacceptable risks of dam failure.

The existing powers for the Minister to declare temporary full supply levels for the Wivenhoe, Somerset and North Pine dams to mitigate the impacts of a potential flood or drought are maintained although the provisions are amended by the Bill to streamline the process for making such declarations.

Warning signs on public land

On 23 November 2008, Nelani Koefer died while wading in shallow water below the Bedford Weir, when an inflatable rubber dam used to increase the height of the weir failed catastrophically releasing a large volume of water in an uncontrolled way.

Bedford Weir is owned and operated by SunWater, a State owned corporation.

In the State Coroner’s findings of the inquest into Nelani’s death (delivered on 17 March 2016), Magistrate O’Connell noted that SunWater had identified the need for signage and had been engaged in discussions with the local council at the time of the incident. The Coroner noted that there was a particular issue slowing progress, which was the right to erect signage in an area that SunWater did not own or control. The Coroner recommended that dam owners have a standard agreement or MOU with the State and with the Local Government Association of Queensland (LGAQ) to be able to erect signage on public land to warn members of the public of the dangers that exist in areas likely to be flooded.

The Bill addresses the Coroner’s recommendation by giving an express power to a dam owner’s ‘authorised persons’ to enter public land that adjoins a watercourse or lake downstream of a dam or weir for the purpose of erecting signage to warn individuals about the risks of entering an area downstream of the dam or weir. This approach was agreed with the LGAQ and SunWater as the most effective way to implement the Coroner’s recommendation.

Simplify process and reduce regulatory burden

Temporary full supply levels

Under the current provisions of chapter 4, part 3 of the Water Supply Act, the Minister has power to declare a temporary full supply level for Wivenhoe, Somerset and North Pine dams to mitigate the impacts of a potential flood or drought.

These provisions were first enacted in response to recommendations of the Queensland Floods Commission of Inquiry in its Interim Report of August 2011.

The powers have been exercised on a number of occasions since in the lead up to a wet season. Reducing the full supply level of a dam ahead of predicted summer storms increases the flood storage compartment of the dam to allow more water to be temporarily stored if a flood event occurs.

While these powers have proved invaluable for managing the potential impacts of floods in SEQ, they are overly bureaucratic, cumbersome and time consuming to implement and can impede or delay timely decision making.

The Bill streamlines the declaration process but retains the existing considerations that the Minister must have regard to in coming to a decision to declare a temporary full supply level. The amendments will therefore facilitate timely decision making while retaining important checks and balances and transparency of decision making.
Specifically, the Bill removes the statutory obligation on the chief executive to consult with and seek impact advice from the dam owner (Seqwater) before the Minister makes a declaration. These actions will continue to be undertaken administratively and the Bill requires the Minister to have regard to the outcome of any consultations between the chief executive and the dam owner before making a declaration.

Work health and safety regulations

Dams are implicitly regulated as ‘structures’ that store ‘substances’ and can pose a risk to workers at a workplace under the Work Health and Safety Act 2011 (Work Health and Safety Act) and larger dams are captured as referable dams that pose a risk to public safety under the Water Supply Act. Some dams can currently be captured under the referable dam framework even where the only persons at risk are located on the same property as the dam.

The dam safety framework under the Water Supply Act is mainly based on dam safety conditions imposed by the chief executive. Conditions are aligned with the potential consequences, which means that the only condition generally applied to small dams is a requirement to provide notification if the dam is decommissioned. Therefore, in these cases, the only practical consequence of the dam being referable is that the dam is covered by an emergency action plan, which is similar to general obligations under the Work Health and Safety Act that already apply to dams at workplaces.

The same rationale applies to dams at mines, which are covered by either the Mining and Quarrying Safety and Health Act 1999 or the Coal Mining Safety and Health Act 1999 (the Mining Acts). These two Acts operate to provide more prescriptive safety frameworks for mining workplaces, and the sites and operations they cover are excluded from the operation of the Work Health and Safety Act.

The Bill will focus the dam safety regulatory framework on public safety issues by reducing overlap with the Work Health and Safety Act framework and the Mining Acts for dams that pose no threat beyond their immediate workplace, such as smaller farm and mining dams.

The policy intent is given effect by amending the definition of ‘population at risk’ under section 346 of the Water Supply Act. Whether there is ‘population at risk’ is worked out through a failure impact assessment in accordance with the failure impact assessment guidelines. The Bill amends the definition to exclude the following from the calculation of population at risk:

- a resident on the parcel of land on which the dam is situated; or
- if the dam is situated at a workplace under the Work Health and Safety Act 2011 – a person at the workplace; or
- if the dam is situated at a place that is a mine under the Mining and Quarrying Safety and Health Act 1999 or the Coal Mining Safety and Health Act 1999 – a person at the mine or coal mine.

Streamlined failure impact assessment for certain dams

The department has an ongoing program to identify dams across the state that may potentially be referable dams (that is, would impact two or more persons if it failed) and which have not previously been failure impact assessed. Dams that meet the height and storage capacity criteria in section 343 of the Water Supply Act must be failure impact assessed before being constructed, or in the case of an existing dam, before works to increase the storage capacity commence. However, not all dams which exceed the size criteria have completed failure impact assessments.

Under the existing provisions (section 343(5)), the chief executive can give any dam owner a notice to have their dam failure impact assessed, if the chief executive believes there would be population at risk should the dam fail regardless of the size of the dam.
In many instances, in forming a ‘reasonable belief’ that a dam would have population at risk, the department has undertaken a broadly similar assessment to that required in carrying out a failure impact assessment. A failure impact assessment must be certified by a registered profession engineer and can cost the dam owner between $15 000 and $30 000. If the chief executive requires a failure impact assessment under section 343(5) but the assessment subsequently finds the dam does not have ‘population at risk’ and the dam is below the size criteria, the chief executive must reimburse the owner the reasonable costs of carrying out the assessment.

The Bill introduces new provisions that will enable dam owners who receive a notice from the chief executive (a referable dam notice), to accept the chief executive’s reasonable belief that their dam is referable and has a category 1 or category 2 failure impact rating, thereby avoiding the significant costs of carrying out a failure impact assessment.

This will be achieved by enabling the chief executive to give a dam owner a notice under new section 342A that the dam is believed to be referable, supported by the safety conditions intended to be applied to the dam. The dam will become a ‘referable dam’ on a particular date unless the dam owner submits a failure impact assessment to the chief executive before that date.

If the dam owner opts to undertake a failure impact assessment, then the process for assessing and approving the failure impact assessment proceeds under the existing provisions. However, the chief executive must cover the reasonable cost of an assessment where it finds no ‘population at risk’ and the assessment is accepted by the chief executive. This will apply regardless of whether the dam is or is not below the size criteria.

Consultation summary

The department consulted with relevant agencies across government, including the Inspector-General Emergency Management (IGEM). The IGEM supports the Bill, which supports improved disaster management planning and aligns with the Standard for Disaster Management. Other agencies consulted support the Bill.

SunWater and Seqwater were consulted on the policy intent as well as a draft of the Bill. Many of the issues raised during consultations by SunWater and Seqwater were addressed in the final Bill. Concern was raised about the power to reduce the full supply level of a dam for safety reasons, and the possibility this could be misconstrued as the ability to operate the dam as a flood mitigation dam. The department stressed that the power is directly related to engineering concerns about the safety of the dam, and the Explanatory Notes clarify this policy intent.

The department consulted with the LGAQ and each local government affected by the Bill, with no significant concerns expressed by these stakeholders. In its submission the LGAQ recorded its appreciation for the department’s consultation process undertaken in development of the Bill.

The department consulted with dam owners through the Queensland Farmers Federation. Concerns were expressed about the streamlined failure impact assessment process and whether this was a new burden, as well as whether individual dam owners had been consulted. The department stressed that the streamlined process is intended to reduce the burden on dam owners that are already caught by the regulatory framework, and does not represent a new regulatory burden. Individual dam owners (with the exception of local governments, Seqwater and SunWater) were not consulted directly but the department consulted the Queensland Farmers Federation.

The Bill includes changes to the definition of ‘population at risk’ under section 346 of the Water Supply Act. Further assessment is required to determine which dam owners will be affected by these provisions and therefore who may receive a ‘referable dam notice’ subject to the Bill being passed.
Fundamental legislative principles

Potential breaches of the fundamental legislative principles are outlined in the Explanatory Notes to the Bill.

Advice on issues raised in submissions to committee

Eight publicly available submissions to the Bill were received by the Committee by the close of submissions on 16 January 2017, from the following organisations:

1. Sunshine Coast Regional Council;
2. Charters Towers Regional Council;
3. City of Gold Coast;
4. Cotton Australia;
5. Queensland Farmers Federation;
6. Local Government Association of Queensland;
7. Seqwater; and
8. SunWater

A summary of the key issues raised by submitters follows. Appendix 1 provides responses to specific issues raised in submissions.

Sunshine Coast Regional Council

Sunshine Coast Regional Council supports the Bill but has raised a concern about the assessment by local governments of emergency action plans. In particular, the Council stated an assessment should only be done in relation to a new or major revision of an emergency action plan and for a dam owner to detail the version of the emergency action plan, a summary of changes and whether they are minor or major. Further they would like the 30 business day period for assessment to be extended to take account of when the local group meets.

The department does not support extending the time period for the assessment of the emergency action plans by local governments, nor the assessment of emergency action plans only where there is a new or major change, based on an assessment by the dam owner.

While the Bill provides for 30 business days for the local government review of the plan, it is expected that the relevant local governments would have been engaged and consulted early in the development of the plans prior to them being formally submitted for assessment of consistency with the local disaster management plan. In addition, advice can be provided by the dam owner to the local government of the changes in an emergency action plan without making provision for this in legislation.

Charters Towers Regional Council

Charters Towers Regional Council supports several elements of the Bill, in particular the distinction that only emergency events trigger the requirement for post event reporting; and changes to reduce regulatory overlap with work health and safety regulations.

It is noted, the Council’s submission supports 60 business days for local government assessment of emergency action plans, while the Bill provides for 30 business days for assessment. As above, the department does not support a longer period for assessment.
City of Gold Coast

The City of Gold Coast’s submission on the Bill raises minor questions concerning the guidance for assessment of population at risk, emergency action plans if there are no persons on property and warning signage on public land. These are detailed in Appendix 1.

Cotton Australia

Cotton Australia supports the measures in the Bill to reduce regulatory burden and limit capture of farm dams under the dam safety framework. However, Cotton Australia strongly contends whether any farm dams should be regulated as referable dams. While the changes under the Bill will significantly reduce regulatory burden of farm dams, it is not the policy intent to remove all farm dams from dam safety regulation, only those that do not pose a risk to the wider community.

The Bill will largely benefit farm dams by excluding persons on the same property from the calculation of ‘population at risk’ and consequently being captured as a ‘referable dam’. Additionally, workers at a workplace situated on the same parcel of land as the dam are excluded. It is expected that about 60 per cent of the dams previously assessed by the department as potentially being referable, will no longer be considered referable under the Bill.

Queensland Farmers Federation

The Queensland Farmers Federation (QFF) supports the Bill with the exception of how on-farm dams are regulated. QFF also queried whether the referable dam framework is appropriate for farm dams given the level of risk these dams pose. The Bill significantly reduces the regulation of farm dams as many will no longer be referable dams where they meet the exclusions provisions.

As above, the Bill reduces the number of farm dams that will potentially be captured as referable dams by excluding persons who reside on the same property as the dam, as well as workers at a workplace on the same parcel of land as the dam, from calculation of ‘population at risk.’

In addition to this, the Bill will enable dam owners who receive a notice from the chief executive (a referable dam notice), to accept the chief executive’s reasonable belief that their dam is referable and has a category 1 or category 2 failure impact rating, thereby avoiding the significant cost of carrying out a failure impact assessment.

QFF contend that there is no need for dam safety regulation to capture farm dams given that there has never been a death attributed to failure of a farm dam. The department agrees it is appropriate to exclude dams that are captured by other regulatory frameworks or dams that do not pose a risk to the wider community but further deregulation is not the policy intent of the Bill.

Local Government Association of Queensland

As LGAQ notes, local governments own and operate a third of all referable dams in Queensland. As dam owners, local governments recognise the need for amendments to current legislation to improve planning and communications in response to emergency events, as defined in the Bill. LGAQ supports the changes within the Bill to improve emergency actions plans and integration with local disaster management arrangements. Clause 18 requires emergency action plans to be referred to relevant local governments for assessment of consistency with the local disaster manager plan.

While LGAQ supports the Bill, it notes there will be a financial impact imposed on local governments as responsible entities for reviewing emergency action plans and consulting with relevant entities for dams that they own, however it considers the costs of implementing these are reasonable. Notwithstanding, it raises the need for a balance between financial cost and safety in considering any future amendments.

LGAQ supports the need for warning signs to be erected on public land warning of the dangers of entering land downstream of dams and weirs and for the associated powers for dam owners to enter
public land to erect such signage. It argues that it should be made clear that maintenance of such signs is the responsibility of dam owners and not local governments where they are not the owners of the dams.

The policy intent is that dam owners will be responsible for maintaining warning signs. The entry power in the Bill has been included to overcome issues around negotiating entry for the purpose of erecting signs.

**Seqwater and SunWater**

Seqwater and SunWater have raised a number of policy, legal, technical and drafting issues in relation to the proposed changes to emergency action plans and reporting as well as the powers to reduce the full supply level of dams for safety reasons.

Clause 28 of the Bill provides an express power for the owner of a referable dam to reduce the full supply level of the dam if the owner believes there is an ‘unacceptab [[...]]

Both entities contend that these provisions, as drafted, will significantly increase their liability risks and expose them to claims for compensation. Both entities strongly submit that the Bill needs to provide statutory protections from these potential liabilities. SunWater argues the decision should be made by government and not the dam owner and both entities submit the terms ‘unacceptable risk’ and ‘acceptable risk’ should be defined to avoid unintended consequences and different standards applying and to limit their exposure to liability risks.

Owners of all dams in Queensland are civilly liable for the operation of their dams and the consequences of their decisions and actions in managing these assets. Some statutory protection is afforded owners of referable dams in certain circumstances, for example, protection from civil liability is afforded the owner of a prescribed flood mitigation dam (Wivenhoe, Somerset and North Pine dams) when the dams are operated in accordance with an approved flood mitigation manual for the dam (see section 387 of the Water Supply Act) and the owner acts without negligence.

Additionally, most dam owners would be afforded protection from liability for loss or damage arising from an event or circumstance beyond their control under section 49 of the Water Supply Act if, in relation to the event or circumstance, the dam owner acted reasonably and without negligence.

The department does not agree that the new provisions materially change the legal position of civil liability for dam owners in operating their dams and therefore does not support the argument for a statutory protection from liability in these circumstances. Also, the State does not release or indemnify dam owners against negligence in any circumstance, and would not stop a legal action against a dam owner for negligence being commenced.

There is a potential issue however raised by new section 399B, to the extent that it may impose a subjective test of ‘acceptable risk’ and ‘unacceptable risk’. The department agrees these terms require clarification and definition.

In addition, while the department believes there would be no grounds for a water customer to be compensated should the dam owner be unable to supply water to allocation holders due to the full supply level being reduced, the department considers it may be appropriate for a ‘no compensation’ provision to be included, similar to current section 399 of the Water Supply Act.

The policy objective is to ensure dam owners can reduce the full supply levels in order to address structural problems that pose a safety risk; as such a ‘no compensation’ provision for section 399B would address this aspect the of the liability concerns raised and enable dam owners to focus on structural safety issues without the need to balance the impact on water security against safety concerns.
Clauses 13 to 25 of the Bill deal with emergency action plans and reporting. These clauses substantially replace the current provisions of chapter 4, part 1, division 2A to improve the framework for the preparation of emergency action plans. The amendments in the Bill respond directly to the IGEM Review’s Recommendation 3 and broader findings.

SunWater and Seqwater have raised a number of issues with the new provisions with respect to the extent of the dam owner’s role and responsibility under the new provisions, including who is responsible for ‘notifying’ and ‘warning’ the community and the nature of ‘warnings’ the dam owner can reasonably issue to downstream communities.

Both entities have raised similar issues with new definitions under the Bill and how they may be interpreted within the context of the new provisions, for example, ‘dam hazard event’, ‘emergency event’ and ‘each circumstances that indicates an increase in the likelihood of a dam hazard event or emergency event’.

The intent of the amendments is to put in place a robust planning framework for all of Queensland that will inform a shared understanding about who is responsible for particular actions in different circumstances so that the community receives timely notifications and warnings.

The IGEM Review found:

The issue of responsibility for warnings and notifications of downstream persons that may be affected is one that must be addressed on a location specific basis through collaboration between the dam owners/operators and local disaster management groups. (IGEM Review, p. 11)

Under the Bill, the dam owner is responsible for preparing the emergency action plan. This means that the dam owner is responsible for identifying who needs to be notified or warned, how and when they will be notified or warned and the appropriate entity for these actions in a dam hazard event or emergency event.

Provision is made for warnings to be provided by a relevant entity, such as the local or district disaster management group or emergency services, where this is agreed with that entity.

This ensures that the dam owner collaborates with emergency groups and integrates its emergency planning with disaster management arrangements.

However, the department considers that the Bill could provide further clarity in relation to particular requirements including:

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

In addition, subject to the Bill being passed, the Emergency Management Plan Guidelines for Referable Dams will be revised to provide additional guidance to dam owners in preparing their plans.
## Appendix 1 – Advice to Committee on issues raised in submissions

### Reduced full supply level

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**SunWater Submission**

Issue: 1

- Decision that there is an ‘unacceptable risk’ to the safety of the dam operating at full supply level should be a decision of government and not the dam owner.
- Clarify separate and distinct schemes for reducing the full supply level for dams which operate as flood mitigation dam and those that do not.
- Such decisions should be balanced against the impacts on water security.
- The dam owner should be afforded protection from liability for the consequences of any decision to reduce the full supply level or not reduce the full supply level – similar to section 387 of the Water Supply Act.
- The dam owner should be afforded protection from compensation claims for consequences arising from a decision to reduce the full supply level - similar to section 399 of the Water Supply Act.
- Clarity needed on what constitutes an ‘unacceptable risk’ given ANCOLD guidelines and Queensland guidelines on acceptable flood capacity.

**Seqwater Submission**

Issues: 8, 9 and 13

- The term ‘unacceptable risk’ should be defined to provide clarify and to avoid use of ANCOLD guideline definitions and unintended consequences.
- Noting it is not possible to ever reduce all risks associated with dam failure, suggest alternative phrase for reducing the level of the dam to ‘a level acceptable to the owner’ – to ‘materially reduced the risk of a failure of the dam to a level acceptable to the owner’.
- Such decisions should be balanced against the impacts on water security.
Clause and Section | Issue | Submission
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 | regulators the period in which it is necessary to operate the dam at reduced full supply level | • The dam owner should be afforded protection from liability for the consequences of any decision to reduce the full supply level or not reduce the full supply level – similar to section 387 of the Water Supply Act – protection should be extended to prevent negligence based claims.  
• Clarify reporting time frame dam owner expects dam can be returned to full supply level in sections 399B(4)(b) and 399C(3)(a) by reference to ‘time frame or applicable situation’.

**Departmental response:**

**Who should make the decision**

Dam owners are best placed to determine whether there is an ‘unacceptable risk’ to the safety of operating their dam at the full supply level. However, under the Bill the decision maker must be advised by a RPEQ in forming the belief that the risk is unacceptable. The engineer’s expert advice must accompany the dam owner’s notice given to the regulator/s as soon as practicable after the dam owner has reduced the level of the dam.

The dam owner’s notice must tell the regulator/s the reasons for the reduced supply level and the period for which it is necessary to operate the dam at that reduced supply level. Seqwater submits that there will be cases where the owner can’t specify a time frame and suggest reference to a “situation” would be more practical. However, the reasons (situation) and time frame are co-related therefore it should not pose any difficulty for the owner in meeting reporting obligations.

The department considers no change is needed to these aspects of the Bill.

**What constitutes an ‘unacceptable risk’**

Both Seqwater and SunWater submit that the term ‘unacceptable risk’ requires clarification to avoid unintended consequences and/or expose the entities to liability for making decisions to reduce the full supply level, or not deciding to reduce the full supply level. There is a potential issue raised by this concern, to the extent that section 399B may impose a subjective test of ‘acceptable risk’ and ‘unacceptable risk’.

Owners of referable dams must comply with safety conditions imposed by the dam safety regulator (the chief executive of the department), and must have regard to the Queensland dam safety guidelines made by the regulator under the Water Supply Act and the ANCOLD guidelines. These guidelines provide guidance on ‘tolerable risks’ and the Queensland guidelines on acceptable flood capacity for water dams also provide upgrade schedules for completion of necessary works by 2035 in order to reduce long term risks (such as spillway inadequacy) below ‘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 time frames.
However, in the absence of a definition for ‘unacceptable risk’ and ‘acceptable risk’ in the Bill there is potential for different interpretations and different standards to apply potentially exposing the dam owner to liability risk.

The department considers it should clarify whether the concepts of acceptable and unacceptable risk in section 399B are intended to be objectively determined, based on the accepted industry standards, or subjectively determined. Further, the department recommends the terms be defined by reference to the Queensland dam safety guidelines made under the Water Supply Act.

Issues of and protection against liability for dam operations and compensation

Liability

Owners of all dams in Queensland are civilly liable for the operation of their dams and the consequences of decisions and actions. Some limited protections are afforded to owners of referable dams in certain circumstances, for example, protection from civil liability is afforded to the owner of a prescribed flood mitigation dam (Wivenhoe, Somerset and North Pine dams) when the dams are operated in accordance with an approved flood mitigation manual for the dam (see section 387 of the Water Supply Act) and without negligence.

Otherwise, most dam owners would be afforded protection from liability for loss or damage arising from an event or circumstance beyond their control under section 49 of the Water Supply Act if, in relation to the event or circumstance, the dam owner acted reasonably and without negligence.

Dam owners subject to Water Act provisions must comply with the resource operations plan and resource operations licence for the dam including maintaining the full supply level and would not be authorised to reduce the level without prior negotiation with the chief executive for the Water Act and consideration would need to be given to the impacts on water security and individual water customers.

Therefore, the express power for an owner to reduce the full supply level without approval from a regulator will facilitate timely action to address an emergent and critical dam safety issue without delay or for the need to balance the decision against other considerations such as the impacts on water security. The power is clearly delimited to circumstances of an ‘unacceptable risk’ of the dam failing if it operates at the full supply level. In these circumstances the risk of the dam failing is superior to all other considerations.

Both Seqwater and SunWater submit they and other owners may be exposed to increased liability risk and should be afforded protection from liability for decisions about and actions, or inaction, to reduce the full supply level, similar to the protection afforded under section 387 for flood mitigation dams. Further Seqwater asserts that protection is needed to prevent claims against the entity for negligence. The department does not agree that the new provisions materially change the legal position of civil liability for dam owners in operating their dams and therefore there is no case for extending protection from liability. The State also does not release or indemnify dam owners against negligence in any circumstance, nor would it prevent legal action against a dam owner for negligence proceeding.

The department considers there is neither a case for, nor a need to, indemnify dam owners from any liability that may arise from exercising powers under new section 399B.
Compensation

Section 399B(2) is permissive and not mandatory. This creates a potential difficulty for dam owners because if section 399B(2) were mandatory, it would reduce the scope for argument that ‘acceptable risk’ involves balancing the owner’s water supply obligations with the safety risk. Further, even if section 399B(2) were mandatory, a dam owner could still face claims from customers/third parties if the owner could not meet water supply commitments as a consequence of lowering the full supply level.

A dam owner must comply with their resource licence conditions under the Water Act, including maintaining the full supply level (formerly stated in the resource operations plan) for the dam. (Other matters formerly under the resource operations plan are now taken to be omitted from the plans, and reside in the operating licence or the operations manual for the dam.)

If the dam owner is unable to comply with the licence conditions, the owner has obligations to report the non-compliance to the chief executive. By way of example, the Burdekin Resource Operations Plan (ROP) provides that if the licence holder cannot comply with the operating rules and requirements of the plan, they must report the details to the chief executive one day after the non-compliance; this includes if the licence holder is unable to supply water allocations.

Under section 13 of the Burdekin ROP, if carrying out the operating and environmental management rules would put a person’s or persons’ safety at risk, they no longer apply. The dam owner must report the situation to the chief executive and provide an interim program within 14 days about how they intend to come back into compliance.

Although customers have no right to be “compensated”, if they do not receive their water allocations, such claims could still be initiated, when there is no express statutory provision that makes clear they have no right to compensation. The policy objective is to ensure dam owners can reduce the full supply levels in order to address structural problems that pose an unacceptable safety risk. As such, consideration could be given to including a ‘no compensation’ provision for section 399B. This would address this aspect the of the liability concerns raised and encourage dam owners generally to focus on structural safety issues.

The department considers a ‘no compensation’ provision for section 399B could address submitters’ concerns.
Reasonably foreseeable situation or condition

<table>
<thead>
<tr>
<th>Clause and Section</th>
<th>Issue</th>
<th>Submission</th>
</tr>
</thead>
<tbody>
<tr>
<td>Clause 13, section 352A</td>
<td>Definition of <em>dam hazard</em> and what constitutes a reasonably foreseeable situation or condition.</td>
<td>Seqwater Submission</td>
</tr>
<tr>
<td></td>
<td><strong>Issue:</strong> 1</td>
<td><strong>Seqwater Submission</strong></td>
</tr>
<tr>
<td></td>
<td>• Reasonably foreseeable situation or condition needs to be clarified.</td>
<td><strong>Issue:</strong> 1</td>
</tr>
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<td>• Dam owners may be aware of a foreseeable situation of an extremely low probability that could foreseeably cause failure of a dam. In most cases the event will not be imminent.</td>
<td><strong>Issue:</strong> 1</td>
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<td>• The situation should be limited to an ‘imminent situation’ rather than ‘foreseeable situation’.</td>
<td><strong>Issue:</strong> 1</td>
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</table>

**Departmental response:**

The current definitions under the Water Supply Act for ‘dam failure hazard’ (in section 352B) and ‘downstream release hazard’ (in section 352C) are both based on the concept of a ‘reasonably foreseeable’ hazard, and the new definitions under the Bill have not changed in this regard. It is appropriate to expect that a dam owner would plan for situations based on what is reasonably foreseeable. Such a situation is only a ‘dam hazard’ if it may:

- cause or contribute to the failure of the dam, and this failure may cause harm to persons or property
- require an automatic or controlled release of water from the dam, and this release of water may cause harm to persons or property.

If this is not the case, then the situation is not a ‘dam hazard’. If this is the case, then the situation is a ‘dam hazard’ and must be planned for, given the potential for harm to persons or property. This planning is conducted on a risk management basis that takes into account the likelihood and consequence of the event.

The department considers no change is needed to this aspect of the Bill.
Harm to persons and property and downstream hazard extent

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<tr>
<th>Clause and Section</th>
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<tbody>
<tr>
<td>Clause 13, section 352A</td>
<td>Definition of <em>dam hazard</em> and reference to may cause harm to persons or property</td>
<td>Seqwater Submission&lt;br&gt;Issue: 2 and 10&lt;br&gt;- May cause harm to persons or property is too vague. The existing concept of a ‘downstream release hazard’ is clearer.&lt;br&gt;- The new definition does not limit how far downstream the persons or property may be, which are referred to in the definition for ‘dam hazard’.&lt;br&gt;- In practice downstream release hazard extent would typically extend no further downstream than to the junction of the next major tributary downstream of the dam, because further downstream it is not possible for a dam owner to issue effective notifications or warnings based solely on dam outflow.&lt;br&gt;- Propose a revised ‘dam hazard’ definition to include a ‘downstream limit’ that reflects the intent of Recommendation 1 in the IGEM Review.&lt;br&gt;- A ‘downstream hazard extent’ definition should be inserted: ‘downstream hazard extent’ means an extent downstream of the dam where downstream flooding represented by a flood flow rate can be reasonably directly related to dam outflow.</td>
</tr>
<tr>
<td>SunWater Submission</td>
<td>Issue: 3&lt;br&gt;- The drafting of this provision requires further consideration.&lt;br&gt;- Combined, these provisions make it seem that a dam owner is intended to have primarily responsibility for issuing warnings to the community.&lt;br&gt;- This is not consistent with disaster management legislation where responsibility sits with the local disaster management group.&lt;br&gt;- A dam owner has limited ability to assess areas beyond those immediately downstream of a dam (for example, where several tributaries may converge).&lt;br&gt;- The Bill may be interpreted by some that dam owners are responsible for all notifications, resulting in some communities being left vulnerable in certain circumstances.</td>
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Consideration should be given to confirming the responsibility of local government as the responsible entity for flood warning for less than 6 hours’ duration. Presently this requirement is informal and as such means the framework in which dam owners are operating lacks sufficient clarity and certainty.

**Departmental response:**

A ‘hazard’ to the safety of persons or property is something that may cause harm to persons or property. There is no difference in terms of how this new provision is intended to function compared to the current definition of ‘downstream release hazard’.

With regard to a ‘downstream hazard extent’, this is best determined by the emergency action plan, in consultation with disaster management groups, given that it will depend on the dam and the particular event. In relation to this the IGEM Review found:

**Finding 16**

The issue of responsibility for warnings and notifications of downstream persons that may be affected is one that must be addressed on a location specific basis through collaboration between dam owner/operators and local disaster management groups (IGEM Review, p. 10).

This would not be possible if a ‘downstream hazard extent’ was arbitrarily defined for all dams and all events.

To be clear, it is not intended to make a dam owner responsible for notification and warning communities that are far from the dam – where they can be adequately alerted by emergency services or disaster management arrangements. Rather, the emergency action plan will identify who needs to be notified or warned, how and when they will be notified or warned, and who is the appropriate entity to provide the notification or warning (having regard to the dam and the nature of the event).

The department considers no change is needed to this aspect of the Bill.
## Dam hazard event and emergency event

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<tr>
<th>Clause and Section</th>
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<tbody>
<tr>
<td>Clause 13, section 352A</td>
<td>Definition of <em>dam hazard event and emergency event and relevant entities</em></td>
<td><strong>Seqwater Submission</strong>&lt;br&gt;Issue: 3&lt;br&gt;• There are a number of issues when these two definitions are read in conjunction.&lt;br&gt;• Almost every dam overflow or release could be an emergency event if it has the potential to harm at least one person or one property.&lt;br&gt;• There needs to be better alignment of the seriousness of an event.&lt;br&gt;• Amend the definition of ‘dam hazard event’ so that it means that a ‘dam hazard is likely or occurring that is not sufficiently serious to be an emergency event’.&lt;br&gt;• Amend the definition of ‘emergency event’ such that an emergency event is generally similar to a ‘disaster’ under the Disaster Management Act.</td>
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<td><strong>SunWater</strong>&lt;br&gt;Issue: 8&lt;br&gt;• Reading these definitions together it does not appear possible for a dam hazard event to ever occur.&lt;br&gt;• If a person who may be harmed is a ‘relevant entity’ then there cannot be a circumstance that is a dam hazard event.</td>
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<td><strong>Charters Towers Regional Council</strong>&lt;br&gt;• Split the definition of emergency event into an emergency event which requires post event reporting and a dam hazard event which still requires community notifications, but are less dangerous.</td>
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</table>

**Departmental response:**

A relevant entity includes a person who may be harmed, or whose property may be harmed, if a dam hazard event or emergency event were to happen for the dam. However, it is not intended that a dam hazard event is to be considered an emergency event simply because, for example, a person whose property may be harmed is notified of the dam hazard event. In other words, it is not intended that notifying or warning a person who may be harmed, or whose property may be harmed, would amount to a ‘coordinated response’.
Ultimately what is a ‘dam hazard event’ and an ‘emergency event’ will be determined by the emergency action plan (i.e. under the emergency action plan for the dam) and agreed on with the local government.

Nevertheless, it is clear from submission comments that there is potential for different interpretations and additional guidance is needed to clarify what is a ‘dam hazard event’ versus an ‘emergency event’. This could be achieved by some minor revisions made to the Bill and/or by providing further explanatory material and guidance under the Emergency Management Plan Guidelines for Referable Dams to be revised following passage of the Bill.

The department notes the submission from Charters Towers Regional Council and the definition for dam hazard event and emergency event are intended to achieve this.

The department will consider potential changes to this aspect of the Bill.
### Purpose of emergency action plan

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<tr>
<th>Clause and Section</th>
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<th>Submission</th>
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</table>
| Clause 15, section 352E(2) | Purpose of emergency action plan | **Seqwater Submission**  
Issue: 4  
- The purpose of an emergency action plan, specified in the Bill, is ‘to minimise the risk of harm to persons or property if a dam hazard event or emergency event for the dam happens’.  
- It is widely recognised across all disciplines of professional risk management that risk is the combination of the likelihood of a hazard occurring and the consequence of the event. In this context an emergency action plan cannot minimise the risk to harm to persons or property because it cannot specify actions to take to minimise the consequences.  
- It would be better to describe the main purpose of an emergency action plan as ‘to identify dam hazard events and emergency events for the dam, and further identify and facilitate communication of the hazards to persons whose safety or property may be impacted’. |

| SunWater Submission  
Issue: 6  
- The explanatory notes recognise that it is difficult to accurately foresee every possible future event.  
- An emergency action plan needs to be capable of change over time as a dam owner’s asset changes and as the dam owner becomes aware of new foreseeable circumstances. That change over time must be provided for in the Bill, together with explicit recognition that a dam owner should operate in accordance with a superior emergency action plan (irrespective of which plan is the approved plan).  
- The statutory purpose clause clouds this position and creates a potential conflict between the statute and the general law.  
- The Bill should explicitly stipulate that an emergency action plan takes precedence over a resource operations plan (reflecting the priority of public safety over water security). |
Departmental response:

The emergency action plan is intended to minimise the risk of harm to persons or property; it is a risk management plan.

It does this by planning for what the dam owner will do in a dam hazard event or emergency event, including:

- providing notifications and warnings to people who are at immediate risk, or whose property is at risks;
- providing notifications to emergency services and local disaster management groups; and
- taking action in response to the dam hazard event or emergency event.

The planning process ensures that the response is coordinated and the notifications and warnings received by the community are location specific and timely.

The current provisions under the Water Supply Act make provision for emergency action plans to be continuously improved. These provisions are not substantively changed by the Bill. For instance, section 352P requires that the dam owner must review their approved plan by 1 October each year and advise the chief executive if the owner proposes any change to the plan. The chief executive can, at any time, direct a dam owner to prepare a new plan (see section 352O) if the chief executive believes it no longer adequately addresses risks to persons and property.

Dam owners should follow the most superior emergency action plan and not rigidly comply with the approved plan where one has been submitted for approval. These are planning documents to direct and guide actions in particular events and not compliance instruments.

It is not considered necessary to state in legislation that an emergency action plan takes precedence over a resource operations plan or resource operations licence.

The department considers no change is needed to this aspect of the Bill.
Area likely to be affected by ‘dam hazard event’ or ‘emergency event’

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<tr>
<th>Clause and Section</th>
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<th>Submission</th>
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</table>
| Clause 18, section 352H  | Identifying the area likely to be affected by a dam hazard event or emergency event | Seqwater Submission
Issue: 5
- The requirements associated with identifying areas likely to be affected (including mapping) in section 352H(1)(a) and (b) will be a concern and is not possible to implement if the concerns raised in issues 1 to 3 are not addressed. |

**Departmental response:**

The requirement to identify areas likely to be affected by hazards and events under emergency action plans has not changed. While the definition for ‘dam hazard’, ‘dam hazard event’ and ‘emergency event’ would be changed by the Bill (primarily for clarity and not in terms of operation), the intent of this requirement has not changed. This is an important step in preparing the emergency action plan, and is necessary in order to plan for:

- who needs to be notified or warned;
- how and when they will be notified or warned;
- who is the appropriate entity to provide the notification or warning (having regard to the dam and the nature of the event); and
- determining actions to be taken to respond to the event

The department considers no change is needed to this aspect of the Bill.
### Circumstances that indicate an increase in the likelihood

<table>
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<tr>
<th>Clause and Section</th>
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<th>Submission</th>
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</table>
| Clause 18, section 352H | Circumstances that indicate an increase in the likelihood of a dam hazard event or emergency event | **Seqwater Submission**  
Issue: 6  
- Defining each circumstance that indicates an increase in the likelihood of a ‘dam hazard event’ or ‘emergency event’ will be extraordinarily cumbersome because there will be numerous circumstances.  
- An increase in likelihood is not defined – it should at least be limited to material change in need to respond to the event.  
- Limit the ‘increase in likelihood’ to a limited number of likelihood classifications such as those used by the Bureau of Meteorology, which uses four classes of likelihood being: ‘may’; ‘is likely’; ‘is expected’; and ‘will’.  
- The need to warn persons should be limited to ‘is likely’ and ‘is expected’ likelihood categories for dam hazard events, and ‘may’, ‘is likely’, ‘is expected’, and ‘will’ likelihood categories for emergency events. |
| | | **SunWater**  
Issue: 2  
- Section 352H requires a statement on how the owner plans to warn persons who may be harmed if circumstances arise that indicate an increase in the likelihood of a dam hazard event or emergency event.  
- Unless there is some quantification of ‘an increase in likelihood’ there is potential to either alarm communities unnecessarily or desensitise communities to warnings. A materiality threshold should be included in the drafting of the provision. In addition, only ‘reasonably foreseeable’ circumstances should be the focus of this regime. |

**Departmental response:**

The current definition of ‘emergency condition’ in section 352A includes ‘a circumstance that potentially indicates an increase in the likelihood of a dam failure hazard or downstream release hazard happening.’ The following example is given: an unusual amount of seepage from the dam. This wording (without the example) has been carried forward into clause 18, new section 352H of the Bill and the intended operation has not changed.
However, the department considers that further clarification may be needed to ensure the intent the emergency action plans are to identify each circumstance that indicates a material increase in the likelihood of a dam hazard event or emergency event.

The department will consider potential changes to this aspect of the Bill.
## Warnings

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<tr>
<th>Clause and Section</th>
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<th>Submission</th>
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| Clause 13 section 352A and Clause 18 section 352H | Warnings under the emergency action plan | **Seqwater Submission**  
Issue: 14  
- The expected intent of a warning needs to be clarified. There are significantly complex and practical limitations for a dam owner to advise if, when, and how people potentially need to act to protect life and property.  
- There is also a significant concern for liability that may arise from providing specific detailed action advice to third parties.  
- At best the dam owner advice on action to take can only be very general, such as words to effect ‘be aware, take care’ and with no specific further action.  
- It should be noted that the IGEM Review identified expectations for warnings from a limited survey of the expectations of community members.  
- The preferred option is to retain the requirement of the current Act, which is to notify. Alternatively, expressly include limitations in the Act and amend the Explanatory Notes, such that the action advice component of ‘warnings’ are only of a general nature rather than any specific detailed action. |

**SunWater Submission**  
Issue: 3 and 4  
- A dam owner is not in position to discharge the type of ‘warning’ referred to in the Explanatory Notes, and that this is the proper role for the local disaster management group.  
- Any requirement for a dam owner to ‘warn’ persons should be of a very general nature and not require specific details of actions that persons should take.
**Departmental response:**

The need for warnings was a key finding of the IGEM Review:

Finding 14

There are different levels of urgency assigned by our community focus group members to the terms notify and warn. The use of these terms may impact their ability to understand and assess risks and take appropriate action during dam emergency events (IGEM Review, p. 10).

Finding 16

The issue of responsibility for warnings and notifications of downstream persons that may be affected is one that must be addressed on a location specific basis through collaboration between dam owners/operators and local disaster management groups (IGEM Review, p. 10).

There may be situations when it is appropriate to provide notification. For example, the dam owner may need to notify a relevant entity, such as the local disaster management group about a dam hazard event. Or the dam owner may need to notify people immediately downstream that there has been an increase in the likelihood of a dam hazard event occurring, and they should be prepared for further notification or warning. In other situations, the dam owner may need to warn people immediately downstream that a dam hazard event is about to occur. The emergency action plan must plan for these situations.

In general, the local disaster management group and emergency services will be responsible for warning the community. And in most situations, this is what the emergency action plan will identify. But there may be cases where it is appropriate for the dam owner to warn people, for example, where there is insufficient time for the dam owner to notify the local disaster management group so that the local disaster management group can ensure those people are warned. It is, therefore, important that provision is included for the dam owner to do this planning in consultation with the local disaster management group. This will ensure that there is shared understanding of who is responsible and how notifications and warnings will be provided.

Dam owners need to consult with the affected community when preparing their emergency action plan. This gives the dam owner the opportunity to ensure the community is aware of what types of warnings they could receive and what these mean. Subject to passage of the Bill, the department will provide further guidance on warnings and consulting with the community in an updated guideline on emergency action planning.

The department considers no change is needed to this aspect of the Bill.
Review and approval of emergency action plan

<table>
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<tr>
<th>Clause and Section</th>
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<th>Submission</th>
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</table>
| Clause 18 section 352HA and 352HB | Review of emergency action plan by the local government and approval by the chief executive | **SunWater Submission**  
Issue: 5  
- The terminology in section 352HA is too broad and would include local governments that may only be indirectly affected. The term ‘directly’ affected should be included.  
- The local government must assess a plan and provide the dam owner with a notice within 30 business days. However, there is no penalty if a local government fails to comply. This creates uncertainty for the dam owner.  
- The Bill does not address potential inconsistency between the emergency action plan and the local disaster management plan.  
- It should not be necessary to submit a copy of the plan to the relevant district group for the plan, under section 352HA.  
- The dam owner should be required to respond to the local government’s notice, unless the local government accepts the plan is entirely consistent. |

**Charters Towers Regional Council Submission**  
- Allow 60 business days for local government to review an emergency action plan.  
- Opportunity should be provided for district disaster management group managers to comment on an emergency action plan. |

**Sunshine Coast Council**  
- The requirement of section 352HB does not satisfy the policy objective to simplify process and reduce regulatory burden.  
- Section 352HB requires the local government to provide written notice to the dam owner whether the emergency action plan is consistent with the local disaster management plan, within 30 business days of receiving the emergency action plan. The local government must consult with its local group in undertaking this assessment.  
- This requirement should only be for a new emergency action plan or a significant revision of the emergency action plan. Minor revisions should be provided to the local government,
but without the requirement to assess and provide written notice whether the emergency action plan is consistent.

- The 30 business day time frame should start after the local government consults with the local group.

**Departmental response:**

Section 352HA requires the dam owner to give a copy of the emergency action plan to each local government whose local government area may be affected by a dam hazard identified in the plan. This is appropriate to ensure that affected local governments are engaged in and comment on the emergency action plan. The department considers that it is also appropriate that each relevant district group has a copy of the plan and can comment on the plan, under section 352HC. This is also recognised by the submission from Charters Towers Regional Council.

A penalty in relation to a local government failing to comply with section 352HB would not be appropriate, and is not common for a provision of this nature. While the Bill provides for 30 business days for the local government review of the plan, it is expected that the relevant local governments would be have been engaged and consulted early in the development of the plans prior to them being formally submitted for assessment of consistency with the local disaster management plan. The Explanatory Notes state that if a local government has failed to provide a notice, then the dam owner is not precluded from submitting the plan to the chief executive for consideration and approval.

The department notes that the local government has 30 business days to consider the emergency action plan and provide a notice the dam owner, not 60 business days as submitted by Charters Towers Regional Council.

The department notes that the local government will not have to assess an emergency action plan that is changed to correct a minor error, or is changed in a way that is not a change of substance. These changes can be agreed with the chief executive under new section 352Q, inserted by the Bill. The department also notes that these provisions are intended to improve the integration of dam safety and disaster management.

The department considers no change is needed to this aspect of the Bill.
# Approval timing and complying with the current emergency action plan

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<tr>
<th>Clause and Section</th>
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</table>
| Clause 18 section 352HA and 352HB | Approval timing and complying with the current emergency action plan | **SunWater Submission**  
Issue: 5 and 6  
- The Bill is silent on what version of an emergency action plan is to be used while the approval process is in progress.  
- The Bill should explicitly stipulate that a dam owner should act in accordance with the emergency action plan it knows to be superior in content regardless of approval.  
- An emergency action plan needs to be capable of change over time as a dam owner’s asset changes and as the dam owner becomes aware of new foreseeable circumstances. That change over time must be provided for in the Bill, together with explicit recognition that a dam owner should operate in accordance with a superior emergency action plan (irrespective of which plan is the approved plan).  
- The statutory purpose clause clouds this position and creates a potential conflict between the statute and the general law. |

**Departmental response:**

This issue was addressed by the Minister’s speech introducing the Bill into the Queensland Parliament:

> I need to be clear that planning will never guarantee that all circumstances will be foreseen, although it is a critical part of disaster readiness. Plans are intended to agree responsibilities and communications and form the basis of a response, but dam owners may need to adapt their response in the face of unexpected circumstances in order to minimise the risk to people if the plan response was not effective (Hansard, 30 Nov 2016, p.4704).

In addition, the Explanatory Notes state:

> No plan will ever accurately foresee every possible combination of circumstances that might arise during an emergency. There will continue to be a degree of residual risk, despite effective planning, and the response to an event is likely to be based on planning as well as the best information available at the time and the sound judgement of all involved (p.17).

In the context of this policy intent, it should be noted that an emergency action plan is a planning document, not a compliance instrument, and there is no offence provision for non-compliance with the approved emergency action plan.

**The department considers no change is needed to this aspect of the Bill.**
Submission of emergency event report

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<th>Clause and Section</th>
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</table>
| Clause 25, section 352T  | Emergency event reporting and the definition of ‘end’ in relation to an emergency event | **Seqwater Submission**  
  Issue: 7  
  • It is widely recognised in the professional risk management of dams that there is rarely ‘no risk’.  
  • The definition should be where the dam hazard has diminished such that it is no longer an ‘emergency event’.  

**SunWater Submission**  
Issue: 9 and 12  
• The definition for ‘end’ of an emergency event may mean that an event will (technically) never end. Perhaps the event should be considered at an end when there is no longer a ‘material’ risk to persons or property.  
• That an ‘emergency event report’ is not required for very ‘minor spills’ with the proviso that the dam regulator can seek such a report should they specifically require one.  

**Departmental response:**  
The department notes the issue in relation to the definition of ‘end’, and will consider potential changes to make definition clearer and more workable.  
In relation to a ‘minor spill’, an emergency event report is only required after an emergency event, under section 352T. An emergency event means an event arising from a dam hazard if, under the emergency action plan for the dam –  
  (a) persons who may be harmed, or whose property may be harmed, are to be warned of the event; and  
  (b) a coordinated response involving 1 or more relevant entities is likely to be required to respond to the event.  

An emergency event report for a ‘minor spill’ would only be required if it was to be managed as an emergency event under the emergency action plan.  
The chief executive can seek an interim report, under section 352U. But again, only in relation to an emergency event.  
The department will consider potential changes to this aspect of the Bill.
## Testing of emergency action plan

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<tr>
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<tbody>
<tr>
<td>N/A</td>
<td>Requirement for testing of emergency action plan</td>
<td>SunWater Submission</td>
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<tr>
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<td>Issue: 11</td>
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<td>• There is not requirement for testing an emergency action plan in the Bill. SunWater notes that this a consideration of IGEM Recommendation 3.</td>
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**Departmental response:**

Requirements for testing an emergency action plan will be addressed in an updated guideline. This is in line with the IGEM Recommendation 4:

> In accord with the outcomes of Recommendation 3, the Emergency Action Planning for Referable Dams guideline and the Queensland Local Disaster Management Guidelines are aligned to require dam operators, councils and local disaster management groups to collaborate in planning, and their plans reflect:

- agreed warning and notification systems
- the testing and exercising of agreed warning and notification systems (IGEM Review, p. 16).

The department considers no change is needed to this aspect of the Bill.
Privacy and sharing contact information

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<tbody>
<tr>
<td>N/A</td>
<td>Sharing contact details for emergency action plan with local government</td>
<td>SunWater Submission</td>
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<td>Issue: 12</td>
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<td>• Dam owners be allowed to share ‘population at risk’ contact data with local governments and emergency services for matters of public interest related to emergency action plans, and the dam owner would not be in breach of privacy laws.</td>
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**Departmental response:**

Dams are owned by entities of various institutional form. SunWater is owned by the Queensland Government, hence it is a government owned corporation but it is also a corporation under the *Corporation Act 2001* (Cwlth) and is subject to various parts of that Act.

The Queensland *Information Privacy Act 2009* applies to various (State) agencies and local governments and contains similar privacy principles to the Commonwealth Act. If a dam owner were bound by the privacy principles, it may be permitted to disclose personal information in the following circumstances:

(a) Information Privacy Principle (IPP) 9 and IPP 10 provide that an agency can use personal information under its control for:
   • particular purpose; and
   • another purpose if the agency is satisfied ‘... on reasonable grounds that use of the information for the other purpose is necessary to lessen or prevent a serious threat to the life, health safety or welfare of an individual, or to public health, safety and welfare’; and

(b) IPP 11 permits an agency to disclose personal information it holds if:
   • the person to whom the information relates has agreed to disclosure or the agency; or
   • the agency is satisfied ‘... on reasonable grounds that use of the information for the other purpose is necessary to lessen or prevent a serious threat to the life, health safety or welfare of an individual, or to public health, safety and welfare’; and

Under chapter 4, part 5 of the *Information Privacy Act 2009*, an agency can apply for a permanent or waiver or modification of the privacy principles in the public interest.

The Commonwealth Act shows contains similar exemptions to those under the *Information Privacy Act 2009* for disclosing information to prevent or lessen a threat to the safety of an individual or public safety.

The department considers that this issue is adequately addressed by the *Information Privacy Act 2009*, and does not need to be addressed by the Bill.

The department considers no change is needed to this aspect of the Bill.
### Warnings signs on public land

<table>
<thead>
<tr>
<th>Clause and Section</th>
<th>Issue</th>
<th>Submission</th>
</tr>
</thead>
<tbody>
<tr>
<td>Clause 6, section 36</td>
<td>Power to enter public land to erect warning signs</td>
<td><strong>SunWater Submission</strong></td>
</tr>
<tr>
<td></td>
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<td>Issue: 10</td>
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<td></td>
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<td>• Entry to land that adjoins a watercourse may be too restrictive given that entry to an area downstream may not be the immediate access point to the area.</td>
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<td></td>
<td></td>
<td><strong>Seqwater Submission</strong></td>
</tr>
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<td>Issue: 11</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• The current drafting doesn’t allow entry to public land without prior notice or the occupants agreement if entry is urgent.</td>
</tr>
<tr>
<td>Consultation with local government</td>
<td></td>
<td><strong>City of Gold Coast Submission</strong></td>
</tr>
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<td></td>
<td>Issue: 3</td>
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<td></td>
<td>• Subclause (3) means that a dam owner won’t have to give notice or seek agreement from the occupant if the land is not occupied but means that the owner won’t be require to consult with local government if the public land is in their control.</td>
</tr>
<tr>
<td>Maintenance of warning signs</td>
<td></td>
<td><strong>LGAQ Submission</strong></td>
</tr>
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<td></td>
<td></td>
<td>• The LAGQ supports the need for warning signs to be erected on public land warning of the dangers of entering land downstream of dams and weirs and for the associated powers for dam owners to enter public land to erect such signage. It argues that it should be made clear that maintenance of such signs is the responsibility of dam owners and not local governments.</td>
</tr>
</tbody>
</table>
Departmental response:

SunWater submit restricting entry powers to land “adjoining” a watercourse downstream of a dam or weir is too restrictive but note they have done no analysis. This could be where there is no appropriate location for a sign on the land directly adjoining the watercourse. The entry power will overcome the problem identified by the Coroner and responds to the inquest recommendations. Should it be evident that the provision is too restrictive, it could be reconsidered in the future.

The department considers no change is needed to this aspect of the Bill.